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## Program on Water Issues

May 31, 2010

The Honourable Lawrence Cannon, M.P.,  
Minister of Foreign Affairs,  
House of Commons,  
Ottawa, ON  
K1A 0A6

Dear Minister,

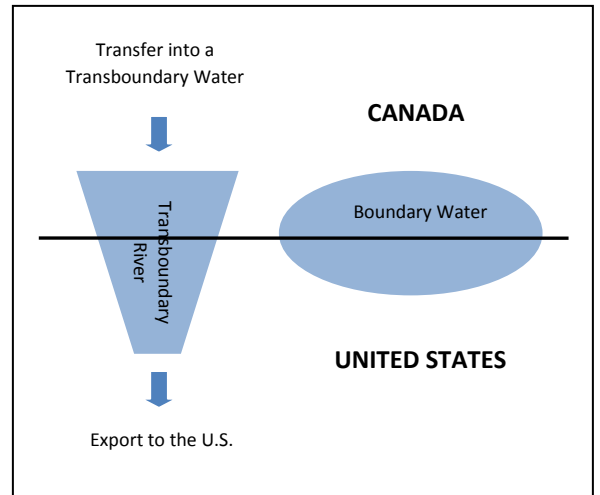
On behalf of the Canadian Water Issues Council (CWIC)<sup>1</sup> we would like to congratulate you on the introduction of Bill C-26, which represents yet another step forward in the protection of Canada's water resources from bulk removals (interbasin transfers). While there are many opinions on how best to accomplish it, the protection of water resources from interbasin transfers is a goal that is shared by the vast majority of Canadians and which commands broad support across political parties. Our purpose in this letter is to suggest how the proposed legislation that was introduced on May 13, 2010 could be strengthened significantly with a very few additional changes. In effect, we are proposing what we hope might be viewed as 'friendly amendments'; these proposed changes would affect both the *International Boundary Waters Treaty Act* [IBWTA] and the *International River Improvements Act* [IRIA]. Before we describe these potential changes in the legislation as proposed, we will first suggest why the Bill as written could usefully be strengthened. Our primary concerns are practical and two-fold.

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<sup>1</sup> CWIC is a group of knowledgeable water experts and former senior water policy makers who provide advice on transboundary water issues to the Program on Water Issues at the Munk School of Global Affairs at the University of Toronto. In December 2007, CWIC released *A Model Act for Preserving Canada's Waters* which suggested one approach for prohibiting bulk removal of water. Information on CWIC is available at <http://www.powi.ca/>

First, with respect to transboundary waters under the IBWTA, while Bill C-26 effectively prohibits most bulk removals of water from transboundary waters, it does not address what is the most plausible threat to Canadian water resources from interbasin transfers. As a practical matter, it seems highly unlikely that Canadian water resources would be threatened significantly by proposals to *remove* waters from a transboundary basin within Canada. As shown in Figure 1, the more likely scenario would be the transfer of Canadian waters from a basin that is neither a boundary or transboundary water *into* a transboundary river flowing from Canada into the United States for export to the United States. Such proposals would not be prohibited under the present legislation.

**Figure 1: Most Likely Scenario**



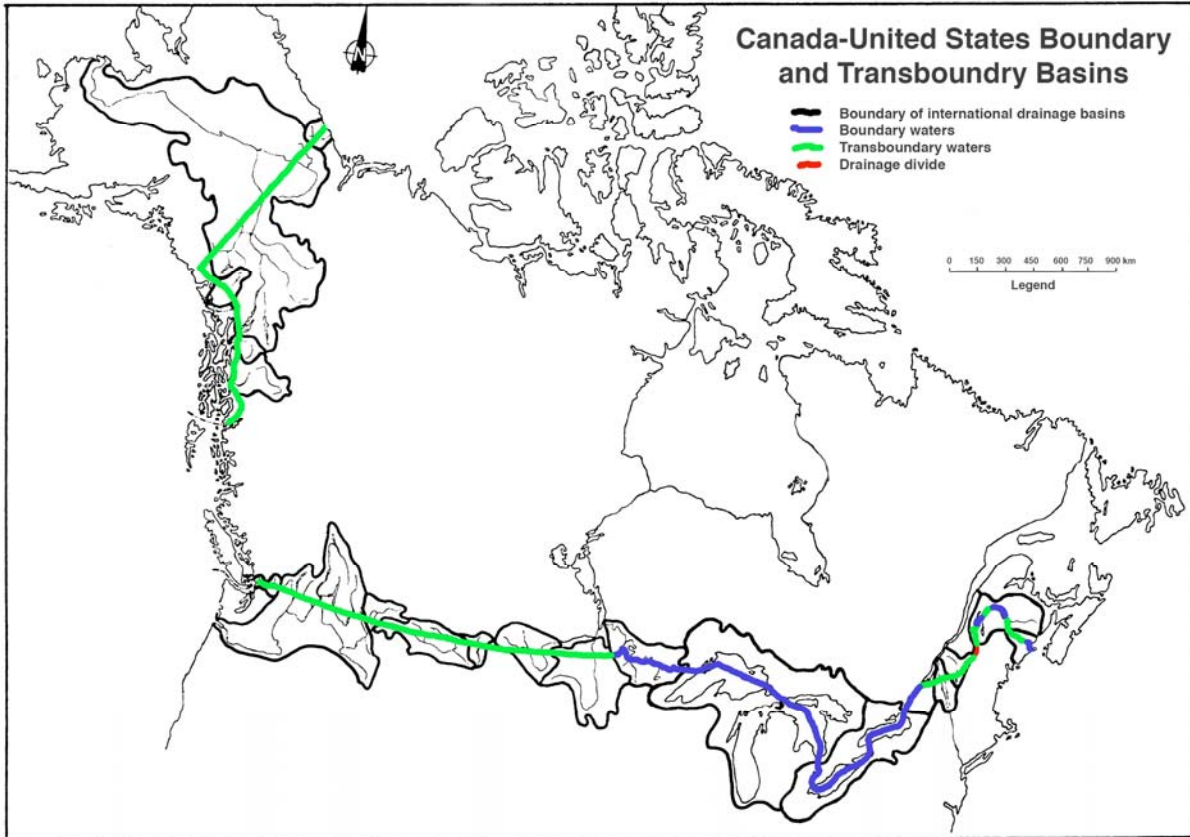
(Figure 2 illustrates the fact that most – about 80% – of Canada’s river basins are neither boundary nor transboundary waters and would not be protected from bulk water export by either current or the proposed legislation as written).

Secondly, the definition of transboundary waters in the IBWTA is narrow and refers only to waters flowing in their *natural* channels across the border. It does not include other means of accomplishing interbasin transfers across the international border – for example a *pipeline* or *canal* from waters that are neither boundary waters nor transboundary waters. While a transborder pipeline from transboundary waters *would* fall under the Bill C-26 prohibitions, as a practical matter it is difficult to conceive of a scenario involving a proposal to divert water by pipeline from a transboundary river in Canada southward to the United States.<sup>2</sup>

**In sum, the most likely proposals for the interbasin transfers of water from Canada to the United States are not addressed under the amendments to the IBWTA and IRIA as proposed in Bill C-26.** It is our view, however, that there are some simple additions to the Bill that would allow the government to effectively address both practical concerns we have outlined above.

<sup>2</sup> If the river flows north into Canada, any diversion would presumably take place in the United States; if the river flows into the United States, there would be no reason to effect the removal by pipeline in Canada, as the river itself would provide the conduit.

Figure 2: Canada-United States Boundary and Transboundary Basins



First, the amendments to the IBWTA should be altered to include a prohibition not only on the removal from transboundary waters but also a prohibition on the interbasin diversion or transfer of waters *into* transboundary waters. We note that such an amendment would be fully consistent with Canada’s existing obligation under Article IV of the Boundary Waters Treaty, which is directed at works that *raise* the water level on the other side of the boundary (and which of course would be the result of a transfer of waters *into* transboundary waters).

Secondly, in order to address potential interbasin transfers from waters that are neither boundary nor transboundary in nature, the proposed amendment to the IRIA in Bill C-26 should be expanded to provide that notwithstanding the licensing provisions in section 4 of that Act, no licence shall be granted that results in the interbasin bulk removal of water (subject to qualifications similar to those included in the proposed amendments to the IBWTA).

We recognize that the above changes would not address all concerns that have been raised with respect to the export of water. For example potential coastal tanker exports would still not be covered by federal legislation. However, while we do not preclude other legislative initiatives (apart from existing provincial legislation) to address this possibility, we also recognize that neither the IBWTA nor the IRIA is likely to be the appropriate vehicle for such measures. Concerns have also been expressed about existing statutory exceptions that permit the export of manufactured products containing water, including bottled water or other beverages. Again, the amendments we have suggested would not preclude addressing such issues through additional legislative initiatives.

We would be pleased to meet with you or your officials if that would be helpful. In closing, we would respectfully request that appropriate member(s) of CWIC be included as expert witnesses when the Bill is considered in Committee.

Yours sincerely,

Ralph Pentland,  
Acting Chair, Canadian Water Issues Council

Adèle Hurley  
Director, Program on Water Issues, Munk School of Global Affairs  
University of Toronto