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https://www.leg.bc.ca/40th2nd/1st_read/gov18-1.htm

The danger of water as a product

Definition vital: If we price this resource, it becomes a commodity and subject to trade agreement

The continuing heat and drought in British Columbia has more than a few people hot under the collar. You can't wash your car, gardeners can't water their lawns, and a petition has been started to stop Nestlé from using free spring water for its bottling plant in the Fraser Valley. The next thing you know, a water war will break out. In many places around the world it already has.

B.C. Minister of Environment Mary Polak, enacted on May 29 Bill 18, which will stay in place until the Water Sustainability Act is brought into effect in 2016. Bill 18 is designed to boost the cost of water management across the province to "support sustainable water management and generate sufficient revenues to recover the costs of managing the water resource." Water will remain free. Please note this important distinction.

A group of committed citizens went to Polak's Langley constituency office, carrying 2,523 sheets of paper bearing 225,000 names of people, all very upset that a foreign-owned corporation such as Nestlé should be using our water at virtually no cost.

Under the Water Act, largescale users using water without limit or any cost pay an annual fee of 85 cents for every 1,000 cubic metres of groundwater. The Nestlé plant, bottling an estimated 319.5 million litres of water for sale annually pays a token fee of about \$500.

Nestlé representative John Challinor says his company would be willing to pay for the resource, as long as everyone else does. Therein lies the rub.

Should the B.C. government be so foolish as to set a price on water, the resource would immediately become a product, a commercial commodity. Giant corporations that bottle water around the world at vast profit, like Nestlé or Pepsi Cola, would love nothing better than to pay for the water they use. They are already making a fortune from bottling free water, but stand to earn even more if and when water finally is recognized as a legal commodity.

The global chairman of Pepsi Cola, Peter Brabeck-Letmathe, has publicly stated his corporation's view that "access to water is not a human right." Water is a foodstuff like any other, he argues, and like any other foodstuff it should have a stated market value, and it's better to give a foodstuff a set value so that we're all aware it's not really free.

The instant you bottle water in a container, it becomes a commodity sold at a market price, as Nestlé has profitably learned to its satisfaction in B.C. and many other companies have profitably learned around the world. If sold in bulk at a market price, water becomes far more valuable. Privatization and corporate management of water supply is the way much of the world is headed.

The last drought in North America hit in the 1970s before global warming became a worldwide concern. At that time there were commercial proposals to ship water from B.C. to California. The government of B.C. introduced a prohibition on the issuance of water export licences. That dispute remains unresolved, but given the continuing drought in California the issue is sure to rise again.

In the NAFTA debate on water, the main argument was whether Canada could be legally forced to export water from our lakes and rivers, if and when the U.S. demanded a supply because of need. Canada demanded an interpretive note from its NAFTA partners ensuring we could not be compelled to export freshwater. The key text of the NAFTA statement was that "unless water, in any form, has entered into commerce and become a good or product, it is not covered by the provisions of any trade agreement."

It's now time to read the fine print, especially the use of the word product, which is defined as any resource that is extracted, harvested, collected, stored, graded, transported, refined, processed, assembled, packaged, or somehow transformed into an article of commerce (as Nestlé is doing). There is nothing in NAFTA by which a country can be compelled to exploit and sell a resource. However, once a resource is exploited by being extracted or collected, it becomes a product and is subject to NAFTA provisions. Then, there is the new development of the need.

The original NAFTA statement left much open to question. Canada has become the most-sued country under NAFTA and a majority of the disputes involve corporate investors challenging our environmental laws. Canada has lost several claims. The U.S., meanwhile, has never lost a NAFTA investor-state case.

The investor-state settlement mechanism in Chapter 11 grants investors the right to sue foreign governments without first pursuing legal action in the country's court systems, in order to protect foreign investors from discrimination. There will soon be a pressing need for water from the state of California's 37 million citizens. If it doesn't rain in California this fall and winter, the gloves will be off.



Bill 18 is a safe but temporary stopgap to protect B.C.'s water supply in the short term but the issue of drinking water as a commodity for export is far from over, and if any giant U.S. corporation decides to test the legal waters, Canada's record in defending itself is dodgy.

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