Opinion: Managing B.C.'s water resources

We have a long way to go before water rents attract international trade claims

BY DEBORAH CURRAN AND OLIVER BRANDES, SPECIAL TO THE VANCOUVER SUN JULY 20, 2015

The Grand Forks aquifer is unconfined sand and gravel and is one of the most important aquifers in British Columbia.

With streams running dry, wildfires raging, reservoirs running low, watering restrictions in place, and severe drought declared across the populous south coast of B.C., fresh water is the hot topic.

This focus on B.C.'s water is amplified by efforts by the provincial government to implement the new Water Sustainability Act, which will replace the 105-year-old Water Act. The new legislation offers government an opportunity to bring groundwater into the licensing system, enhance legal protections for environmental flows, and improve water planning and governance, while also revisiting its approach to water rentals, the amount water licence holders pay for each litre of water they are entitled to use.

This pricing of water has garnered significant recent attention. This includes a high-profile petition with over 225,000 signatures calling for even higher rates. On the other hand, others are invoking the spectre of the North American Free Trade Agreement and an inability to turn off the tap if we sell B.C.'s water as a commodity.

This fear of NAFTA and the international trade claims resulting from increasing water rents is simply unfounded. This discussion of water pricing is not about turning B.C.'s water into a commodity or a good for sale. Rather, it is about ensuring sufficient financial resources to fully implement B.C.'s new water law and management regime. Although the way in which NAFTA deals with water is confusing and somewhat blurry, it is clear B.C. can significantly raise water rentals to improve the water management regime without invoking international trade claims.

As part of its larger water law reform package this spring, the provincial government updated water rental rates, in many cases doubling the amount licence holders will pay. This increase, from $1.10 to $2.25 per million litres for municipalities and many industrial users still means they will pay among the lowest rates in Canada.

Compared with just about every other province whose higher rates have not attracted scrutiny under NAFTA, it will still be a bargain to do business with water in B.C. NAFTA and the international trade rules do not generally come into play if the government treats the various classes of domestic and non-domestic licence holders the same. As as long as no one specific company or individual is singled out — and since we cannot permanently turn off the tap on any licensee under B.C. water law (except for non-compliance with licence conditions or other provisions of the act) — the legal concept of differential treatment does not apply by making licence holders pay the costs of a fully implemented sustainable water management program for the province.

Often at the epicenter of this controversy is concern around bottled water. From a NAFTA perspective, bottled water is already considered a produced good that attracts trade protection. Canada, the U.S., and Mexico clarified this in a side agreement on NAFTA's application to water, and also confirmed that water in its natural state "is not a good or product, is not traded, and therefore is not and has never been subject to the terms of any trade agreement." Therefore, fiddling with water rents in the context of bottled water does not make B.C. any more or less susceptible to NAFTA.

For many, the real concern with NAFTA relates to bulk water exports, which is simply not on the table when discussing raising water rents. Both the federal and provincial governments explicitly ban bulk water exports, which includes water in containers larger than 20 litres under the B.C. Water Protection Act. So there will not soon be any pipelines of water travelling south or freighters being filled and making sales in California.

The far more important questions are: Will the new fee schedule be sufficient to cover the province's costs to comprehensively implement the new Water Sustainability Act, and for what will water rents be used?

Water management is not simply processing water licence applications. It entails a host of key activities that include monitoring and reporting on water use, assessing flow and the changing hydrology in the thousands of watersheds in B.C., funding and supporting water sustainability planning that respects Aboriginal rights to water and the need for environmental flows for fish and ecosystems, working with regional governments to develop water-centric land-use decision-making, and providing incentives to improve the efficiency of water infrastructure to decrease the long-term demand for water.

The province is to be commended for raising water rents this year, and — in light of current drought forecasts, increasing concern, and conflicts over water use — for reconsidering what the appropriate rates should be. B.C. is a large and complicated place for managing water, with over 43,000 water licences from desert in the Okanagan to rainforest on the coast. We have an unprecedented opportunity and public support to remodel B.C.'s water regime. Sufficient resourcing through water rents is a big part of sustainable water management and we must not be distracted by unfounded fears of turning B.C. water into a commodity or triggering NAFTA claims when we are seeking to secure the necessary resources to manage our most valuable resource.

Persuasive evidence does suggest that end users, especially industrial users such as in the oil and gas, water bottling, beverage companies, and manufacturing sectors, are both willing and able to pay more to ensure fresh water is protected and effectively managed in B.C.

Someone — whether it be B.C. taxpayers or water users — must pay for our water management system. This is not commodification. It is implementing a robust user-pay regime. Linking use directly to an effective system of full-cost recovery is more equitable and also more sustainable (from both financial and ecological perspectives) than the current underfunded approach.

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