

SPEECH SERIES\*

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A MODEL ACT TO PRESERVE CANADA'S WATERS

May 16, 2008



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# Library of Parliament Seminar Series

## Speech Summary

In this speech, written for the Library of Parliament Seminar Series, Mr. Pentland reviews issues around bulk water exports and large interbasin transfers. He then introduces the model act developed by the Canadian Water Issues Council through the University of Toronto Munk Centre. He explains how the principles embedded in the Act, such as a focus on river basin boundaries instead of country, can effectively prohibit the removal of water from Canada's major watersheds, with minor and well-defined exceptions, while respecting provincial jurisdiction.

## Speech – Full Text

I'd like to start with a few observations about the several dimensions of the bulk water export issue. I should stress that the objective of the Model Act is to protect the ecological integrity of Canada's major river basins. It's not to prevent water export. But there is an incidental relationship with the bulk water export issue, and that does tend to be the focus of a lot of the questions that arise about the Act.

When I speak about bulk water export, I'm not talking about bottled water or local arrangements between communities across the border. Removals for bottled water can be important locally, but are trivial on the scale of major river basins. And we have had several local cross-basin arrangements over the years, some flowing in each direction. They normally don't involve interbasin transfers, and don't raise significant environmental or sovereignty issues.

The first dimension of the bulk water export issue is the myth of Canadian water abundance. Canada has about 7% of the world's renewable water supply, which is much less than either Brazil or Russia, and about the same as the United States. That 7% of the world's renewable water supply meets the ecological needs of about the same proportion of the world's landmass, so from an ecological perspective, we have no water to spare. Large parts of Canada such as the Prairies and the Okanagan Valley are semi-arid, and many of the lakes and groundwater aquifers that we treat as bottomless reservoirs renew at an extremely slow rate, so that, in many cases, we're actually draining them for generations to come.

The second dimension is the myth that the United States is running out of water. On a national scale, the U.S. still only consumes about 10% of its renewable water supply. And water use in that country has actually been declining over the past two decades. There are several reasons for that. First, the U.S. has made considerable progress on water conservation, especially in agricultural regions. Some of you may have heard Peter Gleick speak about that progress.

Also, some of their laws have changed to allow water to move from lower valued to higher valued uses. As well, they have accidentally exported a lot of their water use to less developed nations, as a result of outsourcing much of their manufacturing to low labor cost countries.

The U.S. does have a lot of local water short area, just as we have in Canada. But, most of those cases have been caused by the over pumping of groundwater, with the return flow ending up far from its original source. And in many cases, that over-pumping of groundwater has caused drinking water quality problems. There is a very good book on that subject by Robert Glennon entitled "Water Follies" if any of you would like to follow up on that topic.

A third dimension to the water export issue is sovereignty. In Canada, we don't generally sell water, even to Canadians. We give individuals and institutions a right to use it, and we sell water services. Governments can theoretically take back the water rights they give to Canadians, but they could never take them back if they ever gave them to another country. Water is not like oil – there are many energy substitutes, but there is no substitute for life-sustaining water

A fourth dimension is the economic one. You can read lots of claims by entrepreneurs that there are bucket loads of money to be made by selling Canadian water. You should take those claims with a grain of salt. Most of those claims are based on three faulty assumptions – the first is cost. For example, while I was in government, we had a top notch engineer do an independent analysis of the cost of the Grand Canal scheme. He calculated that it would cost something like 10 times as much as the \$ 100 billion claimed by its supporters.

Another faulty assumption is the notion that water has no value, and will never have any value in the donor basin. And yet another error is in overlooking the much lower cost alternatives that always exist much closer to home. As a generality, I think it is safe to assume that most large-scale long-distance export schemes would return about a nickel or a dime for every dollar invested. Those kinds of projects simply couldn't happen without massive taxpayer subsidies.

One exception may eventually be marine tanker export. But, that could only serve communities situated right on the east and west coasts of the southern U.S. The economics surrounding tanker exports within North America are a little better than for major diversions, but it still wouldn't be profitable at this point in time. The Province of Newfoundland studied that possibility in great detail, and decided it wouldn't work on the east coast. And on the west coast, Alaska has had a for sale sign out for well over a decade, and still hasn't sold its first boatload of water.

Offshore potential is simply a non-starter. Transportation costs are just too high, and there are many countries better situated than Canada to serve potential markets. For example, China is often mentioned as one potential market. I've done some work in China, and simply don't believe those claims. Some northern Chinese provinces are very water short, but there are extremely large supplies of water in the southern provinces of that country.

The fifth dimension is the water-energy connection. Theoretically, water scarcity could always be overcome by some combination of desalinization, cleaning up wastewater to a very high standard, and moving water over long distances. But, those options are all huge energy destroyers. The further we move down any of those paths, the sooner we will arrive at the inevitable global energy crunch.

Of course the opposite is also true. The faster we squander energy resources, the sooner we will reach water limits. A good example of that is the impact of tar sands development on the Athabasca River.

The final dimension I would like to touch on is the political one. I'm sure it wouldn't surprise you to learn that many Canadian politicians have toyed with the idea of bulk water export behind the scenes since 1960. However, once the economic and environmental realities have been explained to them, and once they realize that 70% of Canadians have always opposed bulk water export, they have inevitably beat a hasty retreat.

Enough about water export. I'd now like to briefly describe how the Model Act came about.

Some of you may recall that last spring a senior representative of a U.S. think tank did a tour of Canadian talk shows promoting the idea of North American re-plumbing, or in other words Americans availing themselves of Canadian water. I think that shocked a lot of Canadians. A lot

of inaccurate assumptions in a report written by that same think tank, reportedly as input to three country Security and Prosperity discussions also astonished a lot of water experts.

You may also recall that a Parliamentary Committee held hearings on the SPP, and that both Canadian water security and Canadian energy security were raised as issues at those hearings. Following those hearings, Parliament passed a motion calling on the government to attempt to get further safeguards regarding water into NAFTA.

To the best of my knowledge, that didn't happen. But, according to newspaper reports, the government did publicly distance itself from both the U.S. think tank and its report, and reconfirm its opposition to bulk water export. That would suggest to me that we are dealing with a non-partisan issue and one where all political parties should be able to agree on an appropriate way to move forward.

By the end of the summer, despite government reassurances, there was still a lot of unease among both the public and water specialists. I think that unease was created by a combination of the less than transparent SPP process, the widely criticized U.S. think tank analysis, and a fear that the combination of the less than transparent process and the flawed analysis could lead to an inappropriate outcome.

A group of concerned academics and citizens concluded that a more open and unfettered discussion would be helpful, both to publicly clarify the issues and to advance independent academic thinking. Subsequently, a conference on Water, Energy and North American Integration was organized for September of last year in Toronto.

At that Conference, five panelists discussed a paper prepared ahead of time by Andrew Nikiforuk, an independent writer from Calgary. I was one of the panelists along with two other Canadians and two Americans. The two Americans were both senior officials with links to the Security and Prosperity Partnership process.

Coming out of that Conference, there was a relatively broad consensus among all five panelists and the hundred or so other participants. The essence of that consensus was that water should be kept within its major river basins and used more efficiently.

That was not an unusual or even a particularly new policy position in North America. For example, as far back as 1968, in response to concerns of the Pacific Northwest states, the U.S. Congress imposed a moratorium on studies of major interbasin transfers.

Similarly, in response to concerns of the eight Great Lakes states, the U.S. Water Resources Development Act of 1986 placed a ban both on federal studies of interbasin diversions, and diversions from the Great Lakes basin without the approval of all eight Great Lakes governors.

More recently, Great Lakes states and provinces negotiated agreements calling for a prohibition on removals of water from the Great Lakes basin, with minor and well defined exceptions.

That position is also quite consistent with existing policy at both the federal and provincial levels in Canada. For example, it is included in Alberta's Water for Life Strategy, and has already been partially translated into law by nine provinces, as well as by the federal Government in 1991 amendments to the International Boundary Waters Treaty Act.

Immediately following the September conference, a few of the participants got together and decided it would be helpful if someone were to draft a Model Act for the consideration of Parliamentarians, either now or at some opportune time in the future. The Canadian Water Issues Council agreed to coordinate the project and the Munk Centre at the University of Toronto agreed to publish the final report. The primary author was Owen Saunders, and the other Council members, along with the Program on Water Issues at the Munk Centre served as reviewers. The Model Act was released and discussed at a Seminar held in Toronto about three months ago.

The proposed Act is conceptually very simple. It would place a prohibition on removals of water from Canada's major water basins, with minor and well-defined exceptions. It would also include equivalency provisions to ensure provincial jurisdiction is fully respected. I think Frank may speak a bit more about the history leading up to the current policy, and some of the geographical considerations, and Owen will speak to some of the legal implications.

The final thing I would like to touch on is the difference between the Model Act and the Bill C-156, An Act for the Preservation of Canadian Water Resources, which was tabled in Parliament by the government of the day in August of 1988, but never passed into law.

The most obvious difference is that Bill C-156 would have prohibited large-scale exports of water from Canada rather than removals from major water basins.

But, the other very interesting difference is in the flexibility offered to potential exporters or removers. In the Model Bill, the exceptions are very limited. On the other hand, Bill C-156 would have permitted small scale diversions for the purpose of export, subject to meeting environmental requirements. The size of diversion that would have been allowed was up to one cubic meter per second, which is fairly substantial – certainly large enough to permit marine tanker exports, or medium sized pipeline proposals.

I was in the public service in 1988, and worked with the Department of Justice in drafting Bill C-156. I was also tasked with fielding many of the questions from the media and the public following its tabling. Although there were a lot of questions asked, there was very little adverse reaction to the flexibility being offered by the Bill.

If one were to suggest the same degree of flexibility today, my guess is there would be a severe negative reaction. In other words, I think both expert and public opinion has significantly hardened on the topic over the past couple of decades.

We can all speculate on the reasons for that hardening. In my view, there are two primary reasons. The first is a growing recognition of the risks to our own water and ecological security – risks posed by things like climate change, newer insidious forms of pollution, and accelerating stresses caused by resource extraction industries. A second, and probably more significant reason is the prevailing view today that any significant exceptions could and probably would start us down a very slippery slope that could not be reversed under the current trade law regime.

In any event, I do think the appropriate way forward is to focus on river basin boundaries instead of country boundaries, and to do that for the right reasons and in a non-discriminatory way. We can do that by codifying the consensus that is pretty widespread in both Canada and the United States – that is the consensus that water should be kept within its major natural water basins, with minor and well-defined exceptions, and used more efficiently.

I'm going to leave it at that for now, and will welcome questions on anything I've said after we hear from the other two speakers.

Thank you.