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Chair

Mr. Dean Allison

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•(0845)

[English]

The Chair (Mr. Dean Allison (Niagara West—Glanbrook, CPC)): I call the meeting to order.

Pursuant to the order of reference on Wednesday, October 3, 2012, Bill C-383, An Act to amend the International Boundary Waters Treaty Act and the International River Improvements Act, is what we are going to talk about today.

The bill was passed in the House and referred to our committee. We're going to hear from Mr. Miller for the first hour and then we'll have some witnesses. On Tuesday we will have the Department of Foreign Affairs and then we will do clause-by-clause.

We would like to welcome Mr. Miller. Thank you for being here today. I see some guests here from other parties, so I want to welcome all the substitutes today.

With that, I'm going to turn it over to you, Mr. Miller. I think you know how the process works, so we'll start with your opening statement, Mr. Miller.

Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC): Thank you very much, Mr. Chair.

It's great to be here with regard to my private member's bill. I'd like to thank the committee for dealing with it so quickly after it passed second reading in the House on October 3. I appreciate that. As you all know, it did pass with unanimous consent that day. While I won't characterize it as a grandma and apple pie bill, I think it's seen somewhat that way. It seems to be a non-partisan bill, and that was my intent in drafting it.

This bill, as you all know, amends the International Boundary Waters Treaty Act. It strengthens prohibitions against bulk removals of water that currently are in place. The change ensures that all waters under federal jurisdiction are protected from bulk water removals. These amendments are meant to complement provincial protections that are already in place to protect waters under their jurisdiction. The bill also strengthens the penalty and enforcement provisions and moves some definitions and exemptions found in the regulations into the body of the act. It makes the provisions that much stronger, I think, and parliamentary oversight of the act will be a little easier to conduct. There are some minor exceptions, such as for firefighting, and humanitarian purposes.

Bill C-383 is very similar to legislation which the government introduced in the previous Parliament as Bill C-26. There was one criticism of that bill at the time by the Munk School of Global

Affairs, and this bill has that amendment in it. The primary difference between Bill C-26 and Bill C-383 is an amendment to the International River Improvements Act that will prohibit a licence being issued for a project that links non-boundary waters to an international river where the purpose or effect is to increase the annual flow of the international water borders. This is intended to prevent the use of an international river as a conveyance to transfer water across the border.

Having spelled out those two issues, Mr. Chair, I understand some amendments are coming forward which, for technical reasons, aren't ready to be presented to the committee today, but I am aware of the ones being proposed. In my view they're housekeeping matters, and I have absolutely no problem with them.

With that, I'm certainly willing to take questions.

•(0850)

The Chair: All right, good. You're under your 10 minutes. It's as if you've done this before.

We welcome Mr. Julian to the committee. It's good to see you, sir.

Mr. Peter Julian (Burnaby—New Westminster, NDP): Thank you very much, Mr. Chair.

It's good to see you, Mr. Miller. On the NDP side of the House, we certainly appreciate your joining the NDP campaign to stop bulk water removals. As you know, in 1999 and 2007 we brought forward motions to the House of Commons that very clearly raised concerns around bulk water exports. In both cases they were adopted by a majority of members of the House of Commons. There's no doubt we're onside with the majority of the Canadian population on that issue, so we're very happy you're bringing this forward.

I did have some concerns and just wanted to get some clarification from you, particularly when we look at clause 3, regarding bulk removal. I will quote from your bill, "Bulk removal does not include the taking of a manufactured product that contains water, including water and other beverages in bottles or other containers, outside a water basin".

I'd like you to explain what size and scope the containers and the removals are limited to. What is the framework around that particular clause in the bill?

Mr. Larry Miller: I can't give you exact the container sizes, Mr. Julian, but I can tell you that it would include, I would suggest, basically all containers from a 20-litre jug of water—there are a lot of water coolers in homes, offices, that kind of thing—down to the smaller water bottles.

There are a couple of water bottling plants in my riding, as well as a couple of small breweries. If we put something in there to restrict that, that would mean my local breweries, for example, couldn't sell their product out of the area, their product being beer. In fact, they have won some international awards with it. This would include soft drink bottling companies. I don't have any of those in my riding, but there are a number of them across the country and across the province of Ontario.

I deliberately kept that out of it. To put something like that in there would be a huge detriment to business, a lot of it small business.

But no, it's anything to do with that type of thing, a product that uses water as part of it, whether it's bottled water, soft drinks, or beer, and I'm sure there are others. That would put a huge stress on them. I'm very pro business, and I think that would be a huge mistake.

That's not the intent here. It's about bulk diversions or simply loading ships, whatever, for example out of the Great Lakes. That's basically what I'm trying to stop by this kind of thing.

Does that answer your question?

Mr. Peter Julian: In part. You do have terrific local breweries. I want to go back to this: are you saying your approach was to limit it to 20-litre containers?

Mr. Larry Miller: Don't quote me on that. I don't know the exact container size, or if there's even a container size in here. Bulk water, whether it's loaded by ship, say, or a pipeline, or a diversion....

In terms of a diversion, I'll use the example of water that's diverted out of Chicago. That was done probably over 100 years ago. This would not allow that type of thing to happen.

Mind you, the City of Chicago, or the City of Owen Sound, which is in my riding, get their potable water for their communities out of there. This isn't going to affect that kind of thing.

As far as putting a container size on it, I think that's....

● (0855)

Mr. Peter Julian: I understand your point about manufactured products. We wouldn't have an impact on breweries, which of course are exporting. For some of the local breweries in British Columbia, it's the same thing.

Looking through the bill, very clearly there is a prohibition on diversion. I don't see that same kind of language in terms of bulk removal of water, regardless of the container size.

You mentioned 20 litres, but I didn't see that anywhere in the bill, so—

Mr. Larry Miller: No, and I think under my definition, and I think under most people's, Mr. Julian, everybody understands what

bulk water removal is. I'll just say reasonably sized containers. That's not what this bill is trying to deal with, nor do I think it needs to be dealt with. I have no concern with regard to that. Bulk water diversions or export are what I went after here, and I think this deals with that very well.

Mr. Peter Julian: It deals with it in terms of diversions; you're absolutely right, but it doesn't deal with it in terms of bulk removal containers.

Mr. Larry Miller: Well, we'll just agree to disagree on that one.

Mr. Peter Julian: You said 20 litres. That's not in the legislation, right? Right now there's nothing in there that—

Mr. Larry Miller: I want to be clear on the 20 litres. I used that as an example.

Mr. Peter Julian: I understand.

Mr. Larry Miller: Okay.

Mr. Peter Julian: I understand, but would you not agree that this is something that needs to be clarified?

If your principle, in approaching this bill, is to limit bulk water exports to 20-litre containers, and it's not actually contained within the bill, would you not agree there's a loophole? You could be looking at containers that are many, many times that size, and in a way, that's a loophole, through bulk removal of water, that can then be used for export, which is a concern that many organizations have raised as well.

Would you not agree that it bears to be clarified?

Mr. Larry Miller: I will take that under advisement, but no, I don't believe we need more in there. But I'll take a look at it. I think you realize what my intent is. I think this bill covers it off quite well. But if there's something that will improve it, I'm always going to be open to that.

Unless you had specific wording or something....

Mr. Peter Julian: I think we will, Mr. Chair. We'll be approaching that as the committee studies the bill.

I want to come to another aspect, which is the 50,000-litre limit. Again, there is a loophole here, I think, that would bear clarifying. You could export more than 50,000—

The Chair: Mr. Julian, we're going to have to pick you up in the next round, because that's all the time we have for this particular one.

I'm going to Mr. Dechert, for seven minutes, please.

Mr. Bob Dechert (Mississauga—Erindale, CPC): Thank you, Mr. Chair. Thank you, Mr. Miller, for being here today and for bringing forward what I think is a very important bill that all Canadians support.

I think Mr. Julian was just about to point out that there is a limitation on the amount of water, which is in paragraph 3(2)(b) of the definition of bulk removal. It limits it to 50,000 litres of water “taken outside the water basin per day”. I also think the committee needs to remember and understand that the use of water in any province or territory of Canada is regulated by the provinces and territories under their environmental protection legislation. Any manufacturer, whether it's a bottler of soft drinks or a brewer of beer, etc., needs a licence from the appropriate provincial or territorial agency to use as much water as they're going to use in that process. They apply for licences, and the licences specify the amount of water they're going to use on an annual basis.

That's the purview of the provinces and territories. It is regulated, in my understanding, in every province and territory of Canada.

Mr. Larry Miller: I can tell you that even to drill a well on a residential property in rural Ontario, you have to apply for a water-taking licence. Even a municipality that wants to expand its municipal water system has to go through that process.

Mr. Bob Dechert: Right. Therefore, your purpose is not to duplicate that legislation.

Mr. Larry Miller: Exactly. In fact, I deliberately stay out of provincial jurisdiction. Mr. Scarpaleggia had a bill earlier. I could have supported that bill, except, with all due respect, it went into some provincial jurisdictions. The last thing we need to be doing, I think, is jeopardizing relationships. We want to avoid duplication, as well. Clearly, to me, it's not necessary. The provinces have that covered off.

● (0900)

Mr. Bob Dechert: Your intention with this bill is to put in place a general prohibition on large-scale infrastructure projects that would divert large amounts of water from Canada to the United States.

Mr. Larry Miller: Exactly. There's one aspect of it, under the International Boundary Waters Treaty Act, that would include, for example, the Great Lakes, which are on both sides of the border.

The addition to the International River Improvements Act deals with that. Those are for waters that flow across international boundaries.

There are two things, and I think we've covered them off.

Mr. Bob Dechert: Many places in Canada have a vibrant tourism industry that's based on our beautiful Great Lakes and our rivers and other waterways. I know that your riding famously borders two very large international bodies of water.

Can you give us a little flavour of how bulk removal from those bodies of water that neighbour your riding would have an impact on the tourism industry in your area?

Mr. Larry Miller: That's a very good point, Mr. Dechert. Yes, my riding is technically surrounded on three sides by water. Georgian Bay and Lake Huron are separated by the Bruce Peninsula. I live right at the base of the Bruce Peninsula. I actually live on part of

Georgian Bay. Tourism is our second biggest industry, after agriculture, and it's growing. It's huge. This protects our quantity or volume of water. At the same time, as you know, there have been lots of changes made, as well, to help protect the quality of our water.

Water is of huge importance in my riding, but it's of huge importance to the population of Canada in general. While it's important to me, I think it's important, as Mr. Julian mentioned, to almost every Canadian.

Mr. Bob Dechert: Would you say that this is a bill that would benefit people living in urban areas, such as my city of Mississauga, as well as those living in a rural constituency, like yours?

Mr. Larry Miller: Yes, absolutely. Mississauga, Toronto, and the GTA in general, we're all affected by the Great Lakes.

Again, this is something that I think benefits almost every Canadian, if not every Canadian.

Mr. Bob Dechert: I note that the bill allows for some temporary exceptions to the prohibition against bulk water removal. Could you explain what those exceptions are and why you think they're necessary?

Mr. Larry Miller: I think I touched on some of them. Obviously, it's water for municipal systems, for expansion. It allows for expansion, whether it's in the city of Mississauga, in the city of Windsor, or in Samia or Owen Sound.

In my riding, in fact, there are some improvements being made to that facility, but all across the Great Lakes and of course in other areas, a lot of these international waters serve as the base for water for these communities. That's certainly one. Firefighting was another one that I touched on. Another one was humanitarian efforts. I think there are probably more in there, but those are some that come to mind.

Mr. Bob Dechert: That's very good.

Do I have more time?

The Chair: You have one minute.

Mr. Bob Dechert: Can you give us some information on what you think the support for this bill is among Canadians generally? Have you done any surveys? Have you spoken to people in various parts of the country about support for this kind of legislation?

Mr. Larry Miller: It has been phenomenal to say the least, Mr. Dechert. I think the vote on October 3 here in Parliament is a good representation of that support.

As you know, no bill is ever perfect, and I'm not going to pretend that this one is, but I think it goes a long way toward what we're all trying to do, which is to protect our water. I'm very comfortable with it, with the intent. I will say that when I first started looking into this, I was going to include all waters in Canada, but once I looked further into it and realized that I would be crossing provincial jurisdictions, I stayed away from there. I want it to be clean and non-confrontational.

• (0905)

The Chair: Thank you very much.

I will let you know who I have on the list. I have Mr. Scarpaleggia and Mr. Tilson, and then we go back to Mr. Julian.

Mr. Scarpaleggia, welcome. You have seven minutes, sir.

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): Thank you.

I'd like to preface my questions with a comment.

The government, in two throne speeches, essentially committed to blocking the export of water by blocking interbasin transfers. In those throne speeches, the government was reacting to the bill that I introduced, which is the one, Mr. Miller, that you mentioned you couldn't support because you thought it invaded provincial jurisdiction. That bill was based on the work of the Munk School.

Here's what I find curious. This is just a comment. I'm not really asking you this question because you're not the minister, but what I find curious is that in two throne speeches we talked about essentially adopting the model in my bill prohibiting interbasin transfers, and then, when Bill C-26 came out, which is your bill, really—your bill is Bill C-26—it had a big loophole. It wasn't going to even address interbasin transfers into boundary waters. It just leads me to question the government's real intentions all along in its two throne speech commitments. That's just a comment.

Is this not a trade bill, really? As you said, the goal is to ban bulk water exports through transboundary rivers. Would that not make it a trade bill?

Mr. Larry Miller: Certainly not, in my opinion, and I'm not sure why you're even referring to that.

Mr. Francis Scarpaleggia: You say that it's about blocking the export of water to the United States. That, to me, is the language of trade.

Mr. Larry Miller: This isn't just to the United States. Under NAFTA, it's quite clear, Mr. Scarpaleggia, that water is not to be treated as a product, or a commodity—commodity is a better word.

It's pretty clear, but I want to point out that this isn't just about exports, if you would, to the United States, or about diversion. Obviously—

Mr. Francis Scarpaleggia: We're talking about transboundary rivers, and the only transboundary rivers I know flow into the United States. Anyway we'll leave that point.

I guess what I'm getting at is this. What does this really add to the treaty between Canada and the United States, the International Boundary Waters Treaty? That treaty already prohibits one country from changing the water levels in another country. The treaty already essentially makes it “illegal” for Canada to change the water flow or

water levels of a transboundary river in such a way that water levels and flows would be affected in the United States. I'm not sure what we're doing here is a great leap forward.

My second question has to do with environmental assessment. When we're talking about major projects like your bill is aiming to address, we're talking essentially about diversions of mass quantities of water. This would have environmental impacts. One would think that any such project would be stopped at the stage of the environmental assessment process, unless the federal government has withdrawn from the environmental assessment process and leaves it up to the province, which then arranges things so that the process would allow a diversion.

If the environmental assessment process were working properly, maybe you wouldn't even need this bill.

Mr. Larry Miller: Could I respond to some of the points you've made?

Mr. Francis Scarpaleggia: Sure. Go ahead, please.

Mr. Larry Miller: First of all, going back to your earlier comments, the Munk School fully supports this bill.

You referred to it being similar to another bill. I made that quite clear. Yes, this is basically Bill C-26, but with some clauses that actually strengthen it. I believe that the amendment that has been added in here was something the Munk School addressed.

Regarding your comment about the intent of this bill, are you implying this bill is not good? I'm not sure.

• (0910)

Mr. Francis Scarpaleggia: No, no. I didn't say that. I'm on the record as supporting the bill.

Mr. Larry Miller: Okay. But you question why I—

Mr. Francis Scarpaleggia: It's not enough. It's not enough.

Mr. Larry Miller: —or the government would bring this forth.

My response to that would be that if everything was okay, why were you trying to change it?

Mr. Francis Scarpaleggia: My bill was not aimed specifically at blocking exports. It was aimed at becoming a backstop.

In case, for example, the federal government pulls out of environmental assessment, which it seems to be doing, I wanted to make sure that if a province wanted to weaken its environmental assessment or wanted to lift its prohibitions on the transfer of water outside its borders, there would be a backstop. The federal government would step in and say that this is for Canada, this is for the good of Canadians, and we don't want mass quantities of water being diverted across provincial boundaries or into the United States.

Mr. Larry Miller: I think this bill is saying that.

As far as environmental assessments are concerned, Mr. Scarpaleggia, in my opinion environmental assessments are actually being strengthened because there are now timelines put on them. Instead of it simply being a delay process, now there are some actual hard timelines.

Mr. Francis Scarpaleggia: Except now we're allowed to destroy fish habitat. That's the difference. Now we're allowed to destroy fish habitat, as a result of your omnibus bill.

Mr. Larry Miller: I disagree with that.

Mr. Francis Scarpaleggia: We're saying if you want to divert water and it destroys fish habitat, then that's okay from now on because of the amendments to the Fisheries Act.

Mr. Larry Miller: I disagree with that.

Mr. Francis Scarpaleggia: Do I have more time?

The Chair: You have 45 seconds.

Mr. Francis Scarpaleggia: I don't believe your bill covers pipelines. I'll make that statement and I'll be bringing it up with the Munk School as well.

Nothing in this bill stops a province from building a pipeline from a non-boundary water into the United States. I don't think this bill covers that. I would mention that the Canadian Alliance did not believe that NAFTA protected water in its natural state, and as you know, I've brought this up before.

Your Parliamentary Secretary to the Minister of Foreign Affairs said so in a speech when he was with the Canadian Alliance. He said we have to reopen NAFTA because it doesn't protect our water in its natural state.

I would add that the U.S. Department of Commerce doesn't think water in its natural state is protected either.

I think there are many problems. I congratulate you on this effort.

Mr. Bob Dechert: A point of order, Chair.

The Chair: That's all the time we have.

I have a feeling this won't be a point of order, but go ahead.

Mr. Bob Dechert: I think it is. You just need to read the definition of "bulk removal" in the bill, which indicates that a prohibition of bulk removal of water by any means of diversion—

The Chair: Mr. Dechert, I was right, that's not a point of order. Mr. Tilson.

Mr. Bob Dechert: —including by pipeline, canal, aqueduct or by any means whatsoever.

The Chair: Thank you. We're going to start the next round with Mr. Tilson, followed by Mr. Julian, and then back to the Conservatives again.

Mr. David Tilson (Dufferin—Caledon, CPC): Thank you, Mr. Chairman.

Mr. Miller, as you know, I have a big quarry application in my riding, which is south of you. You may have heard me reading petitions from time to time.

Mr. Larry Miller: I've actually tabled some myself.

Mr. David Tilson: This quarry in application—it's under provincial jurisdiction of course—is going to be a big quarry. It's 2,300 acres. It's going to go below the water table. It's going to affect a number of rivers, not only in my riding but in your riding, because you are immediately north of me.

I believe it's going to affect drinking water. It's going to affect aquifers. The proponents are from a Boston hedge fund, an American-based company. The whole area is full of water and they haven't made it quite clear what they're going to do with the water or how they're going to get the aggregate—I think it's limestone—out.

I've heard different theories. One is that they're going to pump the water out and hold it somewhere, which will affect the streams and the rivers. The other is they are going to put it on trains, ship it up through your riding, put it on boats, and send it off somewhere, probably to the United States.

Mr. Larry Miller: You're talking about the aggregate.

Mr. David Tilson: No, I'm talking about the water. They have to get the water out of this area to get the limestone. They have to go below the water table. They are going to go below the water table; they've said so in their application.

I have two questions. Would your bill affect removing large quantities of water from the ground and holding it somewhere? Would it affect taking large quantities of water out of the ground, putting it on trains, shipping it somewhere, and putting it on boats to go to the United States?

● (0915)

Mr. Larry Miller: Regarding your first question, I would have to think the answer is a clear no, my bill wouldn't address that. In answer to the second one, my first thought to that, Mr. Tilson, is I'm quite familiar with the general area where the quarry is proposed. I've driven through the area. I'm not familiar with their plans. Usually in a quarry, when water comes up from the water table, as they go down it's pumped out into a marsh or a stream or whatever.

There are pretty strict controls through the Ministry of the Environment for doing that. As far as loading it on trains and taking it out, I think it would be fantastically expensive. I can't imagine something like that, but if you say that's the proposal—

Mr. David Tilson: These are theories. You hear rumours flying around. People are quite anxious.

Mr. Larry Miller: To carry on with the answer, if they were to take that water out and load it on cars, it seems far-fetched to me. I think that it would have to be given a lot of consideration. I'm not 100% clear whether it would come under this bill or not. I think I'd have to see it.

It's certainly removal of water in pretty vast amounts; there's no doubt about that.

Mr. David Tilson: I have no other questions.

The Chair: Mr. Dechert, do you have a point of clarification?

Mr. Bob Dechert: Thank you, Mr. Chair. First of all, I'll draw the attention of members of the committee to clause 4 of the bill, which amends section 13 of the act and reads "despite section 11, the bulk removal of boundary waters is prohibited."

The definition of removal appears in subclause 3(2) of the bill and the bulk removal definition reads as follows:

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 (a) by any means of diversion, including by pipeline, canal, tunnel, aqueduct or channel; or (b) by any other means by which more than 50 000 L of water are taken outside the water basin per day.

It seems to me that that's pretty comprehensive: any method of taking the water and anything that's not specified, including a pipeline, as I think Mr. Scarpaleggia raised, and it also says by any other means.

The Chair: Mr. Dechert, that's all the time we have.

I'll start back with you on Mr. Schellenberger's time.

We're going to move back to Mr. Julian, for five minutes.

Mr. Peter Julian: Thank you very much, Mr. Chair, and I thank Mr. Dewar for giving me a second crack at this.

Mr. Tilson's comments were particularly interesting. We're looking at what would be a bulk transfer of somewhere around 80,000 litres to 90,000 litres per tank car.

I certainly appreciate, Mr. Miller, that you're saying you're open to amendments, because this is a massive loophole. It's a loophole you could drive a railcar through.

If you look at each of these railcars that export a manufactured product—water, according to the definition in the bill—you could be very clearly surpassing that 50,000-litre limit just with one railcar.

Mr. Larry Miller: With respect to my response to Mr. Tilson, if you knew where this quarry was that he's referring to—

Mr. Peter Julian: I do.

Mr. Larry Miller: If this procedure were to be applied for, first of all, it wouldn't come under federal jurisdiction. It would come under provincial jurisdiction. They're not taking water out of the Great Lakes or that kind of thing, so I believe it would come under the province.

I think that would need to be spelled out, that this isn't the same as taking that water right out of Lake Ontario or Lake Huron.

• (0920)

Mr. Peter Julian: On the exemption on water export, because there's no cap on the size of the container, you could be looking at a tanker rail car containing up to 80,000 litres or 90,000 litres.

Mr. Larry Miller: No, again, I think you're missing the key point here, Mr. Julian. This is not out of federal jurisdiction waters or waters that are under federal jurisdiction.

Mr. Peter Julian: You agree that there is no limit on the size of the container, right? That's a loophole, and you've agreed to look at it, and we appreciate that, but there is a massive loophole, a loophole the size of a railway car in this bill.

Mr. Larry Miller: I don't believe so, with all due respect.

Mr. Peter Julian: Mr. Chair, I hear comments from the other side, but I'm just reading the bill. "Bulk removal", which is, of course, prohibited by the bill, "does not include the taking of a manufactured

product that contains water, including water and other beverages in bottles or other containers, outside a water basin."

Mr. Chair, it is pretty clear that there is a loophole here. It's a loophole that other witnesses will attest to as well.

Mr. Larry Miller: Could I just respond to that, Mr. Julian?

Mr. Peter Julian: You certainly can, Mr. Miller.

Mr. Larry Miller: There are some people out there who think bottling a small bottle of water is bulk water removal. Your version, and you're trying to make a point here, is that there is a loophole.

I don't think there is. I think it's covered off well enough—

Mr. Peter Julian: —but you admit there is no—your intent was 20-litre containers. The bill doesn't say that.

Mr. Larry Miller: No.

Mr. Peter Julian: What was your intent?

Mr. Larry Miller: I used that as an example.

Mr. Peter Julian: Fair enough, but I think Mr. Tilson's point is a very valid one. We could be looking at 80,000-litre to 90,000-litre containers that are leaving because of the exemption here. This is something that's a source of concern.

What that does is it diminishes paragraph (b) under subclause 3(2) of the bill: (b) by any other means by which more than 50 000 L of water are taken outside the water basin per day.

You can do that with a tank car.

Mr. Larry Miller: If this were under federal jurisdiction, I believe

Mr. Peter Julian: That's my next question actually.

The problem here is that because there are loopholes in this federal legislation, if a province chooses to issue an export water permit, there is nothing in this bill that prevents that.

As you know, Mr. Miller, we've seen activists in places like British Columbia and Newfoundland and Labrador having to push back on bulk water exports because the provincial government either didn't understand the implications or felt that there was some kind of commercial benefit in bulk water exports.

Therefore, if we're relying on provincial legislation, we're right back to the same problem we had originally, which is that in some provinces there has been a conflict, or a drive to export bulk water.

Mr. Larry Miller: Okay, first of all, as I was going to—

The Chair: Mr. Miller, that's all the time we have for this round.

I'm going to let you finish the answer.

Mr. Larry Miller: My comment to that is, if this application were to load train cars, say out of Georgian Bay, as Mr. Tilson said, I believe the bill would cover that off. I strongly believe that. I just believe that it does as far as the provincial part of it.

You referred to your home province of B.C. Back when I first came to Ottawa in 2005, there was an application out there. I wrote every provincial member of Parliament in B.C.—

The Chair: Thank you. That's all the time we have.

Mr. Larry Miller: Okay, I'll stop there.

The Chair: I see a couple of points of clarification here.

I have Mr. Dechert, Mr. Tilson, then Mr. Schellenberger. This round will be five minutes, and then you'll be starting the second round of five minutes. I'll let you guys know where that is in that order.

Mr. Dechert.

Mr. Bob Dechert: To clarify again, Mr. Chair, my friends in the opposition don't seem to understand the concept of the Canadian Constitution and the division of powers between the federal government and the provincial governments. We've seen this in other things we've done in our committee. They seem to want to duplicate or triplicate every law in Canada.

What the definition of "bulk removal" says is that the only exception is the taking of a manufactured product. That is under the exclusive jurisdiction of the provinces, according to the Canadian Constitution. Maybe Mr. Julian could take a look at that. As he knows, every province and territory regulates, under their environmental legislation, the use of water for any manufacturing process, and for many other purposes as well.

Therefore, there's no loophole here whatsoever. The 50,000-litre figure is a maximum amount for things other than for manufactured products, like bottling of water, bottling of soft drinks, bottling of beer, etc., and anything that falls under commercial use is in the purview of the province, according to the Constitution of Canada. That's simply the division of powers in the Constitution.

I'll leave it to my colleague, Mr. Tilson.

• (0925)

The Chair: Thanks, Mr. Dechert.

Mr. Tilson.

Mr. David Tilson: You've just clarified the question that I was asking you, Mr. Miller.

I believe the federal government is interested in water. It's interested in fish. It's interested in migratory birds. That's what it is interested in when you're having a federal environmental assessment, Mr. Chairman.

I also believe that the taking of massive amounts of water out of the ground—and I'm talking about my favourite issue, this quarry, and they will be doing this—is taking out bulk water. Now, I have no idea how they're going to get rid of it. It's speculation. I don't want you to think I'm saying they're going to put it on trains. They may not. But they're certainly going to take it out. All of that water normally goes into these rivers that go through your riding and into my riding into Georgian Bay, and ends up in the Great Lakes. Therefore, I think it's relevant to the International Boundary Waters Treaty Act.

I believe your bill does cover the removal of bulk water from the ground, whether it's storage or whether it's transporting it on trains. I don't know, maybe I agree with Mr. Julian, maybe I don't. All I know is that's a rumour that's flying around, that they're going to put this water on trains and ship it. I have no idea how they're going to do it. They may not even do it. But I think there are two possibilities: one is to store it and one is to put it on a train, on a boat, and take it out. And that's bulk water.

Therefore, I believe, for all the reasons I've given, this bill affects this quarry, which in turn affects the International Boundary Waters Treaty Act.

Mr. Larry Miller: I'm going to respectfully disagree a little bit, Mr. Tilson, on the part that it comes under the realm of this bill, and I'll try and explain why.

When and if this quarry application goes forward, if at some point they're removing groundwater—which I hear they are—they will have to apply under the Ministry of the Environment for water-taking or whatever. If one of the scenarios is to load it on train cars and ship it out of the country, and to be honest with you, I think that's far-fetched but anything is possible, in the event that it comes through there, again it would have to go through that provincial process. But I can assure you that if that proposal was coming forth, I would be screaming bloody murder, even though I'm in the riding adjacent to yours, and I'm quite sure that MP David Tilson would be, as would many other members.

Some time in the last 10 or 12 years, there was a proposal for ships from Saudi Arabia to come over, basically go up into one of the Great Lakes, probably Lake Ontario, load up with bulk water and then take it back to Saudi Arabia. There was a public outcry from the public and elected people, both provincially and federally, which put a stop to that. To be honest with you, I cannot see that scenario ever being successful. You can never stop somebody from trying to do it or asking for it, but I think I know you well enough to know that you'd be one of the first ones to stand up, and I'd be with you on it. I simply don't see it happening.

The Chair: Thank you very much.

Just to clarify, we're actually into the second five minutes of the next round. We just got started. We're going to start with the Conservatives and move back to the NDP and then finish off with a Conservative.

Mr. Schellenberger, the floor is yours for five minutes.

Mr. Gary Schellenberger (Perth—Wellington, CPC): Thank you, Mr. Miller, for being here today.

I'm quite concerned again with the Great Lakes. I think this is a great bill going forward. I know where you are on this. I do have property on Lake Huron, and I've watched the water level go down about three and a half feet over the last number of years. I know it's more prevalent in Georgian Bay, because you can almost pace it off as you see the edge of the water moving out.

I know there has been a proposal put forward many times to divert water from Lake Michigan into the Mississippi River, and that's to keep the water flow up in the Mississippi so commerce can work that way. I think this bill works very well to stop something like that. That is probably some of the overview that's here. I do have concern about water taken from the Great Lakes and border waters. I look at the St. Clair River and the Detroit River that separate us. Those are the flowing boundary rivers, I think, which were of concern to Mr. Scarpaleggia.

I've always had this concern, and it's just a theory of my own. When you talk about water basins, I look at water coming out of Lake Huron and feeding into London, and then being discharged into the Thames River, which then empties into Lake Saint Clair, which doesn't divert the water back into the same basin it came out of.

Relatively, Lake Ontario and Lake Erie have kept their water levels somewhere close to where they were. Lake Huron, Georgian Bay, and Lake Michigan have all gone down. Chicago takes a lot of water that way. If Chicago doesn't divert that back, if it diverts it into the Mississippi, it goes down into the Gulf of Mexico.

Again, I think that's the main gist of this, to stop that big exodus of some of those waters. I would hope that in this bill, where it says, "by any other means by which more than 50 000 L of water are taken outside the water basin per day", it might pertain to sometimes the taking out of water from one water basin and discharging into another.

My theory, my understanding, is that on this earth we have so much water, and it's been that much water forever. It evaporates and turns into clouds. When it rains, it comes back down, maybe in the form of snow or whatever. I feel that your bill does cover those things. Is the intent to stop big bulk water diversion that might go into the Mississippi, or something like that?

• (0930)

The Chair: Mr. Miller, we have one minute left, so—

Mr. Larry Miller: I'll be very brief.

Yes, the diversion at Chicago that you referred to isn't going to change. Let's call it grandfathering it in or whatever. It's there, but it will stop any new diversions similar to that.

You mentioned the pipeline that goes to London, and I'm quite aware of that. While, yes, it goes into Lake Erie instead of back into the St. Clair River or Lake Huron, you might argue that the water would eventually make it down there. I'm not going to get into that argument. There's not enough time.

The Chair: All right, thank you very much.

We're going to go over to Mr. Julian again, and then we're going to finish off with Mr. Dechert, and that will be all the time we have today.

Mr. Julian, you have five minutes, sir.

Mr. Peter Julian: Thanks very much, Mr. Chair.

Mr. Miller, when we were in the last go-round, you said you didn't think the scenario Mr. Tilson outlined would be possible, but you didn't point to any clause of the bill where there would be a restriction or restraint on an export of bulk water as, essentially, a

manufactured product being sent down across state lines. I'll give you another chance to answer, because it was right at the end. Where is the clause in the bill that, to your mind, stops that from happening?

Mr. Larry Miller: With all due respect, I actually did respond to that. I'll do it again, Mr. Julian.

If that proposal, as Mr. Tilson stated, was to be proposed by the proponents of this quarry, it would come under those provincial jurisdictions. The water being taken would not be coming out of transboundary waters or waters that flow across international boundaries.

• (0935)

Mr. Peter Julian: We understand that.

You also raised the very valid point that there are provinces like British Columbia that have actually moved for bulk water export. If we rely on provincial legislation, I don't think we're doing our job as federal legislators. We're certainly not responding to the concerns that are out in the Canadian public. Granted, you did say you'd be screaming bloody murder if Mr. Tilson's scenario came true. I think a lot of us would. Please join the crowd. With what happened last spring with respect to environmental assessments, I think there are a lot of Canadians who are upset. However, the reality is we do have a loophole now that is quite present in this legislation. I think that's very clear from your testimony. I think there are some parts of your bill that work very effectively, but others do not. The railway car loophole is a real problem.

Now, if we rely on provincial legislation and if the provinces in some cases have actually been pushing toward bulk water exports, then the other concern—and Mr. Scarpaleggia touched on this—is the issue around NAFTA and how water as a good enters into the North American Free Trade Agreement, and the impacts there. That's something the international trade committee has already discussed. We've discussed it in Parliament as well. The NDP brought forward a motion saying there had to be concrete agreement to exclude bulk water from NAFTA. To date, that has not happened.

Mr. Larry Miller: Well, I would respectfully disagree with you on that.

Mr. Peter Julian: We still have this problem with relying on provincial jurisdiction and it ultimately leading to entrenching bulk water exports as a good through NAFTA.

I would like to come back to the loophole clause, which basically doesn't set any limits in terms of container size and doesn't set any limits in terms of the overall bulk water removal. Would you be favourable to removing that loophole from the legislation?

Mr. Larry Miller: Mr. Julian, I'm glad your persistence hasn't changed since our days on the international trade committee. You're a dog with a bone.

I think that Mr. Dechert spelled it out quite clearly. Basically, in my opinion, there is no loophole that you're referring to. It comes in there, it's protected. I don't think there's a loophole there and therefore I'm not going to entertain something which I feel is unnecessary.

The Chair: Thank you very much. We're going to end it there.

This is just a short four minutes. We'll finish off with Mr. Dechert.

Mr. Bob Dechert: Thank you, Mr. Chair.

As I understand it, then, Mr. Miller, it appears that the NDP policy is that in every area of jurisdiction, whether it's municipal, provincial, or federal, especially in respect of the municipal and provincial jurisdiction, if they're concerned this level of government doesn't do its job now or some time in the future, they will put in place federal legislation just in case the province doesn't do its job, regardless of what the Canadian Constitution says about the division of powers between the federal and provincial levels of government. That's interesting policy. It sounds to me like a lot of extra cost and bureaucracy and regulation on the people of Canada and business enterprises in Canada. I can only imagine that would have a significantly deleterious effect on the Canadian economy.

Do you want to comment on that?

Mr. Larry Miller: Yes. I think by the federal government trying to bring in legislation, as you said, to compensate or cover the provincial jurisdiction, that's sending a message to the provinces that we don't trust them to make a decision.

To Mr. Julian's earlier comments about British Columbia declaring that they're open to bulk water, I hadn't heard that, but I guess that would make me very leery about electing an NDP government out there.

Mr. Bob Dechert: Well, I agree with your concern in that respect.

Voices: Oh, oh!

Mr. Bob Dechert: They're not entirely consistent, because in the last Parliament, you'll remember that the government proposed a national securities regulator to protect, in part, the retirement savings of Canadian citizens, but the NDP was against that bill because they thought it infringed on the division of powers and the jurisdiction of the provincial governments. I thought that was interesting.

I just wanted to clarify another point, Mr. Chair. Mr. Scarpaleggia asked why this bill was before this particular committee. That, as he knows, is because the International Boundary Waters Treaty Act—

● (0940)

Mr. Francis Scarpaleggia: On a point of order, I did not—

The Chair: That's not a point of order.

Mr. Bob Dechert: I'm clarifying—

The Chair: No, actually, there was a point of order, but it's not a point of order.

Mr. Bob Dechert: Okay. Thanks.

Obviously, since that bill falls under the purview of the Ministry of Foreign Affairs, that's why this bill is before this particular committee.

Mr. Miller, I just want to wrap up by commending you. All the citizens and residents of the Peel region, where I live and where the riding I represent is situated, derive all the domestic water they use from Lake Ontario. It all comes through the system.

It's a greatly expanding region, as you know, so we've had to expand our water supply system in recent years, but we're using it in a conservative and environmentally friendly way. It all goes back

into Lake Ontario eventually and gets reused. Protecting that water is very important for the people in my region, so I want to thank you very much for bringing this bill forward to Parliament.

Mr. Larry Miller: Thank you very much. Thanks for having me here today.

The Chair: Do you have any final comments?

Mr. Larry Miller: No, my intention here was to improve a situation. I think I've done that.

Some may view it as not being perfect, but again, I don't think there are many of us who are perfect. I do think it's as close to perfect as we can get, and all I can do is say that I hope I get the committee's support at the end of the day and, eventually, the support in Parliament.

The Chair: Thank you.

Did you want to mention carbon tax?

Voices: Oh, oh!

The Chair: No, I'm just teasing.

Thank you, Mr. Miller, for being here. With that, I'm going to suspend the meeting as we get set up for our next witnesses. The meeting is suspended until we're ready.

● (0940)

(Pause)

● (0945)

The Chair: If we could get all the members back to the table, we'll get started.

I want to welcome our witnesses here today.

Thank you for taking the time to be with us on such short notice. When we met last Tuesday, we hadn't had all of our witnesses confirmed, so that means you've rearranged your schedules to be here for us. Thank you very much for that.

We have with us Adèle Hurley, director of the program on water issues, University of Toronto, the Munk School of Global Affairs. Ms. Hurley, welcome.

We also have, from the University of Calgary, J. Owen Saunders, senior fellow and adjunct professor for the Canadian Institute of Resources Law. Welcome, Mr. Saunders.

Joining us via video conference from my area of the country is Mr. Steven Renzetti, who is a professor at Brock University. Mr. Renzetti, thank you very much for being here.

What we'll do is start in the order in which we've introduced everybody.

You have up to 10 minutes for your opening statements. We'll start with Ms. Hurley and work our way around to finish with Mr. Renzetti.

Ms. Hurley, we welcome you and turn the floor over to you.

Mrs. Adèle Hurley (Director, Program on Water Issues, University of Toronto, Munk School of Global Affairs): Good morning. Thank you for the opportunity to be with you today.

I am the director of the program on water issues at the Munk School of Global Affairs at the University of Toronto. With me today are my colleagues, Owen Saunders and Frank Quinn. We are here on behalf of the Canadian Water Issues Council, or CWIC, as we like to call it.

CWIC is a project of the program on water issues at the Munk School of Global Affairs at the University of Toronto. It comprises Canadian water experts and former senior water policy-makers. It was formed in 2007 to conduct non-partisan policy research within a university setting on the topic of Canada-United States transboundary water issues. Biographies for the three of us who are here today, as well as for the other members of the Canadian Water Issues Council, form part of this record.

Our objective has been to be a resource for all parties that demonstrate goodwill and cooperation in accomplishing the goal of protecting Canada's water. For example, over the years we have had opportunities to work with Francis Scarpaleggia and Lawrence Cannon on their bills, and we have had the opportunity to speak with Larry Miller on his bill. We welcome and acknowledge the spirit of cooperation that has characterized these efforts to date.

I would like to turn to my colleague, Owen Saunders, who has been our legal expert over the years, for his remarks.

● (0950)

Mr. J. Owen Saunders (Senior Fellow and Adjunct Professor, Canadian Institute of Resources Law, University of Calgary): Good morning. I would like to begin by echoing Adèle's thanks to the committee for the opportunity to be with you this morning.

My remarks today reflect the long-standing interest that CWIC has had in the issue of interbasin removals of water generally, and water exports more specifically. Over four years ago, CWIC developed a model act for preserving Canada's waters with a view to stimulating debate on this very subject. While the model act suggested one approach to foreclosing the possibility of water exports, we recognized there were other possible legislative avenues for addressing the issue. Regardless of the particular approach, however, there is no doubt about how Canadians feel about the ultimate goal. Canadians have been consistent and firm in their insistence that they do not want to see their endowment of water put at risk through interbasin transfers in the name of chasing, at best, doubtful economic gains.

In this respect, while Bill C-383, the transboundary waters protection act, takes a somewhat different approach than that suggested in CWIC's model act, it nevertheless achieves the same goals that CWIC has been pursuing for several years.

As members of this committee are no doubt aware, the issue of water exports has arisen on a number of occasions over the past five decades, beginning with a series of proposed megaprojects in the 1960s, and then emerging again, first in the context of trade negotiations in the 1980s and 1990s, and subsequently as the result of an abortive private sector proposal to export water by tanker from the Great Lakes. This proposal led to an amendment to the International Boundary Waters Treaty Act in 2002 and the issuance of a joint reference, the water uses reference, by Canada and the United States to the International Joint Commission.

In the 2002 amendments, the government addressed only one potential threat to Canada's waters by prohibiting, with certain limited exceptions, the interbasin removal of boundary waters, that is, those waters through which the international boundary runs, for example, the Great Lakes. It did not address the potential threat of water export by means of transboundary waters, that is, principally rivers that cross the boundary. While this approach had the constitutional advantage of fitting squarely within the empire treaties clause of the Constitution, it also had the obvious disadvantage of leaving unprotected important potential pathways for water export. It was in light of this legislative deficiency that CWIC took on the task of encouraging debate on a more ambitious approach toward limiting the possibility of water exports.

Subsequent to its throne speech undertakings of 2008 and 2009, the federal government did indeed bring forward its own legislative initiative on water exports in the spring of 2010 with the introduction by the Minister of Foreign Affairs of Bill C-26, which eventually died on the order paper with the calling of a federal election. CWIC had the opportunity to comment on that bill in a letter to the minister. While we in general supported the intent of the bill, our view was that it did not go far enough in precluding bulk removals and, in particular, those proposals for bulk removal that were the most likely to be brought forward.

We therefore welcome the current bill, Bill C-383, which, in our view, while building on Bill C-26, goes beyond it in a crucial respect through its amendment to the International River Improvements Act and, in particular, through the addition of a new section, 4.1, which prohibits the issuance of a licence under the act for any international river improvement linking non-boundary or boundary waters to an international river, the purpose of which would be to increase its annual flow. Especially in light of the broad definitions of "international river" and "international river improvement" in the legislation, this seems to us to accomplish the task of truly precluding the use of transboundary rivers as a vehicle for carrying out the export of water.

● (0955)

CWIC recognizes that Bill C-383 will not address all the concerns that have been raised by some Canadians with respect to the export of water. For example, potential marine tankers from coastal lakes and rivers would not be covered. Similarly, there would continue to be statutory exceptions that permit the export of manufactured products containing water, including bottled water or other beverages. However, while we do not preclude other legislative initiatives, apart from existing provincial legislation, to address this possibility, we also recognize that neither the International Boundary Waters Treaty Act nor the International River Improvements Act is likely to be the appropriate vehicle for such measures.

In sum, based on our research, the Canadian Water Issues Council acknowledges that the goal of protecting Canada's water resources from bulk export is significantly accomplished by way of this proposed legislation. We are particularly pleased to see the level of cross-partisan support it seems to have achieved to date.

The Chair: Thank you very much, Mr. Saunders.

We'll now move to Mr. Renzetti, who is from the Department of Economics. He is the scientific director of the Water Economics, Policy and Governance Network.

Mr. Renzetti, the floor is yours, sir.

Professor Steven Renzetti (Brock University, As an Individual): Thank you, Mr. Chair, and other members of the committee.

Let me begin by thanking you for the opportunity to address the committee, remotely, on this important topic.

As you have indicated, I am a professor of economics here at Brock University, and also director of a recently formed research network which is specifically aimed at improving water governance.

For the last 20 years or so, the bulk of my research has been concerned with the economics of water resources, so I very much appreciate the opportunity to discuss this bill before your committee.

The first point I'd like to make is that in some respects, a ban on the export of a natural resource is, to a degree, an unusual step for the government to take. Successive federal and provincial governments have actively promoted the export of both our renewable and non-renewable resources, so a ban on water exports, whatever its emotional appeal, stands in contrast to many perceived government policies. Then why impose a ban? One can imagine at least three arguments being made to support a ban.

First, we want to avoid an irreversible mistake; that is, if we were to allow bulk exports today, that would somehow prevent us from curtailing these exports at some point in the future. This is largely a matter of international and trade law, and I would defer to Professor Saunders on this point.

Second, there may be significant uncertainty about future economic and environmental conditions, and as a result we collectively believe we should be very cautious in the face of that future uncertainty. That's a perfectly reasonable argument, but if it were the case, presumably it would apply to all our natural resource exports, and we would want to think about applying the same type of logic to those.

Third and finally, it could be argued that Canadians assign such immense value to their water that they are unwilling to countenance its export in bulk form. The difficulty with this argument is that Canadians are remarkably profligate in their use of water, thereby suggesting, at least to outsiders, that we may assign relatively little value to preserving it. Indeed, as a result of years of underpricing at the municipal level, and also assigning provincial permits to take water with little or no scrutiny of the wisdom of those uses, Canada is now in the unenviable position of having perhaps the highest per capita water use in the world, and if not, perhaps the second highest.

Furthermore, Canadians and Canadian governments know almost nothing about the value of water as it's used by industry, farms, and households. We have fragmentary knowledge of how water is used and how water contributes value to our society and to our economy. This is particularly true of water's role in providing what are frequently referred to as ecological goods and services, whose values are not captured in the marketplace.

Thus, it's not really clear that there is an economic rationale for such a ban. For all the concern regarding bulk water exports, the fundamental economics suggest that these are very unlikely to occur, even in the absence of a ban. Water has a low value relative to its mass and this means that it is difficult and not cheap to transport over great distances.

If some entrepreneur were to somehow secure a supply of Canadian water and seek to sell it in the United States, she would likely find that there would be a surprising amount of competition from U.S. water sources. In order to see this, it's important to remember that it's not so much that America is short of water, but rather that America is experiencing localized shortages, largely brought on by decades of poor water management. In many areas where water is considered in short supply, such as the American southwest, large volumes of water are still irrigating very low-value crops.

If an entrepreneur tried to sell Canadian water for some dollar amount that was sufficient to cover her cost of transportation and a reasonable rate of return, she would find that local farmers who hold licences to water would be more than happy to sell or lease their water rights at a fraction of the price, so it's hard to see that this could be a viable commercial activity.

I should also point out that the argument I've just made regarding the lack of commercial viability of bulk water exports was made as many as 20 years ago in a report that I co-authored for the Macdonald commission.

If Canada wants to ban bulk water exports, that ban should be comprehensive. It's our water and we can choose to do with it as we see fit. But let's not think that doing so is a substitute for a comprehensive and sound national water strategy, nor for the need to maintain the institutional capacity to measure and document the state of our water resources, to manage water resources in an integrated fashion, and to use those resources in a way that fully benefits all Canadians.

● (1000)

The absence of a sound national water strategy is, in my mind, a far greater impediment to maximizing water's potential contribution to Canada's well-being than is the possibility of future bulk water exports. There are many pressing issues relating to water use that need to be addressed, whether the issue be the threats to groundwater from hydrocarbon extraction, the state of our municipal water supply and sewage treatment facilities, or the very serious threats to first nations communities due to inadequate water supplies.

Let me conclude by saying that I applaud members for their concerns regarding Canada's water resources. Furthermore, if Canadians have signalled that they truly do not want bulk water exports, then the House is right to act. However, once the deliberations regarding this bill have concluded, I would hope that the members would direct their attention to the continuing and very real challenges facing water resources in Canada today.

The Chair: Thank you very much as well.

We're going to start with the opposition. Mr. Dewar, you have seven minutes, please.

Mr. Paul Dewar (Ottawa Centre, NDP): Thank you, Chair.

Thank you to our guests. I particularly appreciated, Mr. Renzetti, your approach to the issue. We on this side have been asking for a water strategy, to seize the day and be comprehensive on the issue.

We are supportive of the legislation. In fact, my former colleague, Mr. Blaikie, in 1999 talked about the importance of this issue and about making sure that we protect our resource for the reasons that you mentioned.

I'm going to come back to you in a second, but I want to go to our guests who are with us here in Ottawa.

Mr. Saunders, you were comprehensive and detailed in your overview, and I thank you. You suggested there are other things that can be done to protect our water and that other legislation may need to be considered for amendment. Could you build on that a bit?

If you have ideas for amendments to this particular legislation, we would welcome them.

Mr. J. Owen Saunders: It's not so much in terms of amendments, but that there is a different approach. We have suggested a different approach in the model act that I talked about. It is oriented to interbasin removals generally and is focused on basins rather than on international boundaries.

One of the reasons we did that is the concern that was expressed by some Canadians, but not all, that a simple ban on bulk removals would incur NAFTA problems. We set ourselves the task of building a model that would essentially be NAFTA-proof.

However, there is an alternative view, and I think it is one shared by this government and perhaps also the previous one, that bulk removals do not fall within the trade provisions of NAFTA. They would still fit within the investment provisions. That reflects why the bill you have is more straightforward, in a sense, and uses the boundary rather than focusing on watersheds.

That, in brief, is what I was talking about.

• (1005)

Mr. Paul Dewar: Thank you.

The concern that has been raised this morning, which my colleague Mr. Tilson touched on, is the way in which water can be taken and then transported. This is something many people are seized with now, essentially because of the demand and the ways in which we now use water.

What do you see as a way to deal with that? As Mr. Tilson pointed out, there are areas where there are massive amounts of fresh water that are outside of the purview of this bill; water that could theoretically be taken, put onto trains, in an example that was used earlier, and shipped across the borders, and then maybe onto boats.

How would you deal with that conundrum?

Mr. J. Owen Saunders: I would have thought the economics of rail transport would be unlikely to make that the most obvious mode. The most likely mode, and it has been the subject of some proposals, is marine tankers—the Friel Lake example in B.C.—in which you get close to a coastal lake, load up the tanker, and send it south. Alaska has been trying to sell its water that way for a couple of decades. I don't think it has had any buyers.

I'm not speaking as an economist, obviously, but from what I've seen there is probably not a saleable option right now. It may be that in the future there will be, especially if you are talking about large bags of water, for example, such as they have used in the Mediterranean.

I guess our view on this is that there certainly could be legislation dealing with it. There's no reason that you couldn't do it. I mentioned that in my concluding comments. This particular bill, however, deals with two existing acts of Parliament. It doesn't seem that either of those acts would be the appropriate vehicle for this, and you'd need a new bill. We haven't taken a stance one way or the other on the potential for using this method, but it would certainly be fairly straightforward, if you accept the idea that you can do it.

There is one problem that I should mention. If you're talking about tanker exports, for example, I think you're much more likely to raise NAFTA problems, and so it's different in that sense in that the way you move the water has some importance. If you're talking about tanker exports, you have essentially captured the water, so there's a much greater argument that you are now dealing with a good. I think it would be hard to deny that this would come within the purview of NAFTA and would thus generate the NAFTA disciplines in a way that this sort of legislation arguably would not. There is less of a case to be made that this qualifies as goods.

Mr. Paul Dewar: I'm glad you touched on that, because when NAFTA was drafted, people had concerns, and there were assurances from government that they'd protect our water. A lot has changed since then, certainly when we see the demand for bottled water.

One of the concerns we have in the bill is that there is no definition on limiting of containers. Have you shared the same concerns? Do you have concerns around that?

Mr. J. Owen Saunders: I think it's fair to say there is a fair bit of trade both ways in bottled water, but if you look at the actual volume we're talking about, it's in terms of swimming pools rather than something really significant. That was probably one of the reasons we didn't address it.

Of course, bottled water again would directly raise the issue of NAFTA disciplines. You really would have to do a trade fix. When NAFTA was passed, and before that the free trade agreement, and water was an issue—I was involved in some of those debates—no one questioned that bottled water came within NAFTA. Indeed, I don't think anyone seriously questioned that tankers came within NAFTA. The argument made was that this other type of bulk removal did not come within NAFTA, and that was really the subject of the debate.

• (1010)

The Chair: Thank you very much.

We'll now move to the government side. We'll start off with Mr. Dechert.

Mr. Bob Dechert: Thank you, Mr. Chair. I'd like to share my time with Mr. Van Kesteren.

I just have one question for you, Mr. Saunders.

In your opening comments you mentioned that you weren't sure that potential marine tanker exports from coastal lakes and rivers would not be covered.

I'm having a hard time understanding that, because the definition of bulk removal prohibits any bulk removal "by any means" of water amounting to more than 50,000 litres per day. The exception is for manufactured products.

Mr. J. Owen Saunders: I think you are talking there, sir, about the amendments for the boundary waters legislation.

Mr. Bob Dechert: That's right.

Mr. J. Owen Saunders: There wouldn't be any boundary waters on the coast that would be relevant.

Mr. Bob Dechert: You are talking about non-boundary waters.

Mr. J. Owen Saunders: The only conceivable one would be the St. Croix River. I grew up at the mouth of the St. Croix, and there's no way you could get a tanker up to the point where the waters are non-saline. That's why they're not covered.

The waters you're talking about are not boundary waters and therefore do not fit within the purview of the bill.

Mr. Bob Dechert: If they're not boundary waters, then it's not a federal issue. It's certainly not an issue that would come before the foreign affairs committee. It's not an international issue. Would that not be covered by provincial legislation?

Mr. J. Owen Saunders: It may well be covered by provincial legislation. Whether or not it's a federal matter depends on the federal government's own choice. It would certainly involve international trade, which is certainly within the federal purview. Now, the federal government may choose to defer that jurisdiction and say that no, they trust the provinces on this. They have done that in other areas.

Mr. Bob Dechert: As you point out, the purpose of the bill we're studying today is exclusively limited to transboundary waters. There may be another bill at another time that deals with non-transboundary waters, but that's what we're dealing with.

Mr. J. Owen Saunders: Boundary and non-transboundary waters are what you're dealing with, yes.

Mr. Bob Dechert: We're here to study this bill, and it only deals with transboundary waters. There's no loophole in this bill that would allow bulk transfers by tanker or any other means. Is that correct?

Mr. J. Owen Saunders: This bill certainly would allow tanker exports. It doesn't say anything about it.

Mr. Bob Dechert: Would it allow exports of transboundary waters?

Mr. J. Owen Saunders: Oh, sorry, if it's transboundary waters, no, it wouldn't.

Mr. Bob Dechert: The point I'm trying to make is that the bill we're here to study today only pertains to transboundary waters, and it totally prohibits the bulk transfer of transboundary waters by tanker or any other means. Is that correct?

Mr. J. Owen Saunders: I can't conceive of any transboundary waters where tankers would be involved, so it's sort of a moot point.

Mr. Bob Dechert: It does prohibit them, in your view.

Mr. J. Owen Saunders: It probably prohibits them, because it says "by any other means," but there are—

Mr. Bob Dechert: What we're dealing with here today are transboundary waters.

Okay. Thank you.

I'll defer to Mr. Van Kesteren.

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): I have three questions, but I don't know if they're quick. They're not just in regard to this bill; I'm interested in looking down the road.

Mr. Saunders, you talked about laws which, if we put them in place, can cause us some grief because of international rules or something. Can't we infuse laws into our international grievance that would reverse those decisions? That's my first question.

Second, water is one of our natural resources. Is there any discussion about that having to be shared? You talk about the hydrological cycle. It is a natural resource, but we're just lucky that it drops on our land. Is there any challenge in international courts in that regard?

Third, we have a real issue with low water levels. The way I understand it, there are three reasons: evaporation, land rise after the glacial effects, and dredging of major rivers. We can't do anything about the first two, but is there any talk about addressing the one cause we can control?

I live in southwestern Ontario. Of course, the Detroit River used to have rapids. It was like a plugged drain, and now it's like this open sewer which everything is just flowing through. The same thing could be said of the St. Clair River and the St. Lawrence River.

Mr. J. Owen Saunders: I didn't quite get your first question. Could you perhaps clarify that?

• (1015)

Mr. Dave Van Kesteren: You said that if we put laws in place, we may run into trouble with international agreements. When we make international agreements, can't we put a provision in our agreement that says that the laws can be...

Mr. J. Owen Saunders: Sure, absolutely. As you may remember, one of the issues surrounding NAFTA was whether or not there should be an explicit provision excepting bulk water removal. What was done with NAFTA was interesting. There was a fix, if you will. They didn't change NAFTA, but they—meaning the three governments—issued a statement contemporaneous with NAFTA, essentially saying they didn't think that bulk water, or water in its natural state, fell within the purview of NAFTA, at least the trade obligations of NAFTA. It would still fit within the investment obligations of NAFTA, which is something you'd have to keep an eye on.

Yes, of course it's possible to do that. I think as a practical matter, it would be difficult to revisit NAFTA now, but you could do it. You could have an amendment to NAFTA.

With respect to the sharing of water, there are international norms with respect to obligations of upper and lower riparians. Interestingly, Canada and the United States are in a unique position in that regard because of the International Boundary Waters Treaty. We, in the International Boundary Waters Treaty, have certain rules, both with respect to boundary and transboundary waters. There are different rules depending upon whether they're boundary or transboundary waters. Those rules probably diverge from customary international law. Certainly our treatment of transboundary waters is different from international law, and indeed so is our treatment of boundary waters.

There's nothing that stops Canada and the United States from doing that. It is perfectly open to two states to depart from customary international law and adopt their own rules, and that's what's happened with the International Boundary Waters Treaty. So yes, there are customary rules of international law, but those rules are largely irrelevant, as between Canada and the United States, because of the existence of the International Boundary Waters Treaty.

On the point of lake levels, I'm not a hydrologist, but I do know what is the major forum in which that has been discussed. It has been discussed for decades because, as you know, sometimes you have high lake levels, and sometimes you have low ones. The International Joint Commission has had a number of references dealing with lake levels. That seems to be the venue that both nations are comfortable with in terms of addressing this in a cooperative manner.

The Chair: Thank you very much.

We're going to move over to the final questioner of the first round, from the Liberal Party, Mr. Scarpaleggia, please, for seven minutes.

Mr. Francis Scarpaleggia: Thank you, Chair.

Welcome, Mr. Saunders and Ms. Hurley. It's nice to see you here.

First off, it's been suggested—and I won't name names because I don't want to personalize it—that your model act, which is the basis of Bill C-267, which was my bill, is a clear invasion of provincial jurisdiction. It was said at this committee this morning. This is not particularly relevant to that statement, but it was said that it shows distrust for the provinces by the federal government. The way I understood the bill is that it was backstop legislation. It wasn't trying to meddle with the provinces, but it was saying that this is of national concern, and we need to have certain safeguards in place or federal legislation will take effect.

I'd just like your comment. It's a loaded question, I agree, but I'm just trying to get it on the record. Do you believe that the model act in Bill C-267 was an inappropriate invasion of provincial jurisdiction?

Mr. J. Owen Saunders: I'm from Alberta.

Mr. Francis Scarpaleggia: Okay. I'll withdraw that question.

Mr. J. Owen Saunders: Maybe that's not as loaded as you might think. If you look at the model act and the legislation before us today, the amendment to the International River Improvements Act rests on national concern. It rests on the same constitutional basis that the model act does, so there's no difference there. Both assert that the bulk export of water, using transboundary rivers, is a matter of national concern and fits within peace, order and good

government. That was the basis of the original International River Improvements Act, and I think it's conceded to be the basis of it. It's different for boundary waters, of course, as an empire treaty.

The constitutional bases of both acts are the same. I can tell you that with respect to the model act we were very cognizant of provincial jurisdiction. I don't want to get into it in great detail, but our approach was basically to defer to provincial jurisdiction and to have federal action only where the provinces would not act. As I said, the constitutional bases of both acts are exactly the same.

• (1020)

Mr. Francis Scarpaleggia: They are solid. Yes, okay.

On the question of pipelines, the thing I have trouble with in this bill, which I and my party support, of course, is the idea that a pipeline is an international river. To me it seems as if a pipeline is water that has been captured. It's not a product like beer or bottled water, which is a product, but it's certainly not water flowing in its natural state. We use pipelines to export oil. I understand the fact, when we're dealing with international rivers, that it wouldn't be a trade bill, to some extent, but the minute you say this applies to the building of pipelines, it seems to me it's a trade bill to some extent, and it's a trade bill that is seeking to ban the export of a resource.

I'm just wondering why this couldn't conceivably in the future trigger a trade challenge.

Mr. J. Owen Saunders: It's a good point. One can make the same argument with respect to canals. A canal is also an international river. Of course an international river is any movement of water across a boundary, the way it's defined in the International River Improvements Act. The International Boundary Waters Treaty Act takes a different view. It talks about rivers in their natural channel. The two acts treat water differently in that respect.

I would say that when you're talking about pipelines or canals, it is a grey area of international law. I assume the government is aware of that and is prepared to defend it under NAFTA. But certainly the argument can be made that the water has been captured when you put it into a pipeline. I take that point.

Mr. Francis Scarpaleggia: I believe you're an expert as well in environmental assessment.

Mr. J. Owen Saunders: I wouldn't call myself an expert.

Mr. Francis Scarpaleggia: But you know something about it.

Mr. J. Owen Saunders: I know something about it.

Mr. Francis Scarpaleggia: I'm just thinking that this bill, which is welcome as I say, is not a step forward in the sense that it's breaking new ground. It's just codifying the International Boundary Waters Treaty with respect to transboundary rivers, saying you can't affect the flow of a transboundary river because you'd be affecting the flow of it in the United States. I would think that even if you didn't have this bill, wouldn't environmental assessment de facto prohibit the diversion of water on that scale for export, quite frankly, or for any other reason? An environmental assessment panel would look at the environmental impacts of such a diversion and say right away, that they can't allow this. Do you think that environmental assessment would de facto put a prohibition on these kinds of exports?

Mr. J. Owen Saunders: With respect to your first point about it essentially codifying what's in the International Boundary Waters Treaty and therefore not being advanced, that's true with respect to the amendments to the International Boundary Waters Treaty. It's largely housekeeping. I think it's useful housekeeping, but it's still housekeeping. That's not true with respect to the International River Improvement Act. That really is a new addition to the act and it does make a change.

With respect to environmental assessment, the answer is always that you don't know until you hear from the panel.

Mr. Francis Scarpaleggia: They'll keep doing it under what rules?

Mr. J. Owen Saunders: You put yourself at risk, certainly.

Mr. Francis Scarpaleggia: That's right.

Mr. Renzetti, I read your paper on tanker shipments a couple of years ago. The Fraser Institute said that right now it's not profitable to export water but that, if we lifted the prohibitions on exporting water, that would spur technological advances that would lower costs.

You're familiar with that report, I imagine. What do you think of that as an economist?

•(1025)

Prof. Steven Renzetti: Several things have happened recently. First, there's a surplus of single-hull tankers in the world, and that has driven down the cost of potentially shipping raw water. In most jurisdictions you would only need single-hull tankers, so that perhaps has lowered the cost. On the other hand, desalination costs are dropping very rapidly, so potentially, in some jurisdictions, especially the Middle East and farther south, the idea of moving fresh water is bumping up against the costs of desalination. Technology changes could move in both directions, making it more or less feasible.

The available evidence right now, though—and it's in fact provided by the policy research initiative of the federal government—indicates that the costs are prohibitive. They are in the order of, for the types of scenarios they looked at, \$8 to \$15 per cubic metre. When you translate that into the values that are paid right now in the areas where water would be sent, it's simply that there'd be lots of other suppliers of water, if you were to try to get that price in those areas. It's just not commercially viable, and the orders of magnitude suggest it's not going to be in the foreseeable future.

The Chair: Thank you very much.

We're now going to start our second round of five minutes for questions and answers.

We'll start with Ms. Grewal.

Mrs. Nina Grewal (Fleetwood—Port Kells, CPC): Thank you, Chair.

My question is for Ms. Hurley.

Many American states in the midwest as well as in the southwest have chronic water shortages. What arrangements exist between these states and the northern states that have better access to water to help relieve these shortages? Are there any comparable regulations

to the one being proposed here in other highly integrated areas, such as the European Union or among states in India or Australia, for example?

Mrs. Adèle Hurley: I'll answer your second question first. There is tons of transboundary work under way particularly via the United Nations and inter-university organizations, but I really can't speak to the applicability of any of that to the current situation.

With respect to your first question about drought and aridity issues in the U.S. southwest in particular, I've just come back from there. They are fully engaged in all manner of water preservation, protection, underground banking, groundwater mapping, monitoring. I think one of the benefits of a committee of the House of Commons addressing this particular issue at this time in our history is to finally remove it from receiving the amount of attention that it has been receiving in this country and the stress it has caused to a lot of Canadian citizens. In the meantime, as was mentioned earlier today, there are a number of other very important water issues in this country that we need to get to. One of those is groundwater mapping and monitoring, particularly in southern Alberta. There are parts of this country that are over-allocated in terms of water use. We need to deal with this bulk water export issue so that we can get to these other issues. I can't overstate that today.

Mrs. Nina Grewal: Thank you.

I'll pass the rest of my time on to Mr. Dechert.

Mr. Bob Dechert: Thank you very much.

I would ask Mr. Renzetti, as an economist, to give us a better understanding of the international sale of bottled water. I've always found it kind of amusing that we live in Canada with the greatest amount of pure fresh water in the world and yet when we go into a restaurant and we order bottled water, whether still or sparkling, we get Italian water or French water.

What is the market for Canadian water outside Canada. Can you give us more information on the international sale of water and what drives that market?

•(1030)

Prof. Steven Renzetti: Economists used to think people are rational, but that may not apply there.

Professor Saunders mentioned a few moments ago that this is a relatively small amount of water. In reality it is. We're talking about very small amounts of water relative to the issues before this committee in terms of bulk exports. In that respect, from an environmental point of view, with the exception of some instances where jurisdictions don't have the same type of safeguards that we enjoy in Canada, and there have been instances of aquifer depletion and fresh water depletion that's of concern, I don't think there's a significant environmental issue here. In terms of the economics of it, it has been largely an effort by some skilful entrepreneurs to market something that appears to be distinct and unusual, and there are people who, whether it's cheese or water, are willing to pay for that.

Mr. Bob Dechert: In your opinion, is there a market for Canadian bottled water outside Canada?

Prof. Steven Renzetti: There is at the moment. It's fairly small. If you travel to the United States, for example, you can occasionally find Canadian bottled water, artisanal water, or even water from icebergs. That has a certain cachet to it. Other than that, it's a very small market.

Mr. Bob Dechert: I would just note that the value of a litre of water is much higher than the value of a litre of gasoline in my city.

Prof. Steven Renzetti: I should also point out that much of the bottled water that's sold in the United States is actually from municipal water supplies. The water has simply been subjected to de-chlorination and other treatments. It doesn't really fall under a concern with respect to environmental impacts.

The Chair: Thank you very much.

We're going to move over to Ms. Davies. Welcome to the committee. Then we'll finish up with a quick comment from the Conservative side before we wrap up today.

Ms. Davies, five minutes, please.

Ms. Libby Davies (Vancouver East, NDP): Thank you very much.

Thank you to the witnesses for being here today. I'm sorry I missed the earlier presentations—I'm covering for another member of our committee—but what I did hear I found very interesting.

Professor Renzetti, I was particularly interested in what you had to say about Canadians' perception or understanding of this whole issue of our water and how we value it. I think the notion of making irreversible mistakes is something that's very important.

I'm from Vancouver. In Vancouver we tend to have a perception that our water is boundless. British Columbia is a province that has lots of water, rain, and all the rest of it, and yet we went through a pretty severe drought this summer on the south coast. Things are definitely changing, with climate change and other things.

I want to pick up on the overarching question as to whether or not the public policy we deal with is treating water as a commodity or whether it is a common or public good.

I think this is something that you raised. We need to have a national water strategy for overall management and so on. I wonder if you could give us any examples of where you've actually seen this in other states, where there a comprehensive policy that deals with not only possibly the ban on exporting water but also the management of water internally. I think it would be helpful for us to know that in terms of what we need to do beyond this bill.

Prof. Steven Renzetti: I would make just one point before I directly answer your question. You raised the issue of whether water is a commodity or a public good. I think the simple answer is that it's both. Water provides a myriad of services to ecosystems, to humans, to industry. We need to be cognizant of all those services, if you like, that water provides. That of course is one of the reasons it's such a complicated thing to regulate.

With respect to other jurisdictions, there are other jurisdictions that are fairly well ahead of us in this regard. It's not surprising that they are often in water-short areas. If you look at Australia, it's often seen as the instance of where, after years of not getting things right,

they are now. That's in terms of integrated water management and possibly the use of water markets.

I'd also point to South Africa, which faces very severe water shortages and also some very severe social justice and inequality issues. Their recent water legislation has simultaneously addressed both. I find that to be a very interesting model to pursue.

Within Canada, a number of the provinces in the last decade have been quite foresightful and comprehensive in their approaches. Alberta has its water for life plan. Here in Ontario there's an initiative that follows some other directions, but also with respect to their source water protection. I know in British Columbia they are now instituting a significant review that will, for the first time, bring groundwater under regulatory control.

It is good to see that in other jurisdictions there are some examples that we can follow, but we can also give a nod to the provinces, which are moving forward in this regard.

• (1035)

Ms. Libby Davies: Are there any amendments that you would like to see brought forward that would help strengthen this bill? Have you considered any amendments?

Prof. Steven Renzetti: I'm not an attorney, so I would defer to Professor Saunders and his group. They have studied this at length, and I believe they have a much better perspective on this.

My point is not to prescribe to the committee. Rather, it's to indicate that if Canadians feel strongly about this, then, all right, let's ban the proposed activities, but at the same time, let's not mistake a ban for a policy. A ban is in some sense an anti-policy. Let's move on to what are the really significant challenges that really do prevent us from maximizing water's contributions, from an environmental point of view and also from a social and economic point of view.

Ms. Libby Davies: Thank you.

The Chair: Thank you very much. We're going to finish up with a quick round from Ms. Brown.

Ms. Lois Brown (Newmarket—Aurora, CPC): Thank you very much, Mr. Chair. I apologize that I wasn't prepared when Ms. Grewal turned over her time.

Dr. Renzetti, I was contemplating your shifts in your supply and demand curves when you made your earlier comment.

I find it interesting that you referenced South Africa. I was in Ghana a year ago and had the opportunity to meet a hydrologist there. The Government of Ghana has undertaken to map all of its underground resources for water. The Volta River is enormous. I had no idea of the size of that water basin they have there. Just to the north there is the Sahel, which is having significant difficulties with drought.

My question is for all of the panel. Is there an opportunity for a document like this piece of legislation to be a model that could be used in other jurisdictions?

Because of Canada's vast resources, are we going to be looked at perhaps as a leader in putting these kinds of agreements in place?

I leave that open.

Mr. J. Owen Saunders: Unfortunately, I think the short answer is no, for two reasons. One reason is that so much of our transboundary water relationship is governed by the International Boundary Waters Treaty, which is unique. It is unique to Canada and the United States. It reflects a long history of cooperation. It reflects certain unique legal principles that work for us, but probably wouldn't work in a different geopolitical context.

The other reason is that there are lots of other states that have gone further in terms of interjurisdictional management, which tend to follow more in terms of customary international law in terms of how you share water basins. For example, I would think they'd be more inclined to look at something like the Murray-Darling, which is not an international compact in Australia, but it's an interstate arrangement, with the Commonwealth taking the lead.

That seems to me to have gone further than anything I can think of in Canada. We do have some interprovincial compacts in Canada as well, but not as sophisticated as the Murray-Darling. Where that may change is actually on the Mackenzie, where there is a series of bilateral negotiations going on among the jurisdictions in the Mackenzie basin. Perhaps there we'll get some leadership, but I think our circumstances in Canada are so unique that it's unlikely we would get that.

● (1040)

Ms. Lois Brown: Interesting.

Do you have any comments, Dr. Renzetti?

Prof. Steven Renzetti: I'll return to a point that Professor Saunders made earlier in his presentation. In their program's earlier

work, one of the issues they were concerned about was the broadening of the approach of the legislation to cover interbasin transfers, whether they're within Canada or across boundaries.

I would think if you look internationally, where the action is occurring is in interbasin transfers within a country, whether it be Spain, China, or India. Those are the areas where I think we need to consider moving forward. I would indicate that Professor Saunders' previous point, and the strengthening of those pieces of legislation, perhaps would be more beneficial than the concern over transboundary issues.

The Chair: Thank you very much to all of our witnesses. Ms. Hurley, Mr. Saunders, and Mr. Renzetti, thank you very much for taking the time today, and on such short notice.

To my colleagues, just before we adjourn, I understand Mr. Miller will be making a couple of amendments. I don't know if the opposition does, but may I suggest we have them in by the end of the day on Friday so that the clerk can get those sorted out and sent around to the respective parties.

Would the end of the day on Friday be okay, given that we'd like to look at this on Tuesday?

Some hon. members: Agreed.

The Chair: All right. Thank you very much everyone.

With that, the meeting is adjourned.

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