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# Bulk Water Removals: Canadian Legislation

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*Bulk Water Removals: Canadian Legislation*  
(Background Paper)

Publication No. 2002-13-E

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## CONTENTS

|     |  |   |
|-----|--|---|
| 1   | INTRODUCTION.....  | 1 |
| 2   | LEGISLATIVE POWERS UNDER THE CONSTITUTION<br>RELATING TO BULK WATER REMOVALS.....    | 1 |
| 3   | MOST RECENT LEGISLATIVE DEVELOPMENTS .....   | 2 |
| 3.1 | Federal Developments .....   | 2 |
| 3.2 | Provincial Developments .....  | 3 |
| 4   | SUMMARY OF CURRENT LEGISLATION AND<br>REGULATIONS REGARDING BULK WATER REMOVALS..... | 3 |



# **BULK WATER REMOVALS: CANADIAN LEGISLATION\***

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## **1 INTRODUCTION**

For decades, Canadians have been raising concerns about the possibility of fresh water being removed from Canadian lakes and waterways in bulk, including for export to the United States and beyond. The federal government has consistently opposed bulk removal of Canadian water, but it does not have exclusive jurisdiction over water issues in Canada; substantial jurisdiction resides with the provinces.

After outlining the legislative powers relevant to bulk water removals that the Constitution has assigned to Parliament and to the provincial legislatures, this paper briefly discusses legislative developments since a failed Canada-wide accord in 2000, which would have prohibited bulk water removals from Canada's major watersheds. This paper then outlines, in a table, current federal, provincial and territorial legislation relating to bulk water removals.<sup>1</sup>

## **2 LEGISLATIVE POWERS UNDER THE CONSTITUTION RELATING TO BULK WATER REMOVALS**

Under the *Constitution Act, 1867*<sup>2</sup>, jurisdiction over water is divided between Parliament and the provincial legislatures, with some overlap. The Constitution does not specifically mention water; however, it does address some water uses, such as navigation, fisheries and, more recently, electrical energy generation. Most questions of jurisdiction over water must be inferred from the Constitution's treatment of other issues, such as property rights, foreign relations and international trade. Because the use of water resources has both national and provincial implications, the two levels of government may lay claim to legislative competence within their respective spheres.

The provinces generally have authority over natural resources within their boundaries. Their jurisdiction over water derives from specific clauses in the Constitution that assign the provinces jurisdiction over such matters as property and civil rights (section 92(13)); the management and sale of public lands (section 92(5)); and matters of a local and private nature (section 92(16)). A 1982 amendment to the *Constitution Act, 1867* specifies that the provinces also have some jurisdiction over electricity-generating works (section 92A(1)(c)).

Although water is a natural resource, the provinces' considerable jurisdiction is limited by specific powers assigned exclusively to the federal government. Examples are federal authority over fisheries (section 91(12)); navigation and shipping (section 91(10)); the regulation of trade and commerce (section 91(2)); federal lands (section 91(1A)); Indians and lands reserved for Indians (section 91(24)); interprovincial works and undertakings (section 92(10)(a)); works "for the general Advantage of Canada" (section 92(10)(c)); and "peace, order and good government" (section 91, opening paragraph). The federal government also has responsibilities for boundary and transboundary waters.<sup>3</sup>

As a result of the constitutional distribution of powers, a water export scheme would succeed only with the support and cooperation of both levels of government. Except with respect to federally owned or administered lands, the provinces possess a proprietary interest in the water resources within their boundaries and thus have both legislative and proprietary rights to deal with them. These rights are subject to federal authority in certain specified areas, however. For example, an emergency or national interest would justify federal intervention on the basis of the residual power granted by the “peace, order and good government” clause of the federal declaratory power. Where water is exported from a province, the federal government necessarily becomes involved.

### 3 MOST RECENT LEGISLATIVE DEVELOPMENTS

Legislative provisions to prohibit bulk water removals have been enacted at both the federal and provincial levels. (Since 2003, each of the territories has had a policy respecting prohibition of bulk water removals from major drainage basins, as discussed further in the table later in this paper.)

#### 3.1 FEDERAL DEVELOPMENTS

At the federal level, in 2001, Parliament amended the *International Boundary Waters Treaty Act*,<sup>4</sup> which was originally enacted to implement in Canada the 1909 Boundary Waters Treaty<sup>5</sup> between Canada and the United States. The treaty established the International Joint Commission and provided mechanisms to resolve disputes, primarily those concerning water quantity and quality, along the Canada–U.S. boundary. Through the treaty, Canada and the United States are mutually obliged to protect natural levels and flows of waters shared by the two countries. The 2001 amendments, along with related regulations made in 2002,<sup>6</sup> prohibited the removal of boundary waters in bulk from the Canadian portion of the Great Lakes–St. Lawrence Basin, the Hudson Bay Basin, and the Saint John–St. Croix Basin.

Recently, Parliament again amended the *International Boundary Waters Treaty Act*, as well as the *International River Improvements Act*.<sup>7</sup> The new *Transboundary Waters Protection Act*<sup>8</sup> expanded the existing prohibition against bulk water removals to apply in respect of transboundary waters (rivers and streams that, in their natural channels, flow *across* the international boundary) as well as boundary waters (waters, such as the Great Lakes, that *straddle* the boundary).

It moved certain definitions and exceptions from the regulations to the Act. Notably, the list of water basins to which the Act applies was expanded to include water basins covering the whole country, and it was moved to the Act. The significance of moving these provisions is that they may now only be amended by Parliament through the legislative process.

The *Transboundary Waters Protection Act* also gave the federal government new powers of inspection and enforcement, and introduced stiff new penalties for violations.

Finally, the new Act amended the *International River Improvements Act* to prohibit the construction, operation or maintenance of a canal or pipeline (or other such “international river improvement”) linking waters that are neither boundary waters nor transboundary waters (that is, waters that are fully within a province) to an international river if the purpose or effect of the improvement is to increase the annual flow of the international river at the international boundary.

### 3.2 PROVINCIAL DEVELOPMENTS

In 1999, the federal government announced a strategy comprising three elements to prohibit the bulk removal of water from Canadian watersheds. One element was a Canada-wide accord on bulk water removals. The government stated that joint participation was essential to develop and implement a permanent Canada-wide solution to bulk water removals.<sup>9</sup>

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 had developed or were developing legislation or regulations that would accomplish this goal by prohibiting bulk water removals within their respective jurisdictions.<sup>10</sup>

## 4 SUMMARY OF CURRENT LEGISLATION AND REGULATIONS REGARDING BULK WATER REMOVALS

| Jurisdiction | Legislation  | Approach  | Exceptions   |
|--------------|--|---|--|
| Federal      | <a href="#">International Boundary Waters Treaty Act</a> ,<br>R.S.C. 1985, c. I-17,<br>s. 13 <sup>a</sup><br><br><a href="#">International River Improvements Act</a> ,<br>R.S.C. 1985, c. I-20,<br>s. 4.1 | <p>For the purposes of both the <i>International Boundary Waters Treaty Act</i> (IBWT Act) and the <i>International River Improvements Act</i> (IRI Act), the term “boundary waters” refers to waters, such as the Great Lakes, that straddle the international boundary between Canada and the United States, whereas “transboundary waters” refers to waters (rivers and streams) that, in their natural channels, flow across the international boundary between Canada and the United States, including waters set out in Schedule 3 of the IBWT Act (section 10 of the IBWT Act and section 2 of the IRI Act).</p> <p>The bulk removal of either boundary waters or transboundary waters is prohibited (sections 13(1) and 13(2) of the IBWT Act). “Bulk removal means the removal of water from boundary or transboundary waters and the taking of that water, whether it has been treated or not, outside the Canadian portion of the water basin – set out in Schedule 2 – in which the waters are located</p> <ul style="list-style-type: none"> <li>• by any means of diversion, including by pipeline, canal, tunnel, aqueduct or channel; or</li> <li>• by any other means by which more than 50,000 L of water are taken outside the water basin per day” (section 10 of the IBWT Act).</li> </ul> | <p>The prohibitions against the bulk removal of boundary waters and transboundary waters do not apply to:</p> <ul style="list-style-type: none"> <li>• Waters used in a vehicle, including a vessel, aircraft or train, (a) as ballast; (b) for the operation of the vehicle; or (c) for people, animals or goods on or in the vehicle (section 13(4) of the IBWT Act);</li> <li>• Waters used in a non-commercial project on a short-term basis for firefighting or humanitarian purposes (section 13(4) of the IBWT Act). A “non-commercial project” means “a project involving bulk removal in which no one is required to pay for the water that is removed” (section 10 of the IBWT Act); or</li> </ul> |

# BULK WATER REMOVALS: CANADIAN LEGISLATION

| Jurisdiction              | Legislation  | Approach  | Exceptions  |
|---------------------------|--|---|---|
| Federal<br>(cont'd)       | <i>International Boundary Waters Treaty Act</i> and<br><i>International River Improvements Act</i><br>(cont'd) | <p>The water basins in respect of which the prohibitions apply and that are set out in Schedule 2 of the IBWT Act are:</p> <ul style="list-style-type: none"> <li>• Arctic Ocean;</li> <li>• Atlantic Ocean;</li> <li>• Gulf of Mexico;</li> <li>• Hudson Bay; and</li> <li>• Pacific Ocean.</li> </ul> <p>A person may only construct, operate or maintain an "international river improvement" in accordance with a licence (section 4 of the IRI Act). An "international river improvement" means "a dam, obstruction, canal, reservoir, pipeline or other work the purpose or effect of which is (a) to increase, decrease or alter the natural flow of an international river, and (b) to interfere with, alter or affect the actual or potential use of the international river outside Canada" (section 2 of the IRI Act).</p> <p>No licence may be issued for the construction, operation or maintenance of an international river improvement that links waters that are neither boundary waters nor transboundary waters to an international river if the purpose or effect of the improvement is to increase the annual flow of the international river at the international boundary (section 4.1(2) of the IRI Act).</p> | <ul style="list-style-type: none"> <li>• A manufactured product that contains water, including water and other beverages in bottles or other containers, that is taken outside a water basin (included in definition of "bulk removal" in section 10 of the IBWT Act).</li> </ul>   |
| Newfoundland and Labrador | <a href="#"><u>Water Resources Act</u></a> , S.N.L. 2002, c. W-4.01  | <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>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"> <li>• Water contained in containers of not more than 30 L in volume (section 12(3)(a))</li> <li>• 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))</li> <li>• Water used to transport food or an industrial product out of the province (section 12(3)(c))</li> <li>• Water removed for a non-commercial purpose approved by the Minister of Environment and Conservation, including for safety or humanitarian purposes (section 12(3)(d))</li> </ul> |



# BULK WATER REMOVALS: CANADIAN LEGISLATION

| Jurisdiction | Legislation  | Approach  | Exceptions  |
|--------------|--|---|---|
| Nova Scotia  | <a href="#">Water Resources Protection Act</a> ,<br>S.N.S. 2000, c. 10 | <p>No person shall be granted an approval to and no person shall</p> <ul style="list-style-type: none"> <li>• drill for, divert, extract, take or store water for removal;</li> <li>• sell or otherwise dispose of water to a person for removal;</li> <li>• convey or transport water for removal; or</li> <li>• remove water</li> </ul> <p>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"> <li>• Water packaged in the province in a container of not more than 25 L or such maximum capacity as is prescribed by the regulations (section 5(1)(a))</li> <li>• 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))</li> <li>• Water used to transport fish or any other product (section 5(1)(c))</li> <li>• 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))</li> <li>• 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))</li> <li>• 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</li> </ul> |

# BULK WATER REMOVALS: CANADIAN LEGISLATION

| Jurisdiction         | Legislation   | Approach  | Exceptions  |
|----------------------|---|---|---|
| Prince Edward Island | <a href="#"><i>Environmental Protection Act</i></a> , R.S.P.E.I. 1988, c. E-9   | <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(<i>r</i>)).</p>   | <ul style="list-style-type: none"> <li>Water used for drinking purposes and packaged in Prince Edward Island in containers having a capacity of not more than 25 L (section 12.1(3)(a))</li> <li>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))</li> <li>Water removed, with the written permission of the Minister of Environment, Labour and Justice and Attorney General, to meet short-term safety, security or humanitarian needs (section 12.1(4)(b))</li> </ul> |
| New Brunswick        | <a href="#"><i>Water Quality Regulation</i></a> , Regulation 82-126 and <a href="#"><i>Environmental Impact Assessment Regulation</i></a> , Regulation 87-83, both made under the authority of the <a href="#"><i>Clean Environment Act</i></a> , R.S.N.B. 1973, 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 (<a href="#"><i>Water Quality Regulation</i></a>, 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" may be subject to an environmental impact assessment (<i>Environmental Impact Assessment Regulation</i>, sections 3 and 4, and Schedule A, item (<i>r</i>)).</p> |   |

# BULK WATER REMOVALS: CANADIAN LEGISLATION

| Jurisdiction | Legislation  | Approach  | Exceptions   |
|--------------|--|---|--|
| Quebec       | <a href="#">Environment Quality Act</a> , R.S.Q., c. Q-2, Division V | <p>No water withdrawn in Quebec may be transferred out of Quebec (section 31.105).</p> <p>The <i>Environment Quality Act</i> includes special provisions applicable to water withdrawals from the St. Lawrence River Basin (subdivision 2, starting at section 31.88). The purpose of these provisions is to 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 U.S. states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin.</p> <p>No water withdrawn from the St. Lawrence River Basin may be transferred out of the Basin, subject to stated exceptions (section 31.90).</p> | <p>Water withdrawn (subject to the provisions below regarding the St. Lawrence River Basin)</p> <ul style="list-style-type: none"> <li>to serve in the production of hydroelectric power;</li> <li>to be marketed for human consumption, if packaged in Quebec in containers of 20 L or less;</li> <li>to supply drinking water to establishments, institutions or dwellings situated in a boundary area; or</li> <li>to supply vehicles, including vessels and aircraft, whether for the needs of persons or animals being transported or for ballast or other needs related to the operation of vehicles (section 31.105).</li> </ul> <p>The Government may, for emergency-response or humanitarian reasons or any other reason considered to be in the public interest, lift the prohibition against water transfers (section 31.106). Such lifting of the prohibition for any reason in the public interest is subject to public consultation (section 31.107).</p> <ul style="list-style-type: none"> <li>Water withdrawals, from the outset made for purposes of transfer out of the Basin, that were either authorized or lawfully commenced before 1 September 2011. Any increases in the quantity of water withdrawn must be authorized (section 31.90).</li> </ul> |

# BULK WATER REMOVALS: CANADIAN LEGISLATION

| Jurisdiction       | Legislation                             | Approach  | Exceptions  |
|--------------------|---|---|---|
| Quebec<br>(cont'd) | <i>Environment Quality Act (cont'd)</i> | <p>The <i>Environment Quality Act</i> includes a subdivision, which is not in force, that would make withdrawals of surface water or groundwater subject to the authorization of the Minister of Sustainable Development, Environment and Parks or the cases prescribed by regulation (section 31.75). The minister's power of authorization would be subject to various considerations set out in sections 31.76 and 31.77. The minister would be able to prescribe any condition, restriction or prohibition the minister considers appropriate (sections 31.79 and 31.80).</p> | <ul style="list-style-type: none"> <li>Water withdrawn               <ul style="list-style-type: none"> <li>(a) to be marketed for human consumption, if packaged within the Basin in containers of 20 L or less;</li> <li>(b) to be used within the Basin in the manufacture, preservation or processing of products;</li> <li>(c) to supply vehicles, including vessels and aircraft, whether for the needs of persons or animals being transported or for ballast or other needs related to the operation of the vehicles; or</li> <li>(d) for humanitarian, civil protection or emergency-response purposes provided the withdrawal is temporary and non-recurrent (section 31.90).</li> </ul> </li> <li>Authorized transfers where               <ul style="list-style-type: none"> <li>(a) all water transferred out of the Basin is intended to supply a waterworks system serving all or part of the population of a local municipality (as described in the Act); and</li> <li>(b) all the water is to be returned to the Basin, less an allowance for consumptive use, and subject to a number of stipulations set out in the Act (section 31.91).</li> </ul> <p>See additional conditions set out in sections 31.92 to 31.104.</p> </li> </ul> <p>Exceptions to the authorization requirement would be made for</p> <ul style="list-style-type: none"> <li>a withdrawal with a maximum flow rate of less than 75,000 L per day, unless:               <ul style="list-style-type: none"> <li>(a) the withdrawal is intended to supply water to the number of persons the Government determines by regulation;</li> </ul> </li> </ul> |

# BULK WATER REMOVALS: CANADIAN LEGISLATION

| Jurisdiction       | Legislation   | Approach  | Exceptions  |
|--------------------|---|---|---|
| Quebec<br>(cont'd) | <i>Environment Quality Act (cont'd)</i>                                   | <p>"Water withdrawal" or "withdrawal" means the taking of surface water or groundwater by any means other than by means of (1) works used for the impounding of water; (2) works used for the diversion of water to produce hydroelectric power; and (3) other works used for the production of hydroelectric power (section 31.74).</p>  | <p>(b) the water is to be sold or distributed as spring water or mineral water or used as such in the manufacture, preservation or processing of products with the meaning of the <i>Food Products Act</i>; or</p> <p>(c) the water is withdrawn from the St. Lawrence River Basin to be transferred out of the Basin (section 31.75(1));</p> <ul style="list-style-type: none"> <li>• a temporary, non-recurring withdrawal for emergency response, humanitarian or civil protection purposes (section 31.75(2)); and</li> <li>• any other withdrawal determined by regulation (section 31.75(3)).</li> </ul>  |
| Ontario            | <a href="#"><u>Ontario Water Resources Act</u></a> , R.S.O. 1990, c. O.40 | <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> <ul style="list-style-type: none"> <li>• 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;</li> <li>• the Nelson Basin, which consists of the part of Ontario the water of which drains into the Nelson River; and</li> <li>• 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)).</li> </ul> <p>In addition to the prohibition against transfers out of the Great Lakes–St. Lawrence River Basin described above (i.e., inter-basin transfers), the Act contains provisions, which are not in force, but which would prohibit new and increased transfers of 379,000 L 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)).</p> <p>For purposes of the provision summarized above (section 34.6 of the Act), 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> | <p>Exceptions to the prohibition against transfers of water out of a water basin:</p> <ul style="list-style-type: none"> <li>• water packaged in a container having a volume of 20 L or less;</li> <li>• water used in the water basin to manufacture or produce a product that is then transferred out of the water basin;</li> <li>• 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 ;</li> <li>• a transfer of water for the purpose of firefighting or other emergency purposes;</li> </ul> |

# BULK WATER REMOVALS: CANADIAN LEGISLATION

| Jurisdiction        | Legislation   | Approach   | Exceptions  |
|---------------------|---|--|---|
| Ontario<br>(cont'd) | <i>Ontario Water Resources Act</i><br>(cont'd)  | <ul style="list-style-type: none"> <li>• Lake Superior watershed</li> <li>• Lake Huron watershed</li> <li>• Lake Erie watershed</li> <li>• Lake Ontario watershed</li> <li>• St. Lawrence River watershed (section 34.5(2))</li> </ul>   | <ul style="list-style-type: none"> <li>• 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 ; and</li> <li>• 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)).</li> </ul> <p>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 L per day or greater can take place from one Great Lakes watershed to another.</p>                       |
| Manitoba            | <a href="#">Water Resources Conservation Act</a> , C.C.S.M., c. W72<br><br><a href="#">Water Resources Conservation Regulation</a> , 179/2010 | <p>No person shall</p> <ul style="list-style-type: none"> <li>• drill for, divert, extract, take or store water for removal;</li> <li>• sell or otherwise dispose of water to a person for removal;</li> <li>• convey or transport water for removal; or</li> <li>• remove water</li> </ul> <p>from a water basin or sub-water basin (section 2 of the Act).</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, no such regulation has been made under the Act.)</p> | <ul style="list-style-type: none"> <li>• Water packaged in a container of not more than 25 L, or any other maximum capacity prescribed in the regulations (section 3(1)(a) of the Act)</li> <li>• 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 3(1)(c) of the Act)</li> <li>• Water removed to meet short-term safety, security or humanitarian needs with the approval of the minister (section 3(1)(d) of the Act)</li> <li>• Water used in Manitoba to manufacture or produce a product (section 3(1)(e) of the Act); for purposes of this provision, potable or other water is not a manufactured or produced product (section 3(2) of the Act)</li> </ul> |

# BULK WATER REMOVALS: CANADIAN LEGISLATION

| Jurisdiction         | Legislation   | Approach  | Exceptions   |
|----------------------|---|---|--|
| Manitoba<br>(cont'd) | <i>Water Resources Conservation Act</i> and<br><i>Water Resources Conservation Regulation</i><br>(cont'd) |   | <ul style="list-style-type: none"> <li>Water that is removed by a person who obtained the water outside the water basin and, at the time of the removal, is in possession of evidence to that effect (section 3(1)(f) of the Act)</li> </ul> <p>Further exceptions may be made by the Lieutenant Governor in Council in regulations (section 3(3) of the Act); at the time of writing, there is one regulation under the Act providing that the prohibition in section 2 does not apply in respect of treated potable water provided by the Regional Municipality of Wallace – from its municipal water supply under a specific licence – to the Village of Maryfield (whose water supply became contaminated) for municipal purposes (<i>Water Resources Conservation Regulation</i>).</p>  |
| Saskatchewan         | <a href="#"><i>The Water Security Agency Act</i></a> , S.S. 2005, c. W-8.1                                | <p>Notwithstanding any other provision in <i>The Water Security Agency Act</i> or any other Act, the Water Security Agency shall not grant</p> <ul style="list-style-type: none"> <li>any licence or approval to construct or operate works for the purposes of transferring water out of a watershed; or</li> <li>any licence or approval to transfer water out of a watershed (section 55).</li> </ul> <p>The Act defines “water” to be groundwater or surface water (section 2(p)); “groundwater” is defined to mean water beneath the surface of land (section 2(j)); “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"> <li>Water packaged in containers that have a capacity that is less than the maximum capacity prescribed in the regulations (section 56(b)); at the time of writing, no relevant regulation has been made in this regard</li> <li>Water transferred or taken for the purpose of transfer between watersheds, or portions of watersheds, within Saskatchewan (section 56(a))</li> <li>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 56(c) and 56(d))</li> <li>Water that is of a class prescribed in the regulations or that is removed in a manner or purpose prescribed in the regulations (section 56(e)); at the time of writing, these matters have not been addressed in regulations</li> </ul> |

# BULK WATER REMOVALS: CANADIAN LEGISLATION

| Jurisdiction | Legislation   | Approach   | Exceptions  |
|--------------|---|--|---|
| Alberta      | <a href="#">Water Act</a> ,<br>R.S.A. 2000, c. W-3<br><br><a href="#">Water (Ministerial) Regulation</a> ,<br>Alta. Reg. 205/98 | <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) of the Act).</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 of the Act).</p> <p>The Act defines a "major river basin" in section 1(1)(ff) to mean</p> <ul style="list-style-type: none"> <li>• the Peace/Slave River Basin;</li> <li>• the Athabaska River Basin;</li> <li>• the North Saskatchewan River Basin;</li> <li>• the South Saskatchewan River Basin;</li> <li>• the Milk River Basin;</li> <li>• the Beaver River Basin; and</li> <li>• the Hay River Basin</li> </ul> <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 regulation.)</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 in 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 of the Act).</p> | <ul style="list-style-type: none"> <li>• Prohibition against transferring water from the province outside Canada by any means set out in section 46(2) of the Act does not apply to "municipal water" and "processed water" as defined in the regulations (sections 46(1) and 46(3) of the Act). The relevant regulation, the <i>Water (Ministerial) Regulation</i>, defines "municipal water" and "processed water" in sections 1(3)(c) and 1(3)(e) respectively for purposes of the <i>Water Act</i> as follows:</li> </ul> <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> <ol style="list-style-type: none"> <li>water that is packaged in Alberta as a beverage, including but not limited to bottled or canned water, and</li> <li>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.</li> </ol> |



# BULK WATER REMOVALS: CANADIAN LEGISLATION

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| British Columbia | <p><a href="#">Water Protection Act</a>, R.S.B.C. 1996, c. 484</p> <p><a href="#">Water Sustainability Act</a>, S.B.C. 2014, c. 15</p> | <p>A person must not remove water from British Columbia (section 5 of the WP Act).</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) of the WP Act).</p> <p>The WP 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. (An amendment, not yet in force, will repeal the words "or extract" from the definition. See <i>Water Sustainability Act</i>, section 202.)</p> <p>A "major watershed" is defined in section 1(1) of the WP Act to mean any of the following nine regions in British Columbia:</p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• the MacKenzie Watershed, comprising the area that drains into the MacKenzie River and its tributaries;</li> <li>• the Columbia Watershed, comprising the area that drains into the Columbia River and its tributaries;</li> <li>• the Skeena Watershed, comprising the area that drains into the Skeena River and its tributaries;</li> <li>• the Nass Watershed, comprising the area that drains into the Nass River and its tributaries;</li> <li>• the Stikine Watershed, comprising the area that drains into the Stikine River and its tributaries;</li> <li>• the Taku Watershed, comprising the area that drains into the Taku River and its tributaries;</li> <li>• the Yukon Watershed, comprising the area that drains into the Yukon River and its tributaries; and</li> <li>• the Coastal Watershed, comprising the rest of British Columbia.</li> </ul> | <ul style="list-style-type: none"> <li>• Water packaged in British Columbia in containers having a capacity of not more than 20 L (section 5(c) of the WP Act)</li> <li>• A person who is a "licensed registrant" (defined in section 1(1) of the WP 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) of the WP Act) (An amendment, not yet in force, will replace the term "licenced registrant" with "registrant" and will amend the definition of "registered licence." See <i>Water Sustainability Act</i>, sections 202 and 207.)</li> <li>• A person who is registered as an "unlicensed registrant" (defined in section 1(1) of the WP Act), under a registration that remains in effect, and complies with the applicable conditions (set out in section 16) of that registration (section 5(b) of the WP Act) (An amendment, not yet in force, will repeal this exception. See <i>Water Sustainability Act</i>, section 207.)</li> <li>• Water that was obtained outside British Columbia and for which, at the time of the removal, the person in question is in possession of evidence satisfactory to the comptroller to that effect (section 5(d) of the WP Act)</li> <li>• 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 of the WP Act)</li> </ul> |
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# BULK WATER REMOVALS: CANADIAN LEGISLATION

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| Yukon                 | <a href="#"><u>Waters Act</u></a> , S.Y. 2003, c. 19     | <p>The federal government entered into the <i>Yukon Devolution Transfer Agreement</i>, which gave the Yukon government provincial-type responsibilities in relation to water management in the territory effective 1 April 2003.</p> <p>The federal <i>Yukon Waters Act</i> was repealed and replaced by a mirror territorial Act (<i>Waters Act</i>) 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 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 a 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 drainage basins in those territories.</p>   | Some exceptions are set out in the policy statement.   |
| Northwest Territories | <a href="#"><u>Waters Act</u></a> , S.N.W.T. 2014, c. 18 | <p>Under the <i>Northwest Territories Lands and Resources Devolution Agreement</i>, the federal government transferred responsibility for managing public lands, water and resources in the territory to the territorial government effective 1 April 2014. As required by this agreement, Parliament repealed the federal <i>Northwest Territories Waters Act</i>, and the territorial legislature enacted the <i>Waters Act</i>, which substantially mirrors the repealed federal Act.</p> <p>The Northwest Territories is now responsible for making decisions about bulk water removals in the territory. However, at the time of writing, it appears that a policy statement developed by Indian and Northern Affairs Canada in collaboration with the territorial governments of the Northwest Territories and Nunavut in 2003 was still the official policy in the Northwest Territories. The statement reads:</p> <p>“The removal of freshwater in bulk quantities from any major drainage basin within [the territory] is prohibited. Any licences submitted to the Minister authorizing bulk water removal will not be approved ... Bulk water removal is defined as any water transferred out of a river basin in any individual container greater than 40 litres in volume, or removal by any means that involves permanent out-of-basin transfer, whether it is by diversion (including pipeline, canal, tunnel, aqueduct or channel), tanker or other mechanism.”<sup>11</sup></p> | <p>The policy contains the following exceptions:</p> <ul style="list-style-type: none"> <li>• water packaged in containers of 40 L or less;</li> <li>• water removed to meet short-term health and safety needs (such as firefighting);</li> <li>• water removed for human or animal consumption during travel and water needed to carry foodstuffs; and</li> <li>• water removed for road construction and maintenance, and other such local uses, insofar as these are consistent with water resource management objectives and environmental considerations.</li> </ul> |

## BULK WATER REMOVALS: CANADIAN LEGISLATION

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| Nunavut | <a href="#"><i>Nunavut Waters and Nunavut Surface Rights Tribunal Act</i></a> , S.C. 2002, c. 10 | <p>The federal government is responsible for water management in Nunavut (although, at the time of writing, the territory is negotiating a power transfer agreement with the federal government). The jurisdiction is exercised under the <i>Nunavut Waters and Nunavut Surface Rights Tribunal Act</i>.</p> <p>Under this Act, the Nunavut Water Board Water is established. Any major diversion or use of water requires a licence issued by the board and approval by the Minister of Indian Affairs and Northern Development.</p> <p>With regard to bulk water transfers, Nunavut supports a policy statement developed by Indian and Northern Affairs Canada in 2003. This policy statement is substantially the same as that developed for the Northwest Territories, which is described in the row above for the Northwest Territories.<sup>12</sup></p> |  |
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- Note: a. The *International Boundary Waters Regulations* made under the Act were not updated when the Act was amended in 2013. Accordingly, section 5 of the regulations continues to state that the application of the bulk water prohibition in section 13(1) of the Act is limited, contrary to the intention of Parliament. It is unknown how a court would reconcile these provisions.

### NOTES

- \* This is a revised version of a publication of the same title by David Johansen, formerly of the Library of Parliament. It also contains text based on material in the following publication by 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 (archived).
- The author 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.
  - [\*Constitution Act\*](#), 1867, 30 & 31 Victoria, c. 3 (U.K.)
  - Boundary waters are waters, such as the Great Lakes, that lie along the international boundary between Canada and the United States. Transboundary waters are waters, such as the Milk River, that flow across the international boundary. See the [\*International Boundary Waters Treaty Act\*](#), R.S.C., 1985, c. I-17, s. 10, for precise definitions.
  - [\*An Act to amend the International Boundary Waters Treaty Act\*](#), S.C. 2001, c. 40.
  - The Treaty appears as a schedule to the *International Boundary Waters Treaty Act*.
  - [\*International Boundary Waters Regulations\*](#), SOR/2002-445.
  - [\*International River Improvements Act\*](#), R.S.C., 1985, c. I-20.
  - [\*Transboundary Waters Protection Act\*](#), S.C. 2013, c. 12.
  - Department of Foreign Affairs and International Trade, "A Strategy to Protect Canadian Water," Background, Ottawa, 10 February 1999.
  - Environment Canada, Background Information on Bulk Water Removal and Water Export, October 2004.
  - Indian and Northern Affairs Canada, [\*A Policy Respecting the Prohibition of Bulk Water Removal from Major River Basins in the Northwest Territories\*](#), Ottawa, 2003, p. 3.
  - See Indian and Northern Affairs Canada, [\*A Policy Respecting the Prohibition of Bulk Water Removal from Major River Basins in Nunavut\*](#), Ottawa, 2003, p. 3.