

# Water and Social Activism in Canada

by

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We accept this thesis as conforming  
to the required standard

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ABSTRACT: This thesis on water and social activism in Canada is a journey into the realm of shared social understanding. Water is too precious to all forms of life to simply permit commodification for the benefit of a few at the expense of the many. The Sun Belt case adjudicated under the North American Free Trade Agreement (NAFTA) when compared with what prevailed under previous Canadian national law reveals severe limits to state sovereignty. A high measure of support has already been manifest around concerns and considerations which pertain to water and the potential for the growth of social activism with reference to water may well be unprecedented in Canada. There are fundamental inequalities found within the Sun Belt case. Current international trade policy coupled with private banking practices does not value the principles of sustainability, equality and justice because it is committed to the commodification of the “commons”. This thesis uses a variety of sources to oppose the present discourses followed by governments according to the doctrines found in the study of classical economics within a capitalist context.

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**Dedication:** This essay which pertains to actions surrounding the possible commodification of water as well as the stewardship of government is dedicated to the development of a “just” “sustainable” society and thus is advanced in spirit to all mothers past, present and future and, in particular, to my own mother, Doreen Busch; it is also dedicated as an academic manifestation of the visions offered by social activists such as Maude Barlow complete with the recognition that:

“There is no polite way to say that business is destroying the world.”

Paul Hawken: *Businessman-turned-environmentalist* \*

Quoted from: Barlow, M., (1998), *The Fight of My Life Confessions of an Unrepentant Canadian*, Toronto: HarperCollins Publishers, p. 192.

**Frontispiece:** The essay enclosed is also addressed to those whom I will label as the “functionaries” of capitalism, to include:

- 1) Bankers
- 2) Trade lawyers
- 3) Business Practioners
- 4) Politicians
- 5) Academics
- 6) Consumers

A recognition of the impact of the social and ecological fallout externalized on the environment due to the traditional practices of business is in order. They must endeavor to understand what it is they actually do in the pursuit of more zeros attached to the bottom line of particular portfolios. The functionaries of capitalism are asked to consider the wisdom presented by George Soros as follows:

*“The belief in laissez faire capitalism has elevated the deficiency of social values into a moral principle...”*

*The supreme challenge of our time is to establish a set of fundamental values that applies to a largely transactional, global society.”*

Soros, G., (1998), *The crisis of global capitalism: open society endangered*, New York: Public Affairs, p. 82,

If we continue on our present course of development it is certain that we will find in the future there are some things that capitalist practices will be unable to secure, namely clean air and water (fit for

all inhabitants of the planet) at any price. We must, instead, seek sustainable alternatives.

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## Chapter 1: A Discursive Study In The Nature Of Water And Air In Canada.

### Personal Thoughts on the Dialogic Method in Discourse:

Seek ... Understanding  
Water Clarification  
Light of the Rainbow.<sup>1</sup>

Navigating a discourse such as my Haiku poem referenced above, whether it is done during the act of creation on the part of the author or later as seen from the perspective the reader, is a personal journey into the realm of social understanding. The shared meaning of a personal journey in discourse, by definition, is originally constructed as a product of careful analysis - in which the individual endeavors to access the validity of the collective message in question - so that understanding may then be shared and further discussed (and thus developed) within society. My story of water and social activism in Canada, with particular reference paid to this reflexive phenomenon, is certainly no exception and consequently has proven difficult to concisely conceptualize in discourse. A central difficulty to be overcome in discourse lies in establishing clear concise conceptual terminology which is free from external conflicting connotations for the purpose of conveying shared social meaning with universal clarity as far as is humanly possible. To this end, regardless of the various discursive connotations associated with the "rainbow" label as they may be found in

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<sup>1</sup> Throughout the text of the "rainbow" discourse references are made in the footnotes to additional references which are located in Appendix A or what I have called an "Aquatic Academic Activist Glossary". For the benefit of traditional academics, summaries for the textual references of Appendix A are first located in each individual footnote so the glossary of Appendix A may be ignored without compromising references in the main text of the discourse. However, from an activist perspective, when struggling against conventional wisdom more voices are necessary to document the growing opposition to the current policies and practices implemented by government; therefore, the stratification of the entire discourse of the thesis is intentional as, in addition to conforming to a "rainbow" method of disseminating information in which the observer takes it as a matter of faith that water is at the heart of the rainbow image, in a matter of course many of the references can be reviewed independently within the glossary found in Appendix A. Those readers who intend to exercise due diligence in checking each reference encountered in the text with the commentary in the glossary are to be commended; but it is not really necessary. However, in the spirit of academic review, as advocated by Raghavan, a more expedient method of determining the validity of the argument might well be to review the contents of the glossary before reading the text of the thesis or, a more likely alternative, at the conclusion of reading the text. Appendix A highlights specific issues which are reciprocally referenced in the discourse of the footnotes [in brackets] both contained within the thesis as well as in the "glossary".

the discourses of political economy, in essence, we know that rainbows in nature are exclusively comprised in their entirety of water, air and light. Rainbows in the traditional sense are natural phenomena that are effectively outside the corrupting influences of both political and economic discursive terminology. Therefore, as an academic work seen in its purest sense, my thesis is a “rainbow” of discourses on the subject matter of water and air which is to be understood through the language of social activists as well as academics in contrast to the dominant discourses of globalization.

Within my discourse of water and social activism I am looking for a worldview (which may be embraced by government) that is not governed exclusively by economic logic and I am willing to speak with many individuals in order to find it (and in this sense my “rainbow discourse” is dialogical in method and consequently is stratified by design). In the “dialogic method” conceptual understanding is established in discourse by developing and sharing one’s experience with others.<sup>2</sup> From my own personal experience at the International Forum on Globalization<sup>3</sup> in Benaroya Hall,

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<sup>2</sup> My interpretation of the dialogical method is taken from: Taylor, C. (1994) “The Politics of Recognition” on pp. 32 -34 found in *Multiculturalism* and particularly in footnotes 8, 9. In terms of the dialogical method of understanding, Taylor makes reference to “Bakhtin and those who have drawn on his work.” The Platonic dialogues as an early standard in the development of mutual understanding shows the timelessness of the dialogic method. Also, it is significant to note the *dialogic nature* of the *Global Sustainable Development Resolution* (referenced in section 5 of that document). A summary of the Global Sustainable Development Resolution is found at Appendix J.

<sup>3</sup> As the method employed in the essay can be said to be dialogical the reader has been advised to peruse the footnotes. The International Forum on Globalization (IFG) is the central dialogical international organization of civil society resistance to the hegemonic policies and practices of national governments and both international financial institutions and trade bodies. An individual seeking an understanding of the contemporary social movement from only one “place” could find no better organization than the IFG. Website: [www.ifg.org](http://www.ifg.org) The best way to understand multiple social movements from a single “source” would be to review the dialogical document sponsored by US Congressman Bernie Sanders “Global Sustainable Development Resolution” found on the internet: [http://bernie.house.gov/legislation/imf/global\\_resolution.asp](http://bernie.house.gov/legislation/imf/global_resolution.asp) The Resolution was formally introduced into Congress as H. Res. 479 on April 13th, 2000. The best way for a Canadian to become involved in activism with reference to global politics from a nationalist perspective is through the “Common Front” organization; and, as a partisan reference this can be done through the Council of Canadians at: [www.canadians.org](http://www.canadians.org) The best first step to resolving the inequalities found in the contemporary global capitalist system is advanced by the COMER (Committee on Monetary and Economic Reform) and CCRC (Canadian Community Reinvestment Coalition) associations which involves government control of the money supply and credit system. Email and Web Addresses: Comer: [wkrehm@ibm.net](mailto:wkrehm@ibm.net) and the CCRC: <http://www.cancrc.org> Cited website addresses are centrally located in Appendix K.

Seattle, Washington, USA, on the evening of November 26, 1999 - three days before the official beginning of the media labelled "Battle of Seattle" while attending a series of lectures entitled "Views From The South" - I watched and listened as Vandana Shiva introduced as the "Honored Guest" of the IFG a scholar/activist by the name of Chakravarthi Raghavan. Shiva introduced Raghavan as the man who had drawn her personal attention to the GATT (General Agreement on Tariffs and Trade), and the dangers of increasingly liberalized global trade. Raghavan - a self-avowed technical critic of international trade agreements and their corresponding regimes - in addition to offering a theoretical and technical criticism of globalization, made the following very interesting observations: what was most important - above all else - was to think for one's self, live what we preach, and when evaluating a piece of writing, the footnotes and bibliography are often the most informative source - more so than the text - as they determine what the author deems to be the authoritative references. This man's comments made perfect sense to me and thus I have used them to develop my "rainbow methodology" in my quest to discursively understand issues which surround water located in Canada which is addressed in the main discourse of the text. To assist the reader selected quotes rather than merely providing simple references are included as a "glossary" (found in Appendix A in an effort to accurately conceptualize dissident perspectives) which collectively provide the foundation of academic references of social activists found throughout the text. The stratified text found in the "glossary" contains useful academic and activist discourse which pertains to water in Canada.

As my study is focused on water (and to a lesser extent air), the "rainbow" metaphor is an appropriate conceptual tool for my study of water and social activism set within the current discourses of globalization and political economy. Natural rainbows exhibit all of the colors inherent in the spectrum of human perception. Yet, as science demonstrates, the substances which give rise to the perceptual prism which then manifest into an array of visual experiences are the basic necessities for life, namely

water, air and light. We see color but it is not really there, in the solid physical sense; it is only there in the metaphysical sense as a product of the perceptual interaction of water, air and light: the building blocks of both growth and decay. The colors of the rainbow are, in effect, both real and an illusion at the same time which may also be said of many of the discourses found within both political and economic theory<sup>4</sup> as they are themselves collectively set within the context of the discourses of political economy<sup>5</sup> and globalization. From the perspective of state sovereignty in the context of the discourses of globalization and political economy, the handling of Canadian water is greatly influenced by contemporary capitalist practices;<sup>6</sup> and, it has been my intention to use water to effectively challenge the underlying systemic principles that are constructed on the basis of economic logic and which inevitably seem to have destructive consequences for people and the environment. We can do better in Canada and an academic activist inquiry into water can certainly be seen to be a proper place from which to start the process of “coalition-building”<sup>7</sup> that is so necessary for successful social activism and meaningful social change in Canada.<sup>8</sup> Such an

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<sup>4</sup> Bloom, A., (1988), *The Closing Of The American Mind*, Toronto: Simon & Schuster Inc., pp. 360 -361. For a critical evaluation of the ability of the social sciences, specifically with regard to political and economic theory, to make accurate predictions see “Political / Economic Theory” in the “glossary” [137] for a selected quotation on the role of theory taken from Alan Bloom.

<sup>5</sup> The discourses within my thesis employs an eclectic understanding of the term “political economy”. As a framework for analysis, terms within the Marxist tradition of “political economy” are appropriated and integrated within my discourse to challenge existing forms of structural inequality; however, as the method is eclectic, my purpose is not to build Marxist theory which conforms to an operational understanding of “political economy” as a framework for analysis. Therefore, the term “political economy” is better understood as a means by which to denote the political efforts and economic relations which surround policies and practices which pertain to water in Canada. In this sense, my orientation can be said to be activist rather than academic, as for the question whether Marx would agree with the terminology of my analysis, it is not really relevant for my purposes. Thus, in essence, I endeavor to understand the actual relations of “political economy” as they pertain to water and social activism in Canada rather than offer my discourse as an extension of traditional doctrines of “political economy” as a framework for analysis.

<sup>6</sup> Barlow, M., (2001), *Water Privatization and the Threat to the World’s Most Precious Resource: Is Water a Commodity or a Human Right?*, San Francisco: International Forum On Globalization.

<sup>7</sup> Rose, F., (2000), *Coalition Across The Class Divide: Lesson from labor, peace and the environmental movements*, Ithaca: Cornell University Press. For a summary see: “coalition-building” in the “glossary” [123].

<sup>8</sup> For contemporary Canadian theory designated towards progressive social change in the tradition of Kant, see: Carroll W.K., (2000) “Undoing the end of history: Canada-centered reflections on the challenge of globalization”.

For a historical account of the theory for progressive politics which predates Canada by close to a hundred years, see:

interdisciplinary study has enormous potential to enlighten and thus to provide a pragmatic pool of knowledge which may prove to be invaluable within the activist struggle in the collective search for social justice, with the primary intent being to protect the aquatic integrity of the environment in Canada.<sup>9</sup>

A public discussion on whether water in Canada is a public or private resource is fundamental when one is considering Canadian sovereignty. We must now, in addition, address the substantive issues that are rooted in structures of institutionalized economic inequality and, in particular, how Canadian water is affected by way of contemporary banking practices and international trade policy. Quite simply: the present rules of international trade law assume that everything is for sale: the questions that follow are simply how and for how much? Under the current commodity oriented capitalist system, contrary to the best efforts of public sector unions and other labor unions, the benefits of private ownership are not evenly distributed to maintain the health of the population or the environmental integrity of the nation. Any future costs of private ownership as they might pertain to water, over what have been traditionally considered in Canada in terms of public resources and services, would most certainly through the mechanisms of the market be externalized onto the social and ecological environments (ultimately to taxpayers and their local communities).<sup>10</sup> The over-flowing concern for Canadian water is that bank policy

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Kant, I., (1784), "Idea For a Universal History With a Cosmopolitan Purpose," pp. 41 -53;

Kant, I., (1793), "On the Common Saying: This May Be True In Theory, But It Does Not Apply In Practice," pp. 61 -92;

Kant, I., (1795), "Perpetual Peace: A Philosophical Sketch," pp. 93 -130. All of the above references are located in: Immanuel Kant, *Political Writings*, ed. Hans Reiss, trans. H.B. Nisbet (Cambridge: Cambridge University Press, 1991).

See: "Kantian Philosophy" in the "glossary" [132/33] for a summary of Kant's writings on the nature of peace.

<sup>9</sup> A video shown on December 8, 2000 on the Discovery channel (in Canada) that was entitled, *Captured Rain: Northern Water / Southern Drought* specifically addressed issues of environmental sustainability, from a Canadian perspective, that are worth considering when engaging in forms of activism for social justice connected to water.

<sup>10</sup> "B.C.'s Office of the Auditor General recently concluded that continuing to allow land-use practices to degrade municipal water supplies will carry a heavy price tag. For example, for the 100 municipalities outside of Victoria and Vancouver that use unfiltered surface water 'the capital cost of installing filtration will be about \$700 million and the extra cost of financing operating and maintaining the new treatment plants would be about \$30 million a year.'(\*)... As Auditor General George Morfit says: 'Effective water protection hinges

ultimately dictates trade practice to national governments.

My meta-discourse, as a fluid framework for the condensation of the discourses of civil society which are discursively displayed in the “glossary”, endeavors to create a wave of resistance that leads to a collective sea change in the consciousness of Canadians. It does so by using the subject matter of water to expose fundamental inequalities found within the Sun Belt case - in terms of the unsustainable consequences of current international trade policy coupled with private banking practices - to establish a political mindset, reflected in the law, which values the principles of sustainability, equality and justice in a humane society rather than what is dictated in the extrinsic pursuit of the commodification of the “commons”.<sup>11</sup> My “meta-discourse” which is constructed from a variety of sources manifests in opposition to the present discourses followed by governments that have themselves previously been prescribed by the doctrines found in the study of classical economics within a capitalist context. In essence, I have endeavored to use the discourses of social activists and academics juxtaposed with the subject of water as a universal medium by which to expose the fundamental inequities of capitalism and thus through dialogue in discourse<sup>12</sup> begin to educate and set the debate with a range of possible alternatives postulated for consideration. Looking at issues which surround water, from a perspective which is not dominated by the dominant paradigm of economics, opens up a realm of possibilities which has previously not been given due consideration.

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on managing the land uses on the surfaces over or through which water flows. Accordingly, one key condition for success water protection is integrated management of both water and the land uses that affect it’(\*). [Footnotes from: *Protecting Drinking Water Sources*, Office of the Auditor General of British Columbia. 1998/1999 Report 5 on page 13.] Quoted in: Parfitt, B., & Brewster, L., (2000), *Muddied Waters*, Sierra Legal Defence Fund, pp. 3 -4.

<sup>11</sup> Included and referenced in Appendix B is *The Treaty Initiative* “To Share and Protect the Global Water Commons”. This document concludes with the following sentence: “However, because the world’s fresh water supply is a global commons, it cannot be sold by any institution, government, individual or corporation for profit.”

<sup>12</sup> Schematically the discursive dialogues are for the reader, in the sense that one form of discourse builds on the understanding of another in an interactive process, in which the collective understanding is constructed by the reader. Understanding is manufactured in a dialogue between discourses represented in the “glossary” and said discursive references to a “rainbow” metaphor whether discursively applied to “method” or “theory” as are contained within the text of the thesis and means that the thesis is ultimately to be interpreted as a work of academic activism in progress.

A review of the discourses referenced in the thesis will show that it is obvious that simple solutions to complex problems of an aquatic nature are becoming more difficult for the state to administer in our present world of globalization.<sup>13</sup> Globalization accelerates the “transformation of the organic into the inorganic... [a] reduction of life to death... [in which] creatures and ecosystems are made into packaged commodities, which then serve as priced goods for people to consume”<sup>14</sup> and unfortunately, here in Canada, water is not presently immune from the destructive influences of globalization and capitalist practices.<sup>15</sup> My purpose advanced through an interdisciplinary academic approach, by taking up the issue of water in Canada in terms of state sovereignty, has been to use the politics of water to seep into a fissure in the edifice of capitalism and expose - thus contribute to eroding - the unstable foundation upon which our present capitalist system is built. A central objective of the discourse

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<sup>13</sup> A central proposition within the thesis is that political action designed to capture the power of the state, namely, government is a necessary component which needs to be carefully considered on the part of various sectors of civil society in their efforts to achieve meaningful social justice. For a popular discourse designed towards such ends, see: Hellyer, P., (2001), *Goodbye Canada*, Toronto: Chimo Media. On page 29 Hellyer writes: “Sun Belt Water Inc. of Santa Barbara California is suing us for between US\$1.5 and US\$10.5 billion, because we won’t let it sell our water.” This case, brought under chapter 11 of the North American Free Trade Agreement (NAFTA), will be explored in depth within the discourse of my thesis for the purpose of generating meaningful opposition to the policies of the current Federal Government in Canada. The story of the Sun Belt case has been suppressed by the Canadian Government and needs to be heard by Canadians in order that civil society may well establish the political will as a prerequisite to constitute unified political action. Such information may well provide the foundation necessary to establish a dialogue which is destined to implement meaningful social change in Canada.

<sup>14</sup> McMurtry, J., (1998), *Unequal Freedoms The Global Market As An Ethical System*, Toronto: Garamond Press, p. 328. See: “Capitalist System” in the “glossary” [122] for a more complete version of the quote taken from McMurtry.

<sup>15</sup> “World-wide, more than 5 million people die every year from diseases spread through contaminated water. Canadians are lucky to have a massive supply of clean fresh water. But even in Canada people are so uncertain of the quality of their water, they buy bottled water at prices that exceed gasoline! The recent drinking water contamination problems all over the country show the need for a better approach to water management. While we must be vigilant about testing and safety, we also need to protect the watersheds that deliver high-quality, naturally filtered water to us.” Suzuki, D., “Water Management Plan Urged”, *Common Ground*, June 2001, p. 12.

The David Suzuki Foundation is committed to researching and implementing a process of meaningful change. See: “Suzuki Foundation” in the “glossary” [141] for a summary of the four step process designed to implement change. Also see: [www.davidsuzuki.org]

will be show how a privileged sector of society, namely private financial institutions with the ability to generate credit, has inordinate access to economic resources and thus to natural resources simply by virtue of the privilege of being able to extend credit (oftentimes to government). This interdisciplinary essay endeavors to provide a solid foundation for the construction of a coalition of oppositional politics around the issue of state sovereignty rights to Canadian water as a constructive means of challenging the

doctrine of economics<sup>16</sup> inherent in the status quo. The “rainbow” metaphor will also be used to construct a useful model which is central to my discourse of water (with specific reference to social and environmental activism).<sup>17</sup> My method in discourse is to present water as a fountain for change, clearly discursively displaying a colorful “rainbow” with spectrums of understanding embodied in the evidence of the appendices, including quotations found within an aquatic academic activist glossary. The extensive documentation and stratified design are necessary features of the discourse: as the discourses available which pertain to water and social activism, where they are taken and arranged collectively in a single discourse, embody a form of heresy when seen in terms of the orthodoxy of contemporary discourses of political economy and globalization that are endorsed by the federal government. Ultimately, in my final analysis, this aquatic “rainbow” metaphor will be employed to describe the condition of state sovereignty as it is currently being practiced in Canada. My thesis, particularly in

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<sup>16</sup> Forstater reports that: “Heilbroner [1994, 8] has expressed the hope that the ‘irrelevant scholasticism’ of contemporary neoclassical economics might be replaced with a reinvigorated political economy. Political economy may ‘perhaps [be] resurrected by a corps of dissenting economists...’ (Forstater, M., 1999: 1026).

Higgott argues for “The Need for a Balanced Diet in an Era of Globalisation” by concluding his essay in this way: “Yet international institution must secure converging policy positions by agreement and willing harmonisation, not by force. To argue as much is not a call for a free riders’ charter, but a call for tolerance and an acceptance of genuine difference that is often missing within the liberalising discourse of mainstream economics. It is also a call to recognise the limits of trying to explain or prescribe policy in these issue areas using the tools of only one specialised discipline. It is, in short, a call for a balanced diet” (Higgott, 1999: 34). I see economics as science which justifies the continued practices of exploitation. See: “Economics” in the “glossary” [129] for a summary taken from: Henwood, D., (1998), *Wall Street: How It Works And For Whom*, New York: Verso which is highly critical of economic policies and practices within Henwood’s contemporary framework of political economy.

<sup>17</sup> Near the conclusion of the thesis an “Aquatic Discourse of Social Activism” will be offered as a means by which to challenges existing political policies and practices that pertain specifically to the economic relations which structure the contemporary political economy of water in Canada. Such recommendations require political action if they are to effect meaningful social change in Canada. The issue of water and social activism has the potential to advance such action if diverse groups are willing to participate in meaningful discussions connected to water policy.

Note: Those academics who engage in theory building or methodological deconstruction (depending on the nature of the direction of inquiry) who seek to evaluate this thesis on such grounds (using academic labels) decidedly miss the point. The thesis is not concerned with academic labels which may be applied in theory or questioned with reference to method. To endeavor to make such determinations as to whether labels such as “historical materialism”, “dialogical communication”, “reflexivity”, “hermeneutics”, or even to evaluate the data contained in the thesis with reference to the more traditional forms of discourse on the subject of political economy is to miss the point of the academic exercise. My discourse pragmatically pertains to water in Canada, nothing more and certainly nothing less.

the chapters that follow, will project a “rainbow theory” of Canadian state sovereignty which shall clearly and plainly demonstrate the illusionary nature of national sovereignty with reference to water that exists within the present and future contexts of international trade agreements. The discourses reviewed focus primarily on water and social activism but will also reflect on discourses of private and public banking coupled with international trade.

The state (Canada is no exception) must return control of the money supply to public hands as a first step to retain (or regain) control over natural resources housed within what have been the traditional boundaries of sovereign nation states. Academic debates about the discourses of such theorists as Karl Marx<sup>18</sup> and their applicability within the modern world will not lead to positive changes in the nature of state sovereignty.<sup>19</sup> A unified debate about the fate of one of this country’s greatest life-giving natural resources, **water**, on the other hand, might facilitate just, sustainable, practical developments which radically enhance the quality of life for all citizens in Canada. We need to continue this dialogue on trade further and, thus, endeavor to hold government accountable. Otherwise, academic theory developed and designed within the disciplines of the social sciences, particularly economics, will ultimately prove to be far less sustainable from either a social or environmental perspective than that

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<sup>18</sup> “Haven’t you read Marx?” Klein, N., (2000), *No logo Taking Aim At The Brand Bullies*, Toronto: Alfred Knopf, p. 439. For a brief summary of Karl Marx on issues of: “The State”, “Free Trade”, “Money” and the “Social and Ecological Revolution” see “Marx” in the “glossary” [135].

<sup>19</sup> Noam Chomsky explains how the progressive terminology of marxist theory can be coopted in discourse as follows: “The reason that I don’t use the word ‘class’ is that the terminology of political discourse is so debased it’s hard to find any words at all. That’s part of the point, to make it impossible to talk. For one thing, ‘class’ has various associations. As soon as you use the word ‘class,’ everyone falls down dead. There’s some Marxist raving again... [Instead] You can talk about the masters, if you like. It’s Adam Smith’s word, you might go back to that. They are the masters, and they follow what he called their ‘vile maxim,’ namely ‘all for ourselves and nothing for other people.’ That’s a good first approximation to it, since Adam Smith is now in fashion.”

Chomsky, N., (1994), *Keeping the Rabble in Line*, Monroe Maine: Common Courage Press, pp. 108 -109.

For thoughts on method which are liberated rather limited by language in discourse, see: Vanderplaat, M., (1997), “Emancipatory Politics, Critical Evaluation and Government Policy,” *The Canadian Journal of Program Evaluation*, Vol. 12, No. 2, pp. 143 -162.

which is manifest in my discursive representation designed in the spirit of chasing rainbows to facilitate changes within Canadian civic consciousness; the same spirit is manifest, and was shown in Quebec City in the public demonstrations by the civil society activists against policies and practices of free trade. Perhaps my “rainbow” discourse may prove to contribute in an equally meaningful way to a process for unified movement - which rejects the principles and practices of corporate managed trade - and privileges the rights of actual “natural persons” (rather than the fictitious status of “natural persons” given to corporations). Academics and activists both need to think carefully about how it is that we wish to be governed with particular reference to the natural environment, specifically with our water and air; and, naturally develop a course of action advancing principles of sustainability. It is possible through the protection and preservation of state sovereignty. Canadian governments must work for rather than against the interests of Canadian citizens with vigilance required to make it so.

“Governments hesitate when it comes to conserving the environment because they loath the possibility of giving up undiscovered riches...”<sup>20</sup> In the 1987 document entitled *The Prioritization of Research For Water Resources Management*, by Dorcey and Rueggeberg, specific reference in section 2.2 is made on the need for “Interdisciplinary Science in Water Resources Management”. Some of the subdisciplines referred to include: “hydrology, environmental chemistry, toxicology, biology, ecology, engineering, economics, sociology and law.” In sections 2.4 and 2.5 of the 1987 document issues of “Increasing Demands for Research” and “Decreasing Resources for

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<sup>20</sup> Dabrowski, W., “Prince’s fund aids Canadian waters”, *Victoria Times Colonist*, October 21, 2001, p. C4. Note: “Joshua Laughren, WWF Canada’s director of marine conservation, said that over the last 10 years, more than 1,000 new protected areas were created on land in Canada, compared with only two marine areas.

The fund will help the environmental group bolster its marine conservation efforts over the next ten years. WWF Canada president Monte Hummel said \$400,000 has been raised so far, but the target is at least \$500,000...

Philip said media should put pressure on politicians and highlight the environmental agenda for Canadians.” (ibid).

Research” are addressed respectively. The trend of shrinking economic resources available from governments and by extension to civil society around the water question is, perhaps, the central focus of this thesis.

## Chapter 2: Water In Canada: Private Property or Public Resource?

### An Introduction To Canadian Water Set Within A Historical Context

#### A more open debate

The dance routine between the Alliance rebels and PC party seems to have hit on a good formula. Cooperation on a few main planks while leaving the fringe stuff to the diehards of each party.

We have to guess at what their common agenda will be but it could contain agreement to field one common candidate in each riding with a platform of, say, acceleration of “free trade,” privatization of parts of health care and education, adoption of the U.S. dollar, etc. Come to think of it, you could include the Liberals in that group!

Now if only the anti-globalization, environmental protection and electoral reform groups could get together with a common umbrella platform of a few key planks and agree to field only one candidate in each riding we could have a terrific debate.

It is no longer a question of left versus right. Under the two distinct banners of Americanization or Canadian independence, any individual in any party or group could choose the path we the electorate wish to follow for our future instead of being conned by concealed corporate interests.

It is a given that we will be the resource base for the American economy and this has always been good business. However, under the new definitions we will be able to decide the terms of trade in the open instead of having to resort to demonstrations to protest against legislation such as FTAA and GATS that is being rammed through in virtual secrecy.

Skinner, D., “A more open debate,” *Victoria Time Colonist*, August 28, 2001, p. A9.

The politics which surround water in Canada would greatly benefit from the same simplistic dichotomy proposed by Skinner and, therefore, it is my intention in this chapter to posit the question: as to whether water should be considered private property or a public resource? In reality, the distinction is somewhat artificial as water in Canada is considered both a commodity which must be paid for as well as a public resource, in its natural state, which at present remains a central component of the natural environment or “commons”. My intention is not so much to answer the question, but to polarize the debate in a discursive effort to illustrate the dangers of private ownership over an absolute necessity of life and the unintended consequences which accompany such policy. Consequently, a cursory review of the historical context of water in Canada is necessary to develop the debate further.

Water is ubiquitous. It flows within every living facet of the experience we call life. With a myriad of perspectives available, the prospect of writing on water as subject matter runs a decided risk of dispersion to such an extent that the thesis ultimately vaporizes unless the overall discourse is unified within a central intent. The central tenet which runs throughout this discourse pertains to water and social activism as a means by which to pursue meaningful social change in Canada.<sup>21</sup> A discursive analysis of academic and activist endeavors to preserve water as a central element of the earth's commons and thus ensure water as a basic "right" for all living species is the fountainhead of this thesis. By tracing the recent history of events involving Canadian water, that is influenced by a world dominated by forces of globalization, my intention is to unify all the diverse groups of social and environmental activists which are by necessity ultimately dependant on water. The purpose of the thesis is to discursively link water to matters of social justice and environmental integrity - as set in the context of state sovereignty within a world of globalization - as a means to advance both academic and activist understandings of the political economy of water as a framework for analysis and thus to provide a solid foundation by which to effectively challenge the policies and practices contained within the deeper economic structures. Such policies include international trade agreements and terms dictated to nation states by chartered banks whose combined influences are pervasive yet not fully understood in modern

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<sup>21</sup> "The old Marxian question is still unanswered and unanswerable: how can it be that an increasing majority of non-owners continue to lie under the democratic dominance of a shrinking minority of property owners? Why should the many accept the continuing domination of the few? More specifically, how does the increasingly inegalitarian democracy remain viable? The mechanisms that secure the continuity of the system thus appear as the most crucial of issues. The fundamental role of the state in ensuring the reproduction and political cohesion of capitalist class societies remains the most important question of political theory." Tsoukalas, K., (1999) "Globalization and 'The Executive Committee': Reflections on the Contemporary Capitalist State" *Socialist Register*, p. 56.

I will address the role of the Canadian state, with particular reference to water, in an effort to identify international trade agreements and contemporary banking practices as "the mechanisms that secure the continuity of the system" which allows "the increasingly inegalitarian democracy [to] remain viable" in Canada. My method cannot be said to be Marxist, although it will take insights from such analysis where appropriate. For example: "Through construction of generative principles and theories, Marxists themselves seek, to change the world." Harvey, D., (1996) *Justice Nature and the Geography of Difference*, Cambridge: Blackwell Publishers Inc., p. 68.

society. The thesis is set within a national context prescribed by particular Canadian historical circumstances, political rhetoric and legal and economic parameters of contemporary global capitalism. This thesis documents the legitimate public concerns voiced by many collectively expressed sectors of civil society in opposition to the private water policies and practices proposed by agents within the market,<sup>22</sup> which, due to economic pressures, are increasingly being endorsed by governments in Canada. In so doing, the thesis will endeavor to provide a fluid framework to unite diverse interest groups in an effort to stand in opposition to capitalist commodification of the commons.

Water is a basic necessity for all forms of life on earth. In Canada, as in many places elsewhere in the world, legal rights to clean drinking water are subordinate within the canons of law to the rights of property. This newly evolved recognition in the law is credited to the Honorable Mr. Justice McEwan, who on the 21st of July, 2000 said in paragraph 13 of the case involving *Slocan Forest Products Ltd., v. John Doe, Jane Doe And Persons Unknown* where the defendants:

have set up a competing “right” to clean water, but do not suggest that this right has any legislated or common law status as against the clearly defined rights of Slocan Forest Products. Whether this is as it should be is not a legal question, but a question of social policy. Any change would be the province of legislators, not judges.

In effect, under Canadian law, the rights of property are at present superior to those of “natural persons” and therefore the judicial as well as the political decision-making branches of government reflect these priorities. Social activists endeavor to make governments accountable for social considerations and environmental policies surrounding water, including whether or not water in Canada is for sale. Thus, the

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<sup>22</sup> An early example of an ideological effort to insert water into the mechanisms of the market is found in: Anderson, T., (1983) *Water Crisis: Ending the Policy Drought* Baltimore: John Hopkins University Press copyright to the CATO Institute specifically in “Could Markets Do Better?” at pp. 5 - 8. Also see: Anderson, T., (1992) “From Political Water to Private Water: Switching to Market Allocation” in *Water Export: Should Canada’s Water Be For Sale?* Vancouver: Water Resources Association, pp. 85 - 92.

subject matter of international trade agreements or whether water remains within the exclusive legal purview, has been previously set within the Canadian Constitution. Increasingly it is through the work of dedicated activists that the state must come to recognize water as the drop of life.<sup>23</sup>

The two most significant bodies of legislation in Canada with specific application to water policies and practices (as they have been managed in the past) are *The Canadian Constitution Act* and *The Canada Water Act*.

The constitutional underpinnings of Canadian water law are found in the Constitution Act. Because water is not treated as a separate head of power in the act, the respective federal and provincial roles in water management can be found under a number of constitutional headings that may be either legislative or proprietary in nature... The most ambitious attempt by the federal government to legislate in a comprehensive fashion with respect to water was the Canada Water Act of 1970.<sup>24</sup>

As witnessed by the case brought by way of a challenge under Chapter 11 in the North American Free Trade Agreement (NAFTA) by Sun Belt Water Inc., of Santa Barbara California against the Government of Canada, the combined influence of international trade agreements when supported by international financial institutions may in fact surreptitiously set the parameters in which governments may act with reference to water. The Sun Belt case against the Government of Canada when seen to be clearly coupled with the practices of private, as opposed to public, forms of government debt will make it increasingly clear that such forms of litigation supported with bank resources may actually dictate future Canadian water policies on economic terms. In

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<sup>23</sup> The recently defeated NDP Government in British Columbia - as one of their final actions taken with reference to water - sponsored, in part, the series entitled: *Water: The Drop of Life* (2000) Swynk. This series aired (in several episodes) on Knowledge Network. For more information on the video or companion book, see: [www.knowtv.com](http://www.knowtv.com)

<sup>24</sup> *Protection of the Waters of the Great Lakes Interim Report to the Governments of Canada and the United States*, August 10, 1999, International Joint Commission, p. 22. For a contemporary summary of *The Canada Water Act*, see: Table 1 in the text. The International Joint Commission (IJC) which studies the Great Lakes Region is arguably the main source for the current study of water policies and practices in Canada. However, the IJC will not be addressed in depth in this thesis but more information can be accessed at: [[www.ijc.org](http://www.ijc.org)]. For additional information on the IJC from the perspective of social activists, see: [[www.glu.org](http://www.glu.org)] for the website of Great Lakes United. Note: for information on the various forms of legislation applicable to the province of British Columbia which directly pertains to water, see: Appendix C.

my opinion, the Sun Belt case for water in Canada clearly and practically demonstrates the political and economic vulnerability of the Canadian Government to pressures of international trade and coercive forces in the nature of private forms of government finance. Academic activists, if they choose to review public documentation filed in open court, can learn many things from the Sun Belt case<sup>25</sup> including the fact that *The Canada Water Act* (see table 1) is subject to the dictates of international trade law.<sup>26</sup>

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**Table 1**  
**Summary of *The Canada Water Act***

*The Canada Water Act*, proclaimed on September 30, 1970, provides the framework for joint federal-provincial management of Canada's water resources. Section 38 of the Act (Revised Statutes of Canada, 1985) requires that a report on operations under the Act be laid before Parliament after the end of each fiscal year. The report describes a wide range of federal activities conducted under authority of the Act, including significant water research, participation in various federal-provincial agreements and undertakings, and a public information program. This, the 27th report, covers operations to March 31, 1999.

The following is a summary of the major provisions of the Act:

*Provisions of The Canada Water Act*

Part I of the Act provides for the establishment of federal-provincial consultative arrangements for water resource matters (Section 4) and plans for cooperative agreements with the provinces to develop and implement plans for the management of water resources (Sections 6, and 8). Section 7, enables the minister, directly, or in cooperation with any provincial government, institution or person, to conduct research, collect data, and establish inventories associated with water resources.

Part II envisages federal-provincial management agreements where water quality has become a matter of urgent national concern. It permits the joint establishment and use of federal or provincial incorporated agencies to plan and implement approved water quality management programs. The provisions of this part have never been used.

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<sup>25</sup> The case was submitted to a NAFTA tribunal by Sun Belt on November 27, 1998; according to the NOTICE OF INTENT TO SUBMIT A CLAIM FOR ARBITRATION which is exhibit "A" of the solicitor's affidavit of John Carten submitted in the Supreme Court of British Columbia on February 13, 2001, in the action styled *The United States of Mexico v. Metalclad Corporation* (No. I 002904). Carten as an authorized filing agent of Sun Belt Water Inc. filed for intervenor status in the first review of an award of a NAFTA tribunal. His application was denied on February 19, 2001, but his affidavit is now part of the public record. The affidavit is addressed in depth in the section found in Appendix D.

<sup>26</sup> "[With reference to recent strategy on water] the government announced that in order to avoid abrogating its trade obligations, it was pursuing an 'environmental' approach [which] it argued was permitted was permitted under the trade measures, specifically GATT Art. XX (g) which purports to allow for measures 'relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption'. This language is also incorporated into the NAFTA. Bill C-6 is said to be in keeping with this environmental approach by focusing on prohibiting the removal of water from 'Water Basins' instead of imposing an export ban. Unfortunately this approach has never survived a trade challenge."

Dunn, J., May 15th, 2001, Submission by the Council of Canadians Before The Standing Committee on Foreign Affairs and Trade for Hearings on Bill C-6, p. 1.

Part III, which provides for regulating the concentration of nutrients in cleaning agents and water conditioners, was incorporated into the Canadian Environmental Protection Act (CEPA) by a proclamation on June 30, 1988. Information concerning regulation of nutrients is reported in the CEPA annual report to Parliament.

Part IV contains provisions for the general administration of the Act. In addition, Part IV provides for inspection and enforcement, allows the Minister to establish advisory committees, and permits the Minister, either directly or in cooperation with any government, institution, or person, to undertake public information programs.

[Quoted from: *The Canada Water Act Annual Report 1998-1999*,  
Minister of Public Works and Government Services, 2000, page 1].

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In my research to find the “truth” about the political economy of water in Canada, particularly with reference to the Sun Belt case, I endeavor to engage academic thought processes in an effort to challenge conventional wisdom with activist efforts<sup>27</sup> so that, if nothing else, it becomes increasingly clear that water politics in Canada remain a complicated matter in which it is questionable as to whether (or not) governments have as much influence on the policies and practices of water management as do the international structures of economic globalization that are presently codified within international trade agreements and contemporary banking practices. Some activists argue that citizens must reclaim the auspices of the state for democratic purposes and thus reject many of the practices of an economy dictated to by business which, at present, often result in social and ecological costs being externalized onto the environment. Others argue the political apparatus of the state has become so co-opted by business the more expedient route by which to achieve social justice is through concerted efforts within sectors of civil society. The issue of “state sovereignty” and “what to do about it” is open to debate within the activist community.<sup>28</sup> Collectively Canadian social activists, while recognizing that water is

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<sup>27</sup> From a pragmatic perspective my personal experience began with the Water Watch “Summit” held in Ottawa in September, 1999 (see: Appendix E for information from the “Summit”) and has continued through the International Forum held at the University of British Columbia, Vancouver, July 5 -8, 2001 (see: Appendix B for a copy of the *Treaty Initiative* complete with references for the “International Forum on Water For People and Nature”).

<sup>28</sup> I will argue that with essentials, such as air and water, compromised by the actions of the state, present forms of “state sovereignty” are clearly lacking in substance but the state itself should not be abandoned by the activists. I am aware that “state sovereignty” is a slippery concept which is better thought of as a set of processes. For the purposes of this essay “state sovereignty” as it pertains to water naturally refers to control and distribution of water but, more to the point, also includes economic considerations which flow from the

presently treated as both a “good” and a “service”, argue, for the most part, that the proper place of water is as a part of the “commons” so that consequently water has no proper place within the discourses of market economics.<sup>29</sup> Activists argue that this is so because water is an absolute necessity of life and therefore water should not be subject to the disciplines of the market.<sup>30</sup> However, while the thoughts and actions of social activists have some influence on policy making they are far from determinative and thus the issue of whether or not to treat water as a commodity to be regulated by market forces remains to be answered by those empowered to make such decisions. Therefore it is incumbent on the academic investigator<sup>31</sup> interested in social justice not only to comprehend the ethereal properties of water but also to understand from the perspective of contemporary political economy how the availability of water has come to depend on economic considerations predicated on traditional cost benefit analysis as prescribed within the practices of the global economic marketplace. The bottom line is that water is not to be considered “free” according to the policies and practices

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political decisions made with reference to water policy. See: “State Sovereignty” and “State System” in the “glossary” [139/40] and [140].

<sup>29</sup> Perceptions from civil society social activists will include representations from the Sierra Legal Defence Fund, the Canadian Environmental Law Association, the West Coast Environmental Law Association, the Canadian Union Of Public Employees, the Canadian Labor Congress, Citizens Concern About Free Trade, the Council of Canadians, Canadian Centre For Policy Alternatives and others. For a summary of the Canadian water question which has acceptance within civil society, see: Barlow, M., (1999) *Blue Gold* San Francisco: International Forum on Globalization (revised edition published in Spring 2001).

See IFG website: [www.ifg.org](http://www.ifg.org) Also see Appendix K for cited websites and a listing of related websites to the material assembled on the question of water rights in Canada in the context of international economic obligations such as are found in the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO).

<sup>30</sup> For an insightful analysis of global capitalism and the effects that it has on national politics which is at variance with most of his colleagues in terms of the devastating impact that economic practices have had on political decision-making. The point being, of course, that a leading functionary of contemporary capitalist practices has recognized that the system as it presently functions is unsustainable and needs a balance of intrinsic values to counter the destructive effects of capitalism. Soros, G., (1998), *The crisis of global capitalism: open society endangered*, New York: Public Affairs. See: “Dissident Capitalist” in the “glossary” [128] for a brief summary of Soros’s analysis.

<sup>31</sup> For the purpose of this thesis it is enough to recognize that water has a special place in the cycle of human life, which, by virtue of the fact that it is absolutely essential to life, transcends economic considerations. A special effort by Eloise Charet of the watertalk organization included a walk across Canada in 1998 to gather water samples. For additional information, see: [<http://www.watertalk.org/waterwalk>]. For additional insight as to just how special water is, see: Batmanghelidj, F., (1997) *Your Body’s Many Cries For Water* Falls Church: Global Health Solutions; Caro, P., (1993) *Water* Toronto: McGraw-Hill; de Villiers, M., (1999), *Water*, Toronto: Stoddard.

prescribed by economists for all levels of government.

An idea presently being floated in the mainstream press, with the support of senior academics, which is ostensibly designed to foster governmental accountability and empower citizen actions is assigned the designation of “an environmental auditor”. David Boyd, senior associate with the Eco-Research Chair in Environmental Law and Policy at the University of Victoria, on March 15, 2001 in the *Victoria Times Colonist* on page A13 explains the rationale of such appointments, saying in part: “The federal environmental auditor was appointed because Chretien’s government recognized that objective, independent monitoring of ecological performance is every bit as important as objective, independent monitoring of financial performance. The latter task has been done with great utility, by an auditor general at both the federal and provincial levels.” After outlining the superiority of the proposed model for an environmental auditor in British Columbia Boyd continues: “Achieving sustainability cannot be done single-handedly by the Ministry of Environment. Sustainability is a fundamental ethic that must inform the policies and actions of all government ministries and Crown corporations. Ensuring that the entire provincial government meets sustainability commitments is also an important element of the new commissioner’s mandate.” This proposal, however well-meaning, by design, naturally quantifies ecological features in economic terms. Under such a scenario, decisions which impact on environmental sustainability will continue to be made using an economic logic as witnessed by the following recently disclosed development with reference to water:

Environment Canada wants to evaluate the worth of the nation’s fresh water - not to justify bulk water exports, but to argue against them, Environment Minister David Anderson said Thursday.

“The more data you have, the more effective you will be in your arguments,” the minister said as he defended a project funded by his department to estimate the value of the country’s water resources.

A call for tender, posted on the government Web site, said the work would “help governments make decisions on issues such as water exports.” But Anderson rejected suggestions that government was trying to put a price on water in order to put it on the market.

[Jaimet, K., and Bryden, J., “Anderson denies bid to export bulk water”, *Victoria Times Colonist*, June 1, 2001, p. 1].

The danger of conceptualizing water exclusively as a commodity to be sold ensures that a prerequisite for life is managed within the framework of capitalism - to be bought and sold - and this tendency to think of water exclusively in economic terms is a discursive challenge which desperately needs to be addressed by academic activists. Establishing a discursive awareness of the dangers involved in the evolving discourse that allows water in every form - from the obvious commodification of it in bottles to the partially publicly subsidized water that flows into your house by way of public infrastructure and right back into nature where water is found in its natural state - to be conceptualized in economic terms is a task in which academics can inspire the aspirational actions of social activists to maintain a heritage of water as a part of the commons in Canada. Universal public access to clean water as far as is humanly possible, as a rightful legacy for future generations of Canadians, and the reconstruction of an economic system which enhances rather than restricts the prospects of environmental stewardship rather than economic calculation as the basis by which such decisions are made comprise the collective aspirations embodied within the discourse of my thesis. My discourse is constructed in the model of a rainbow with many voices, located in the “glossary”, that express dissident perspectives (in terms of economics) with reference to water.

### **Canadian State Sovereignty Over Water: An Illusion Of The Past?**

The Merchant-Heeney Report was drawn up in 1965 for the Canadian and American governments by Livingston Merchant, former American Ambassador to Canada, and by Arnold Heeney, former Canadian Ambassador to the United States. Heeney was the man who followed General McNaughton as chairman of the Canadian section of the International Joint Commission. This report, published in 1967, not only supported a continental view of Canadian energy and water development, but strongly recommended that discussion of such matters be carried out by the two nations behind closed doors. In the words of the report:

Many solutions between our two governments are susceptible of solution only through the quiet, private and patient examination of the facts in the search for accommodation. It should be regarded as incumbent on both parties during this time consuming process to avoid, so far as possible, the adoption of public division and difference.... Canadian authorities must be satisfied that the practice of quiet diplomacy is not only neighbourly and convenient to the United States but that it is in fact more

effective than the alternative of raising a row and being unpleasant in public.  
 [Bocking, R., (1972) "NAPAWA: dream or fact?" in *Canada's Water: For Sale?* Toronto: James Lewis and Samuel Publishers, pp. 40 -41].

Before the NAFTA challenge by Sun Belt Water Inc., water in British Columbia was primarily a matter for the provincial government and was treated accordingly in the courts. Governments could demand payments for access to water, could control the delivery of water and wastewater systems, and could ensure that any and all of such demands were upheld in domestic courts - no amount of money from the private sector could make it otherwise.<sup>32</sup> Before evaluating the specifics of domestic contract law, the issue of state sovereignty needs to be addressed for it remains fundamental to the question of control and access to water within the present global capitalist system. The question to be addressed becomes: can the Canadian state retain sovereign control over resources within its recognized geographic boundaries regardless of the intrinsic values of the resources in question and the international desire for access to such resources? Or, is it possible for Canada to maintain sovereign control over water resources and services? Both questions assume that Canada had and should have sovereign control over water services and the resources upon which water and wastewater services depend. Whatever the answers may have been in the past, contemporary answers to these questions reside within the texts of international trade agreements such as the North American Free Trade Agreement (NAFTA) and organizations such as the World Trade Organization (WTO). Therefore, a review of international trade agreements and international institutions in relation to traditional considerations of state sovereignty is necessary to determine whether the state has sovereign control over the water which is captured as rain within the borders of Canada.<sup>33</sup>

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<sup>32</sup> Provincial powers to natural resources are rooted in Section 109 of the Canadian Constitution Act. See: Saunders, J., "A Legal Perspective on Water Exports" as found in Holm, W., (1988) *Water And Free Trade* on p. 64 [further referenced in footnote 4 of that text].

<sup>33</sup> Thompson, J., (2000), "Captured Rain: Canadian Water/ American Thirst". A comprehensive overview of the water question was telecast December 5, 2000 in this video on the program "Witness" which aired on

Canadians naturally assume that they as citizens of Canada possess sovereign rights to water. Notwithstanding the Columbia River Treaty in which Canada has been paid: “\$273.3 million for the benefits the U.S. gained by being able to generate more power downstream... \$68.3 million for flood control benefits derived in the U.S. from the dams [and] \$112 million [which] accrued in interest and other payments in the years following the signing of the treaty”<sup>34</sup> there have been other economic proposals floated up from the United States with particular reference to Canadian water. Beginning in the late 1950s and continuing into and through the 1960s a series of proposals for diverting Canadian water to the United States has been advanced, including: the North American Water and Power Alliance (NAWAPA),<sup>35</sup> and the Grand Canal Proposal.<sup>36</sup> Presumably in each of these cases American money was

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CBC. The program was Part One of a two part series and the second episode dealing with the environment issues and consequences of bulk water export aired on the Discovery channel on December 8, 2000.

<sup>34</sup> Bocking, R., (1972) *Canada's Water: For Sale?* Toronto: James Lewis and Samuel Publishers, p. 92.

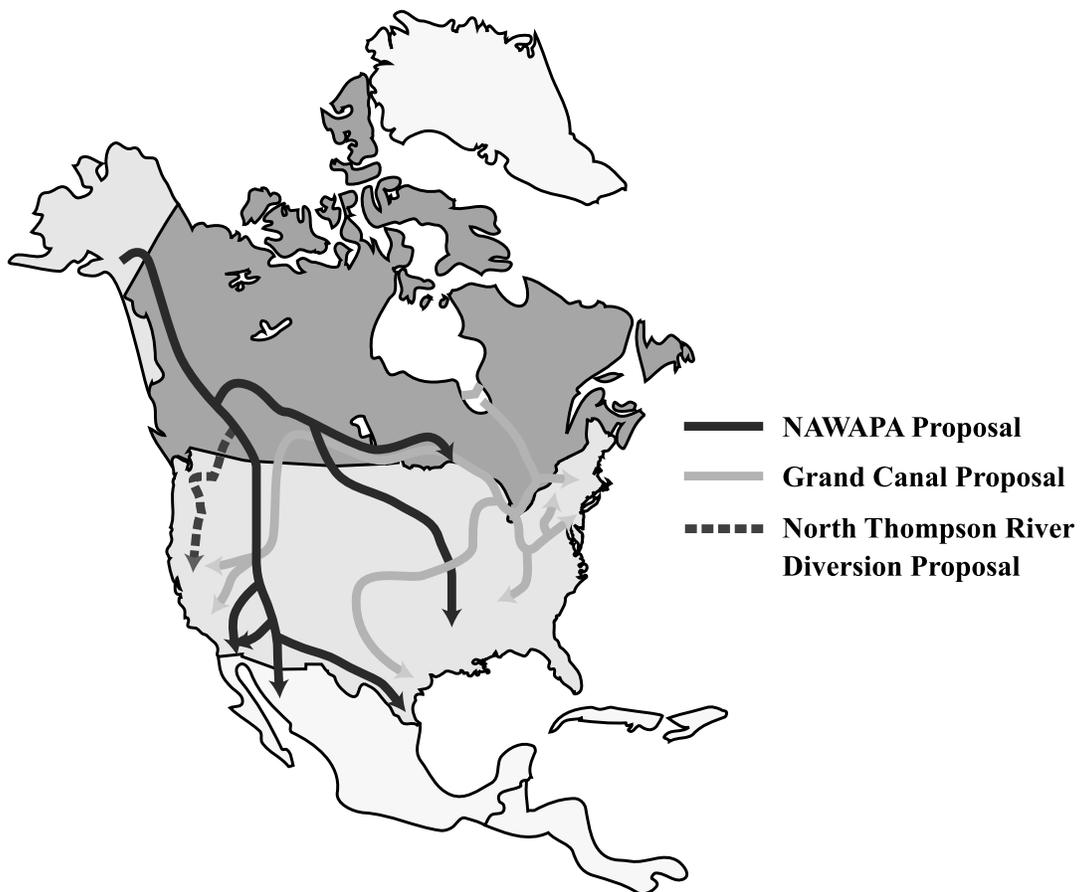
<sup>35</sup> NAWAPA: “In 1964 Los Angeles engineer Ralph Parsons proposed solving the problems of dry areas from California to Mexico to New York by taking water from the northwest corner of the continent and diverting it across North America. This scheme, called the North American Water And Power Alliance - NAWAPA- was for years the focal point of discussions about possible water diversions, and a number of similar proposals were modelled on it...

Mr. Parsons outlined a continent-wide river distribution network which incorporated 240 reservoirs, 112 irrigation systems and 17 navigation canals handling 136 cubic kilometers of water a year. While some of the water was to be pumped east across the Prairies as far as the Great Lakes, most of it was to go south via the Colorado River. Water would be spread far and wide to irrigate about 220 000 square kilometres of dry farmland in the United states and Mexico and even produce water for New York City.” [Keating, M., (1986) *To The Last Drop Canada and the World's Water Crisis* Toronto: Macmillian, pp. 154 -155]. For additional information on NAWAPA, see: Bocking, R., (1972) “NAWAPA: dream or fact?” in *Canada's Water: For Sale?* Toronto: James Lewis and Samuel Publishers, pp. 71 -88.

<sup>36</sup> Grand Canal Proposal: “The Kierans plan, called the great Recycling and Northern Development Canal, or Grand Canal for short, is on the same scale as NAWAPA. It calls for a 160-kilometre-long system of dikes and causeways across the mouth of James Bay. This would allow fresh water from north-flowing rivers in Ontario and Quebec to gradually flush out the salt water into Hudson Bay.” [Keating, M., (1986) *To The Last Drop Canada and the World's Water Crisis* Toronto: Macmillian pp. 155 -156]. “Water from the reservoir would be pumped and diverted south through a series of canals and the Ottawa River to the Great Lakes through the Chicago diversion. From the Great Lakes, water would be carried through a series of canals which would then be linked for distribution south by way of the Missouri and Mississippi Rivers.” [Holm, W., (1988) “Incompetence Or Agenda” *Water And Free Trade*, p. 33]. For additional information on the Grand Canal, see: “Perspectives on the Grand Canal” in Nicholaichuk, W., and Quinn, F., (1987) *Proceedings Of The Symposium On The Interbasin Transfer Of Water: Impacts And Research Needs For Canada* Environment Canada: National Hydrology Research Centre and Canadian Water Resources Association, pp. 59 -99.

offered up front in return for access to Canadian sovereign rights to water. Nevertheless, regardless of the economic parameters in which such discussions may have taken place over the years, it has generally been recognized that the issue of sovereignty over water resources was traditionally a matter to be discussed between, or at least with, governments, with no place reserved for private interests to challenge the authority vested in state sovereignty.

**Figure 1**  
**Map of Proposed Water Diversions**



This map, which locates these water diversion proposals, is reconstructed from a cartographic representation constructed by Margo Stahl as was originally found in the 1993 article by Thompson, J., (1993), "Diverting Interests" on page 69 of *Equinox* April 1993, Number 68.

The legal instruments which make it possible for future water diversions from Canada to the United States to be controlled by private (corporate) interests rather than remain in the hands of elected governments are codified in international trade agreements. Before the NAFTA was signed between Canada, the United States and Mexico, the Canadian and American Governments entered into the Free Trade Agreement (FTA) in 1988. The principal negotiators for each country both had interests in the policies and practices that surround water.<sup>37</sup> Canadians were repeatedly assured that water was not to be a part of the trade agreement, an assurance which proved to be patently false when the text of the agreement was made public.<sup>38</sup> Notwithstanding the statements of politicians that water was not a part of the FTA, the contents of article 409 of the text of the agreement and subsequent legislative actions on the part of the Canadian Government clearly indicate otherwise.<sup>39</sup> Therefore, it is conceivable that Canadians first ceded their sovereignty rights to water in the FTA, but it will become increasingly obvious that that initial concession has been reinforced in the legal text contained in the Investor-State provisions of Chapter 11 of NAFTA.

The illusion created over water and Canadian state sovereignty is constructed from a complex set of inter-related processes which are set in motion by way of international agreements as well as financial organizations in our globalized world. There has been a major shift in the nature of state sovereignty over water with the

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37 In the essay entitled, "Water Is In the Deal" by Mel Clarke and Don Gamble as found in Holm, W., (1988) *Water And Free Trade* on pages 13 and 19 respectively the following passages are found: "Prior to being appointed Canada's chief free trade negotiator, Simon Reisman was one of the most vocal advocates of proposals to sell Canadian water to the United States." On page 19, "Yetter: 'I don't see the free trade agreement being used as a vehicle to accomplish that but I can certainly see that there will be U.S./Canada discussions on access of water supplies over the next ten, twenty or fifty years. I happen to know the issue of water well because I did my PhD dissertation in water law and water administration, but I don't see it being an FTA issue.'"

38 In the essay written by the editor of the collection of essays on free trade entitled, "Incompetence Or Agenda" as found in Holm, W., (1988) *Water And Free Trade* (pp. 36, 37) the following subsections are found: "New Clause Included under Article 409 after the Deal Was Signed" and "Evidence That Water Was Exempt from The Deal Until the Eleventh Hour".

39 *ibid.*

advent of international trade agreements in the last decade and in that context consider the concluding comments made by the editor of the proceedings from the 1992 conference entitled: *Water Export: Should Canada's Water Be For Sale?*

... the public might chose to support water export. If we are not prepared to absolutely prohibit water export (providing that is possible under the FTA and GATT) then we ought to put in place those water export policies that are acceptable. Scott et.al. (1986, p. 195) made the same suggestion several years ago, noting: 'A country may be said to have adopted a policy about water exports when it has prepared itself in advance to deal with new situations.' That, then would seem to be the challenge of the future. Canadian politicians must either ban water exports (by changes to the FTA, domestic legislation or by other means appropriate) or tell Canadians, through the issuance of a policy document, under what circumstances, in what regions and at what price etc. they would be prepared to allow the export of water. The water export "ball" is, it would seem, in the politicians court. [Winston, J., (1992) "Water Export: What Does The Future Hold?" *Water Export: Should Canada's Water Be For Sale?* Vancouver: Canadian Water Resources Association, p. 304].

Less than ten years after the conference, when seen from the perspective of international trade agreements: the NAFTA has replaced the FTA - with the GATT having been incorporated into the WTO. The paradigm shift mandated by these international agreements is from traditional understandings of state sovereignty to a world governed within the economic dictates of international agreements which are developed in secret between members of international institutions, corporate organizations and representatives of nation state governments. In this scenario, sovereignty shifts from that which is designed for territory and stewardship of natural resources to an administrative regulatory enforcement role in the service of international economic dictates codified in trade law and banking practices. The result being, of course, that the application of domestic law in particular circumstances is no longer coherent with the emerging practices of international trade law.<sup>40</sup> Past understandings of the Canadian state's sovereignty over water are no longer upheld by domestic law. There is no illusion of state sovereignty with reference to water in the realm of international trade agreements as this particular application of evolving

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<sup>40</sup> "Governments that are fixed in space and property rights that exceed that space no longer form a coherent political and economic unity." Marchak, M., (1991), *The Integrated Circus*, Montreal/Toronto: McGill-Queens 's University Press, p. 262. See: "Rainbow Theory" in the "glossary" [139] for paragraph of the Marchak quote.

international law operates without regard for environmental sustainability or other such principles which arguably is of concern for the legislators of the state.<sup>41</sup> From an academic perspective, traditional understandings of water sovereignty both regulated and codified in domestic law, may well be a historical illusion when evaluated in terms of the legal doctrine of economic rights as are presently codified within international trade agreements. However, from an activist perspective, the historical question of water sovereignty in Canada is moot; it is the present and future of water policies and practices which is of concern to Canadian social activists.

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<sup>41</sup> “It is important to state that the governments overall strategy is flawed in several ways. The government has argued that water in its ‘natural state’ is not a good under the NAFTA. While it is unlikely that this position would survive a trade challenge, it is vital to realise that water is not only a good under trade agreements, particularly NAFTA. It is also a service under Chapter 12 and can be an investment under Chapter 11 and neither of these obligations require it to be a good under Chapter 3.

Secondly, NAFTA article 2101 provides that GATT Article XX exemptions on which the government is relying for the viability of its ‘environmental’ approach, applies only to articles 3 to 9 and therefore offer no protection from Chapter 11 on investment and Chapter 12 on services. Currently the Canadian Government is being sued for \$10.5 billion US by Sunbelt Water Inc of Santa Barbara California under Chapter 11 of NAFTA over the cancellation of a water export license.” Dunn, J., May 15th, 2001, Submission by the Council of Canadians Before The Standing Committee on Foreign Affairs and Trade for Hearings on Bill C-6.

“ABSTRACT: The establishment of a binding international agreement concerning the provision of services is likely to have profound implications for public policy and law concerning water. Because it represents the embodiment of neo-liberal policies that favour privatization, deregulation and free trade, the GATS [as the WTO agreement entitled General Agreement on Trade in Services] will undermine the sovereign authority of governments to achieve environmental, conservation or other societal goals. At risk is the public ownership of water resources, public sector water services and the authority of governments to regulate corporate activity for environmental, conservation or public health reasons.” Shrybman, S., (2001), *Water And The GATS* (An Assessment of the Impact of Services Disciplines on Public Policy and Law Concerning Water), Ottawa: Council of Canadians, p. 1. Also see footnote 140 for additional references to NAFTA and footnote 141 for additional references to WTO.

## Chapter 3: Political Economy And Legal Aspects Of Water In Canada.

### Nature of the Sun Belt NAFTA Challenge Under Chapter 11 to Water in Canada

The definition of water is primarily bureaucratic - that is the business of government. According to Denis Diderot (1713 - 1784), who wrote an article on Hobbism in his *Encyclopedie*, Thomas Hobbes (1588 - 1679) suggested in the mid-1600s that "it should not be left to doctors or philosophers to interpret the laws of nature. It is the business of the Sovereign; it is not truth, but authority that makes law." In fact, water is defined, meticulously described, and explored in all its complexity by government, which pays scrupulous attention to it, not overlooking the slightest detail that could be the subject of complaints, disputes or doubts, *not hesitating to change the rules when necessary*, always adding new constraints (*emphasis added*). [Caro, P., (1993), "Legal Water" in *Water*, Toronto: McGraw-Hill, pp. 22 -23].

There are severe disjunctures in the nature of state sovereignty, and by extension contract law, in the Sun Belt case adjudicated under the NAFTA when compared with that which was present under previous Canadian national law. In terms of the Sun Belt Water Inc., claim for access to water in British Columbia a review of the decisions<sup>42</sup> in the case styled *Snowcap Water Ltd. v. B.C. Minister of the Environment* is necessary to understand contract law under the Canadian system of parliamentary democracy . Such a review is taken within the historical context of comments made by Fred Paley of Snowcap Waters Ltd., and those made by the Honorable John Cashore the B.C. Minister of Environment at the conference<sup>43</sup> entitled, "Water Export: Should

<sup>42</sup> *Snowcap Waters Ltd. V. British Columbia Minister of the Environment* written by Bouck, J. Judgement on April 15, 1997 referenced in 34 B.C.L.R. (3d), pp. 139 -148. *Snowcap Waters Ltd. V. British Columbia Minister of the Environment* written by Shabbits, J. Judgement on July 16, 1997 referenced in 45 B.C.L.R. (3d), pp. 193 -200.

<sup>43</sup> Fred Paley: "As a point of interest, in 1990 Snowcap Waters applied to the B.C. provincial government for an increase in its bulk water license to 15,000 acre feet per year, which would allow the transport of one tanker load per week to Goleta, California. This contract would have brought in gross revenue of U.S. \$105 million to a British Columbia company. In spite of receiving many assurances from bureaucrats and elected officials, our request was deferred by several continuous government moratoria the last of which is due to terminate June 30, 1992. These moratoria killed the contract..."

The contract with Goleta, California would have provided much needed cash flow for Snowcap, which is a small glacial water bottling company on Vancouver Island employing 20 people. Along with the additional manpower for the bulk water contract Snowcap would have been able to expand its operations by approximately 30 people.

British Columbia should share a proportion of its surplus water for economic as well as humanitarian reasons. Our government must deal with the realities of the day instead of continually postponing decisions by

Canada's Water Be For Sale?" held in Vancouver May 7-8, 1992. Sun Belt Water Inc., of Santa Barbara California was a party to the earlier legal decisions by virtue of a partnership with Snowcap Waters Ltd., and the claim to water in British Columbia by the California company had little chance of success in Canadian law.<sup>44</sup> Hence the plaintiffs collectively left the provincial court system and Sun Belt Water Inc., proceeded to move against the Federal Government within the economic realm of international trade law under the NAFTA. For the purpose of international trade law the issue is no longer whether water is considered a "good" or a "service" but can it now be considered an "investment" for the purposes of trade?<sup>45</sup> The legal ramifications are

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way of moratoria. Shipping bulk water by marine tanker has passed all environmental tests required by the federal and provincial governments. Water export by marine tanker offers a new environmentally sound industry to B.C. utilizing a commodity which is available in vast supply and continually replaces itself.

It is high time that the bureaucratic official of the Ministry of Environment start absorbing the facts before them and base their decisions accordingly, rather than act on personal feelings and political pressures."

[Paley, F., (1992) "Bulk Water Export Benefits for British Columbia" in *Water Export: Should Canada's Water Be For Sale?* Vancouver: Water Resources Association, pp. 5 - 9 at pp. 7 -9].

Honorable John Cashore: "I am therefore announcing that the moratorium on bulk water shipments by marine vessels from coastal streams will be extended for two years, to June 30, 1994.

I want to assure you that this will be the final extension of the moratorium. At the end of the two year period, we will have a definitive policy on water exports, supported by comprehensive legislation...

I look forward to hearing what you, as stakeholders, and the people of British Columbia have to say on these important issues. I am confident we will emerge from this renewal process with a water export policy, and a Water Management Act that will help preserve and enhance our environmental heritage for many years to come. Thank you." [Cashore, J., (1992) "A British Columbia Perspective on the Issue Of Water Export" *Water Export: Should Canada's Water Be For Sale?* Vancouver: Water Resources Association, pp. 287 - 292 at pp. 291 -292].

<sup>44</sup> A brief synopsis of the decisions in the domestic courts is in order as neither case held out much chance of success for the Sun Belt Water Inc under conventional forms of contract law. Justice Bouck wrote in section 29 on page 145: "Applying this theory, does Sun Belt have a reasonable chance of success if the action proceeds to trial? On the basis of the material referred to me by counsel, it does not appear so. I will now explain why by reviewing the three main causes of action that are set out in the Statement of Claim." *Snowcap Waters Ltd. V. British Columbia Minister of the Environment* written by Bouck, J. Judgement on April 15, 1997 referenced in 34 B.C.L.R. (3d), pp. 139 -148.

The Honorable Justice Shabbits wrote in sections 28 and 29 on page 199: "It does appear that if the plaintiff does not succeed in this action, that it will neither have the assets within the jurisdiction nor be able to pay costs. The plaintiff's 'assets' lie in its cause of action in this proceeding. The plaintiff may not succeed. In making that observation, I refer to the reasons of the Honorable Mr. Justice Bouck in these proceedings filed on April 15, 1997. I have neither considered nor weighed evidence in order to access the merits of the plaintiff's claims. It is sufficient for the purposes of this application that I be satisfied (as I am) that liability is contested, and that the plaintiff may not succeed. (29) I am satisfied that the plaintiff ought to post security for the cost of these proceedings. The amount I order is \$27,800." *Snowcap Waters Ltd. V. British Columbia Minister of the Environment* written by Shabbits, J. Judgement on July 16, 1997 referenced in 45 B.C.L.R. (3d), pp. 193 -200.

enormous involving unprecedented rights to property for private investors in the NAFTA which may, in fact, result in the ensuing inability of national and provincial governments to control water supplies within national or provincial boundaries. The impact on water policies and practices of the development of various forms of international trade law and perhaps more significantly the impact that international trade agreements have in terms of areas of Provincial jurisdiction cannot be overstated.<sup>46</sup> As we will see in the section which follows, the nature of NAFTA dispute resolution tribunals and the fact that they are conducted in secret without a public record, makes it exceedingly difficult to verify any of the facts of the Sun Belt case with certainty, especially with reference to the position of the Province of British Columbia.<sup>47</sup> Furthermore, it is noteworthy that no communications branch of the Federal Government nor any of the mainstream press has made a concerted effort to accurately document developments with regard to water and national sovereignty in the case between Sun Belt Water Inc., and the Federal Government.

The first public references to the Sun Belt challenge under Chapter 11 of the NAFTA began to be introduced to Canadians on the twenty-second of October, 1999.<sup>48</sup> Before that the media did a very poor job of informing the Canadian public that under the provisions of Chapter 11 in the NAFTA a case had been brought by Sunbelt Inc. of Santa Barbara California against the Canadian Government for over \$10

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<sup>45</sup> Fred Paly and Jack Lindsey of Sun Belt Water have formed a partnership to deal in water from Alaska, see: Thompson, J., (2000), "Captured Rain: Canadian Water/ American Thirst" (referenced in footnote 33). Also see "Water in Trade" in the "glossary" [142/43] for a general description of "National Treatment" and "Most Favored Nation Treatment" and their collective impact on considerations of "state sovereignty".

<sup>46</sup> The case is addressed in The Legislative Assembly of British Columbia *Special Committee On The Multilateral Agreement On Investment Second Report* Third Session, Thirty-sixth Parliament June 1999 at pp. 33 -38 under the heading of "Water Protection and the NAFTA Sun Belt Case".

See: "MAI Recommendations" in the "glossary" [134] for preliminary conclusions on the Sun Belt case.

<sup>47</sup> Ibid., p. 37. See: "MAI Water Evaluation" in the "glossary" [134/35] for a preliminary evaluation of the Sun Belt case.

<sup>48</sup> "U.S. firm sues B.C. and Canada for billions in water export fight." *Vancouver Sun*, October 23, 1999.

billion (U.S.) which, according to the affidavit of John Carten, was a year after the case was actually submitted. Two articles found in the mainstream press, the article in the *Vancouver Sun* entitled: "U.S. firm sues B.C. and Canada for billions in water export fight" and a slightly more recent article announcing the new Federal Provincial Water Accord which reads: "The province is facing a \$10 billion lawsuit from Sun Belt Inc., of California, in connection with a law it introduced to ban the export of bulk water"<sup>49</sup> - seem to indicate that the province is a party to the law suit - when the provisions of the NAFTA do not provide for a place at the table for provincial governments, only investors and national governments. Therefore, the question must be asked, why would the media describe the province and the Federal Government as co-defendants when only the national government is party to the NAFTA? Why does it appear that the provincial government is called to account for the dispute in the Sun Belt case? Why is it not the Federal Government? The province may be responsible for resource management under the Constitution, but it is the Federal Government who signed onto the NAFTA and sits at the table to resolve disputes. The Federal Government is responsible for agreements which pertain to international trade and provinces are expected to adhere to federal policy.

Without access to the documents in the Sun Belt case, the next best means of developing an understanding may be to extrapolate from evidence in the proposed investor-state NAFTA litigation with reference to the other absolute necessity of life, namely air. Perhaps, the Federal Government has not forgotten the public relations debacle it encountered when it unsuccessfully tried to ban MMT<sup>50</sup> from the gasoline sold by the Ethyl Corporation to preserve air quality for the citizens of Canada.<sup>51</sup> In

<sup>49</sup> Curtis, M., "B.C. rejects water accord" *Victoria Times Colonist* December 1, 1999, p. A3.

<sup>50</sup> MMT is an acronym for: methylcyclopentadienyl manganese tricarbonyl.

<sup>51</sup> Hellyer, P., (1999) *Stop Think* Toronto: Chimo Media, p. 58. See "Ethyl case" in the "glossary" [130].

the Ethyl case, the Federal Government could not afford to make the requisite payment as compensation for the law designed to protect its citizenry and, not insignificantly, the case was for millions of dollars rather than billions of dollars as is the present case with Sun Belt Waters Inc. In view of these facts, can it be said that such considerations represent a paradigm shift in conventional understandings which delve into the nature of state sovereignty? Or it is merely a form of crony capitalism in Canada? If either question can be answered in the affirmative, what does "state sovereignty" mean with reference to Canadian water? Can we speak of Canadian water in terms other than those framed by economic considerations in this new paradigm, or, is the function of the state in contemporary capitalism - on the pretext of acting in the legitimate interests of its citizens - simply to accumulate additional national debt and thus in the future facilitate the increased exercise of control over natural resources by powers beyond the state? With reference to the monumental decision inherent in the Sun Belt case under NAFTA - within the larger context of additional questions which have evolved around Canadian water - we will just have to wait and see what further developments are in store in the political economic context of contemporary Canada in order to provide answers on questions of state sovereignty. Or must we wait? Answers which may be found within the Sun Belt case may currently provide a means by which to analyze some of the contemporary processes of globalization which we have come to know as "Free Trade".<sup>52</sup>

The hearings into the Multilateral Agreement on Investment (MAI) by the Provincial Government of British Columbia form an interesting record of the disjuncture between conventional understandings of state sovereignty and the newly evolving economic regime embodied in trade agreements such as the NAFTA and they are worthy of study relative to understanding international trade agreements on

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<sup>52</sup> See "Free Trade" in the "glossary" [132] for a definition of "Free Trade" taken from Gramsci, A., (translated 1971) "The Modern Prince" in *The Prison Notebook* on pp. 159 -161.

Canadian water. Ostensibly before the NAFTA challenge by Sun Belt Water Inc., but certainly after the provincial court cases which preceded the challenge, the opposition to liberalized international trade and water from a provincial perspective was well expressed by the MLA from Surrey-Whalley, Joan Smallwood, who chaired the “Special Committee on the Multilateral Agreement on Investment”, saying:

As chair of the committee, I was particularly glad to see how many British Columbian have thought about these complex international issues... The people that came out to speak to us represented workers, businesses and communities. They had a very good handle on how these trade rules might shape our future and the fight we will have in trying to protect those things we value in our economy and our society.

Many pages of our committee’s report are dedicated to reproducing verbatim the thoughtful and forceful statements we heard from people across the province. We heard a lot of interest in new protections for **BC’s water** and a lot of concern that, through the WTO, our federal government may negotiate many of the same rules that lead Canadians to reject the MAI.<sup>53</sup> [emphasis added]

Here, in discussions held by the Provincial Government with representatives of civil society on matters of international trade, state sovereignty and provincial jurisdiction one encounters a most interesting phenomenon which may explain why the Provincial Government is targeted by the media and the Federal Government has chosen to maintain silence on the Sun Belt case: in convening the hearings, the Provincial Government acted in opposition to the direction set by the Federal Government<sup>54</sup> and made a real effort to listen to Canadian citizens. What is most noteworthy from the perspective of civil society, is that this demonstrates that it is still possible for governments, at least at the provincial level, to purposely represent the interests of the people for whom they are elected. As a critique of the Federal / Provincial Water Accord may reveal, this ability to act in the interests of the citizens of nation states may

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<sup>53</sup> “MAI COMMITTEE CHAIR REPORTS ON PUBLIC HEARINGS WANTS MORE PUBLIC INPUT ON WATER EXPORT BAN AND TRADE RULES THAT PROTECTS WORKERS AND COMMUNITIES” British Columbia Government Press release dated July 19, 1999 which accompanied the The Legislative Assembly of British Columbia *Special Committee On The Multilateral Agreement On Investment Second Report* Third Session, Thirty-sixth Parliament June 1999.

<sup>54</sup> A copy of the motion against the MAI is found in the reports of The Legislative Assembly of British Columbia *Special Committee On The Multilateral Agreement On Investment* in both the *First Report* of the Third Session, Thirty-sixth Parliament December 1998 on pages 10 and 11 and the *Second Report* of the Third Session, Thirty-sixth Parliament June 1999 on page 2. For a copy of the motion see: “MAI Motion” [134] in the “glossary”.

not be true for water resources and services at the federal level under existing international trade agreements. Certainly the Federal Government was unable to protect air in the Chapter 11 challenge by the Ethyl Corporation; and it is very likely that the same economic power found within the NAFTA holds true and the government cannot protect water from the dictates of international trade agreements.

There is a certain symmetry to the study of air and water as both are fundamentally essential to life; both have been the subject of NAFTA challenges by American corporations against the sovereignty rights of the Canadian Government to act in the interests of its citizenry. In the study of water and the NAFTA we can learn from a review of the Ethyl case against the Federal Government over issues of clean air. For example, the following revelations with reference to the investor-state mechanism - complete with specific details of the Ethyl case brought under Chapter 11 of the NAFTA - are proffered by Barry Appleton, who discloses the extraordinary details pertaining to the secrecy of the NAFTA process, in his testimony before the committee, saying:

[The public] ... didn't know about these other cases. That's because they have been kept secret. The government of Canada chose to keep these secret; it's their choice. The fact of the matter is that there have been four claims, as I believe the Chair pointed out, against Canada, and there are at least five cases that have been brought against Mexico. These are totally secret. I, as an international trade lawyer, cannot find out what's there, except that I happen to have been consulted on two. I happen to know firsthand about two of them, but other than that, I would have no knowledge - neither would you, neither would your legislative assistants, neither would your Attorney General. The only people that have a right would be the Government of Canada, and they would not be entitled to release it under the terms of the NAFTA. So even if they had the information, they couldn't tell you... [References that follow pertain to the Ethyl Case]

Now, in fact, I have in my hands the document from the NAFTA tribunal that told the Government of Canada on July 2 that they could have made the entire record public. They could have made the notices of intent, the notice of arbitration, the statement of claim and the statement of defence public. They could have made the orders public. They chose not to at that point. They had an opportunity and chose not to.

In fact, even today they still haven't released everything. It was only because I had the permission of my client, Ethyl Corp., to be able to release materials that these have become public. I'm sorry that you didn't have an opportunity to have a representative from the Department of Foreign Affairs who's knowledgeable about these cases to talk to you about them, because there are

certain issues that I'm sure you'll want to talk about around the secrecy of the process.  
[Appleton, B., Report of Proceeding *Special Committee On The Multilateral Agreement On Investment Second Report* Third Session, Thirty-sixth Parliament Vancouver: September 30, 1998 Issue 5, p. 141].

By keeping the Sun Belt case a secret, the federal government could avoid a constitutional challenge from the provincial governments over the jurisdiction of water. By virtue of Mr. Appleton's privileged position as a trade lawyer one might infer that his understanding of "certain issues", that the Provincial Government may wish to speak to the Federal Government "around the secrecy of the process", pertains directly to water resources. According to the Constitution, jurisdiction over water and other natural resources is a matter of provincial jurisdiction.

It is a logical inference that when Mr. Appleton spoke of "certain issues" he was "sure you [as members of the B.C. Government] will want to talk about" that he was speaking as a legal representative from the pending litigation on water in British Columbia and it is entirely possible that he was speaking indirectly about the Sun Belt case brought against the Federal Government under the NAFTA. Certainly, the Provincial Government would have no such knowledge about the possibility of a claim brought by a disgruntled investor against the Federal Government, since only investors and representatives from the Federal Government are parties to the dispute resolution process. But I suspect that Mr. Appleton may know more than he can say about the Sun Belt case.<sup>55</sup> I base that suspicion both on his comments before the Special Committee of the MAI, referred to earlier in conjunction with specific comments which aired on the CBC broadcast of "Captured Rain: Canadian Water/ American Thirst" on the program *Witness* on the fifth of December, 2000 (previously referred to in footnote 33). In an interview shown on national television Mr. Appleton was asked specifically about water under the NAFTA, to which he replied:

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<sup>55</sup> Appleton: "I am currently counsel for one client who's involved in an investor state claim against the government of Canada. I have in the past acted on other cases. I am also counsel of record on some other ones that are pending. I have a number of other clients that are involved in these issues, so I just want to make sure that I'm speaking in my own personal capacity and that none of the comments I have made in the past or today should be taken to necessarily reflect the position of my clients, past present or future." Appleton, B., Report of Proceeding *Special Committee On The Multilateral Agreement On Investment Second Report* Third Session, Thirty-sixth Parliament Vancouver: September 30, 1998 Issue 5, p. 140.

Water is covered by the harmonized tariff schedule and the schedule which is a separate volume to NAFTA; that nobody holds up and shows you. It covers water. [Later with reference to access to water].

When you win you don't have to tell everybody how well you won. *If you play poker and you win a big pot you don't always tell everybody how much is in the pot. The Americans have the access to the water, they have it already; they don't have to wring their hands, they don't have to do anything. They've got it. And when they need it, they'll come by and pick it up...*

If you have those water rights, you are entitled to use the water as you see fit. And if you own it, then you get to use it, and using it then you get to sell it.

If you sell your water and we don't let you do that, because a government whether it is federal or provincial or even municipal for that matter says, 'No more sales of water.' You're entitled to compensation for your loss. That's what NAFTA says. It a very fundamental right...

I can't understand what kind of advice the Government is getting. If this were a company they would sack the CEO and they would sack the lawyer. But in this country we haven't done that. The fact of the matter we are leaving ourselves unprotected in an area where there is tremendous demand. We are the largest supplier. I would think that we would want to be able to call the shots on that. *[emphasis added]*.

Based on this information presented, and in the context of Appleton's previous testimony before the Provincial Government of British Columbia with reference to the hearings on the MAI, it sounds to me that the Sunbelt case may already be decided in a manner which favors the American corporation. Undoubtedly, the Sun Belt case was presented before the NAFTA tribunal: in a manner such that the Federal Government chose not to make the response of government public to Canadians.

### **Sun Belt Affidavit Summary**

The following will represent a brief summary of the 9 page affidavit (98 pages with exhibits included) made "Amicus Curiae" by John F. Carten, an authorized filing agent for Sun Belt Water Inc. of Santa Barbara, as a review of the affidavit that was filed in the Supreme Court of British Columbia on the 13th of February 2001, in the case of commercial arbitration (No. I. 002904) styled *The United Mexican States v. Metalclad Corporation*.<sup>56</sup> The affidavit was filed in support of an application for intervenor status

<sup>56</sup> See: Appendix D for a longer summary of the affidavit of John Carten. For reasons that will become increasingly obvious I have used the language found in Exhibits "A" and "B", complete with references noted accordingly, to provide my summary of the Chapter 11 challenge brought by Sun Belt under the NAFTA. References are by exhibit and paragraph number, for example, the first of two references in Appendix D come from the NOTICE OF INTENT TO SUBMIT A CLAIM FOR ARBITRATION filed by Sun Belt as (Exhibit

in the first judicial review of the investor-state provision in a Chapter 11 case of the NAFTA scheduled to be heard in a Canadian court (Vancouver, British Columbia, Canada). The application was one of two applications heard by the Honorable Mr. Justice Tysoe on the 19th of February 2001, in the action between Mexico and an American corporation in which lawyers representing Canada and Quebec participate with intervenor status.<sup>57</sup> The application for intervenor status advanced by Carten was made to “provide a reference pattern” for the court and was opposed by all parties in the litigation; thus, the application was consequently dismissed by the learned trial judge for two reasons: 1) considerations of time, and 2) it was determined that the participation by Carten would not be helpful in the case before the court. However, the fact that costs were not spoken to may be somewhat significant: lawyers representing Quebec categorized the affidavit on which the application was made as a “calculated form of contempt” designed to “diminish respect for the court”; lawyers for Canada concurred.

The second application of the morning of February 19th, was made by Scott Nelson of the Independent Media Center (IMC) for the purposes of being allowed to make and broadcast a tape of the proceedings on the internet; the application made by Nelson was allowed by the Court with the proviso that the proceedings must be shown in as complete a form as was technically possible. Therefore, the proceedings of the hearing between Mexico and Metalclad in virtually an unedited form appear on the IMC website at: <http://vancouver.indymedia.org/> Unfortunately, because of the timing of

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“A”) in paragraph A and will simply be cited A A; and, the second reference is from paragraph 8 taken from the NOTICE OF CLAIM AND DEMAND FOR ARBITRATION filed by Sun Belt as (Exhibit “B”) and is referenced B 8. My express purpose is to make such a summary available for the consideration of the Canadian public.

<sup>57</sup> An earlier application for intervenor status made by the Canadian Union of Public Employees (CUPE) had been dismissed in chambers by the learned trial judge on January 31, 2001 and a transcript was made of the oral reasons.

the applications Carten's application will not appear on the broadcast. With the permission of the court clerk and thus presumably that of the Honorable Mr. Justice Tysoe, I was able to obtain access to the affidavit of Carten [hereinafter "the affidavit"] which I will endeavor to summarize. We will see "the affidavit" is a remarkable document and is worthy of activist and academic commentary.

The subject matter of "the affidavit" arises from the actions of Sun Belt Water Inc., and their dealings with first the British Columbia Government and later the Canadian Government as the signature party to the NAFTA which has now become the focus for an investor-state challenge pertaining to legal rights to water under Chapter 11.<sup>58</sup> The substantive allegations of "the affidavit" are addressed in an overview conceptualization in paragraph 6 which are then further referenced in Exhibits "A" and "B". The essence of the Sun Belt claim, as advanced by Carten in paragraph 6 of his affidavit reads: "That Exhibits "A" and "B" herein disclose a story of fraud, corruption, stock market swindle, deceit, cover up, suppression of evidence and concealment of documents with links to the highest levels of government in British Columbia and Canada that will eventually make actions of the Office of the Attorney General in the Carrier Lumber case appear like a Boy Scout exercise." This sweeping allegation is the subject matter described in much further detail in the challenge put before the NAFTA tribunal to which Canada must answer.<sup>59</sup> My summary is made from the available Sun Belt documentation and not the competing interplay of the

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<sup>58</sup> In "the affidavit" there are 26 paragraphs and 21 attached exhibits which includes: the NOTICE OF INTENT TO SUBMIT A CLAIM FOR ARBITRATION filed by Sun Belt which is signed and dated the 27th of November 1998, against Canada under the NAFTA at (Exhibit "A"), the NOTICE OF CLAIM AND DEMAND FOR ARBITRATION filed by Sun Belt which is signed and dated the 8th of November 1999, against Canada under the NAFTA at (Exhibit "B"), copies of two newspaper articles, and copies of 17 letters: with 9 letters sent individually to a variety of prominent politicians at both the Federal and Provincial levels, including two letters to the Prime Minister with a letter in reply from the Office of the Prime Minister, as well as six letters to senior members of the judiciary (including Chief Justices of the B.C. Courts and the Chief Justice of the Supreme Court of Canada) and a letter to the Canadian Judicial Council.

<sup>59</sup> For an overview of Canada's response to the Sun Belt case and other challenges under Chapter 11 of the NAFTA see website: [[www.dfait-maeci.gc.ca/tna-nac](http://www.dfait-maeci.gc.ca/tna-nac)].

documents produced in the course of litigation or arbitration. The summary therefore can be said to represent only one side of the story.

NAFTA tribunals proceed very quickly. Therefore, one cannot assume that a decision in the Sun Belt case is still outstanding; and if the decision has been rendered and we have not heard about it that can only mean that Canadians are surreptitiously paying to maintain the illusion of sovereignty; Canada is making payments to Sun Belt Water Inc., for compensation under Chapter 11. Because of the ability of water to draw concerted forces of social activism together,<sup>60</sup> Sun Belt is far less likely to publish the terms of a victory from within the NAFTA tribunal, as Barry Appleton did in the Ethyl case. On the other hand, if the Federal Government had successfully defended traditional forms of sovereignty rights to water we would certainly have heard about it. We know government likes to publish its good deeds. Because of the paucity of documentation in the case of Sun Belt and water, once again it is helpful to use a method of extrapolation derived from available information in the Ethyl case using a formula with the numbers of the initial claim and final settlement made regarding air to create an understanding for water. The purpose is to demonstrate the magnitude of the potential claim of the Sun Belt Water Inc., against the Federal Government and thus to estimate what the costs in Canadian dollars might be to settle the claim and maintain the illusion of water sovereignty. The numbers, offered merely for purposes of comparison are: Air in the Ethyl Case: Claim \$300 million, Settlement \$20 million, Multiplier 15; Water in the Sun Belt Case: Claim \$15 billion, Multiplier 15, Settlement \$1 billion. If such an estimate is in any way accurate, the *cost to the Canadian taxpayer would be \$1 billion dollars for the Sun Belt case alone* and if this amount is then financed with any form of credit other than the Bank of Canada you then have an ongoing debt which is compounded with interest: in essence, a form of “structural adjustment by

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<sup>60</sup> The “Water Watch Summit” had convened in Ottawa in September of 1999 - bringing together major sectors of labor with environmentalists in a coalition which overcome traditional forms of division - shortly before the Sun Belt case had been announced to the Canadian public. The Summit will be addressed in some depth later in the essay.

stealth”.<sup>61</sup> Without a doubt, NAFTA tribunals provide the legal foundation by which business interests may extract “structural adjustments by stealth” from government coffers.

The allegations made in the Sun Belt claim and the refusal of the Federal Government to rebut the substance of that claim in public,<sup>62</sup> or endeavor to refute the allegations of Sun Belt, must be understood to have ominous overtones for state sovereignty and water resources in Canada.<sup>63</sup> Corporate rights should be made to serve the purposes of humanity rather than have the law adjudicate that humanity<sup>64</sup> be made to serve corporate rights. It is simply a question of priorities. It is entirely reasonable to assume that a possible settlement for lost rights to water followed the same formula as in the Ethyl case, resulting in a \$1 billion settlement, but it is more likely that the amount corresponds to what is set in the pleadings, which set the amount at (US) \$1.5 billion [see Appendix D in #13]. Regardless of what the amount might be, it is safe to assume that Canadians are paying compensation in large amounts without funding the expenditure, at minimal interest rates through the Bank of Canada. Unless the claim for compensation was settled in full (\$10.5 billion plus \$1.5 billion US [see: Appendix D in #s 13 and 14]), there remains an outstanding claim for water; therefore Canadians have a right to know what the national status of water<sup>65</sup> is and so far our

<sup>61</sup> For a summary of what I have labeled “structural adjustments by stealth” contextualized with available evidence in the Sun Belt challenge under chapter 11 of the NAFTA against the Government of Canada, see Figure 2 in the text on the next page.

<sup>62</sup> There is no reference to the Sun Belt case on the government website at: [www.dfait-maeci.gc.ca/tna-nac](http://www.dfait-maeci.gc.ca/tna-nac)

<sup>63</sup> I have neither the access nor the resources to verify and validate (or not) the claims of the affidavit of J. Carten, an authorized filing agent for Sun Belt Water Inc., and the government (including lawyers for the BC Government as informal observers to the Metalclad case) chose not to respond. I have been able to determine that Mr. Bryan Williams was the Chief Justice of the Supreme Court of British Columbia and that he authored the Annual Reports and published them on the website as the Chief Justice of the Supreme Court of British Columbia (1997-1998, 1998 -1999 at: <http://www.courts.gov.bc.ca/Sc/Annual>). The Honorable Chief Justice Donald Brenner was appointed on May 12, 2000 to the Supreme Court of British Columbia. Therefore, it is true that Mr. Williams is no longer a member of the judiciary in British Columbia (as asserted in Carten’s affidavit). This does raise interesting questions about the impact that this trade case may have had within the Canadian judicial community.

<sup>64</sup> The ability of nation states to effectively regulate corporations is questionable in domestic law but does exist. See: “Corporate Regulation” in the “glossary” [123/24] for a summary of the ability of government to effect change on corporate behavior in domestic law.

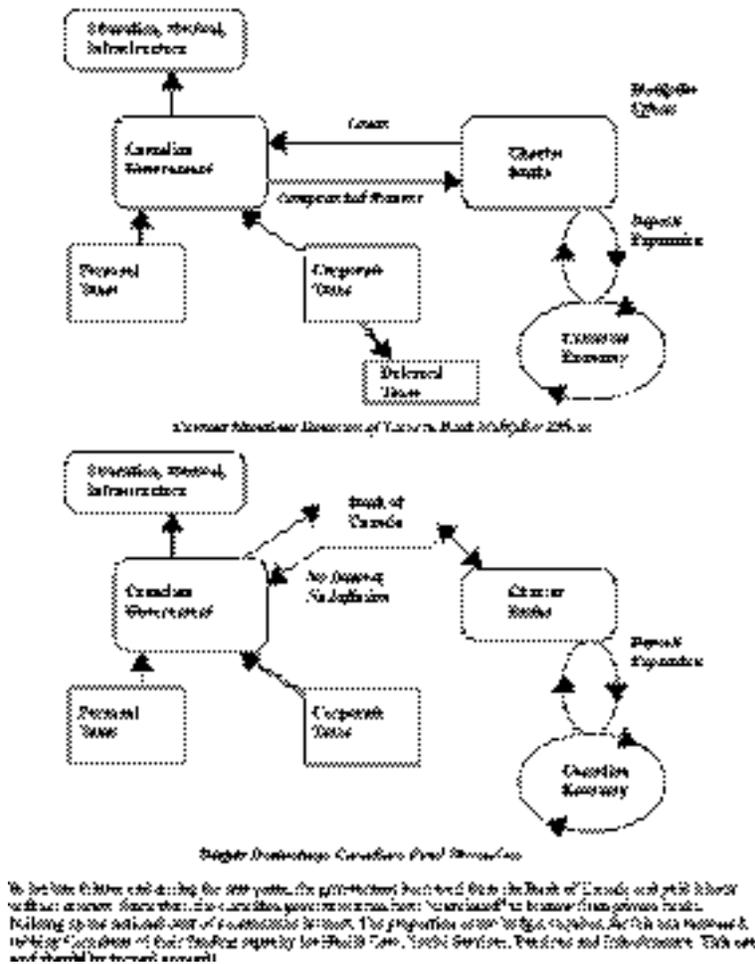
government has yet to release the details of the case to the Canadian public.

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<sup>65</sup> See: “Water Status” in the “glossary” [143] for description of ambiguity which exist for water in trade law.

Figure 2

Structural Adjustments By Stealth In The Sun Belt Case.



The two models above, provided to the author at a public forum by Doug Seely of the Council of Canadians, are schematic representations of the practice of 1) private government financing as well as 2) public financing through the Bank of Canada, respectively. The two scenarios advanced below show the payments involved (what I have labeled “structural adjustments by stealth”) when government finances debt by way of private means. Interest payments are not a burden on government financing (federal or provincial) when it is secured through auspices of the Bank of Canada.

In scenario “A”, the amount corresponds to what is set in the pleadings which went before the NAFTA tribunal (which set the amount at (US) \$1.5 billion [see Appendix D on page 151 in #13]). Regardless of what the amount might be, it is safe to assume that Canadians are paying compensation in large amounts without funding the expenditures (at minimal interest rates) through the Bank of Canada: therefore we truly have a form of “structural adjustments by stealth” in the Sun Belt case which the Federal Government refuses to acknowledge on its website. Unless the claim for compensation was settled in full (\$10.5 billion plus \$1.5 billion US [see Appendix D on page 151 in #s 13 and 14]), without being financed with a form of credit (other than the Bank of Canada) you then have an ongoing problem with interest: in essence, a form of “structural adjustment by stealth”. CLAIM: \$1.5 billion US @ 10% interest = \$150 million US per annum.

In scenario “B”, the numbers, offered merely for purposes of comparison are: Air in the Ethyl Case: Claim \$300 million; Settlement \$20 million; Multiplier 15; Water in the Sun Belt Case: Claim \$15 billion; Multiplier 15; Settlement \$1 billion. If such a correlation is in any way accurate, the cost to the Canadian taxpayer would be \$1 billion dollars for the Sun Belt case alone and if this amount is then financed with any form of credit (other than the Bank of Canada) you then have an ongoing problem with interest: in essence, a form of “structural adjustment by stealth”.

CLAIM: \$1 billion @ 10% interest = \$100 million per annum.

Secret payments to maintain the illusion of sovereignty over water, as subject to international trade agreements, to be followed by the privatization of water and wastewater services to service debt payments are unacceptable. Furthermore, it makes an incredible difference with reference to future interest payments on borrowed capital if it is not financed through the Bank of Canada; therefore, how money is borrowed (and in what currency) become arguably the important consideration in terms of sovereign control over natural resources as it is presently exercised in government. Understanding the systemic features of finance<sup>66</sup> and their influence on government's ability to exercise stewardship over the environment is a lesson about which activists and academics must have greater dialogue in order to reclaim a form of state sovereignty which is both ecologically and socially sustainable.<sup>67</sup> The lesson is that present system is unsustainable.

Many Canadians are somewhat familiar with the impact that "structural adjustment" policy has had on the Third World,<sup>68</sup> but they do not conceive of such possibilities in their own country; instead, they choose to believe that Canada remains a country with sovereign rights to air and water intact. We have seen with the Ethyl case that those rights do not exist with reference to air; and, with a "rainbow theory"<sup>69</sup> we are working on the assumption that it is not likely to be the case with

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<sup>66</sup> I will define the systemic features of finance using two components: banks by virtue of their privileged position to create the money supply for society and governments with their ability to tax citizens. See: "Features of Finance" in the "glossary" [131] for a summary of how banks may secure investment made to government.

<sup>67</sup> "The duality of ecological and social projects... takes some interesting twists for while it is true that debt repayment, as ecologists argue, is at the root of many ecological problems it is precisely the threat of debt default that forces international finance to recognize that such ecological problems exist. What then is evident is that all debate about ecoscarcity, natural limits, overpopulation, and sustainability is a debate about the preservation of a particular social order rather than a debate about the preservation of nature *per se* (*emphasis original*). Ideas about environment, population, and resources are not neutral. They are political in origin and have political effects."

Harvey, D., (1996) *Justice, Nature and the Geography of Difference*, Cambridge: Blackwell Publishers Inc., p. 148.

<sup>68</sup> See: "Structural Adjustments" in the "glossary" [140] for a brief description of the devastating impact that these policies have had with reference to resource extraction in the Third World.

<sup>69</sup> I have offered a "rainbow" vision of air and water, manifest for the state and civil society within the contemporary context of free trade. I have used the "rainbow" metaphor as a label for the unorthodox method employed throughout the discourse. For a theoretical reference on method advanced by way of anecdotal

reference to the Sun Belt challenge under NAFTA for water in Canada. In the event that a public review is conducted and the documentation in the Sun Belt case conclusively shows that Canada has incurred substantial debt to a foreign corporation, as we have seen was the case with Ethyl, then it is truly fair to say that state sovereignty in Canada with specific reference to air and water has no more substance to it than that of a rainbow. Clearly then this practice, what have been labeled “structural adjustment programs”,<sup>70</sup> has dire consequences with reference to the ability of national governments to protect and maintain the health of their citizenry and ecological environment. And in the final analysis, is that not what state sovereignty is supposed to be about, the wise and mature stewardship of people and the environment? What we have instead, under the NAFTA and other international trade agreements and organizations, is nothing more than a “rainbow” form of state sovereignty.<sup>71</sup> In relation to the Sun Belt and Ethyl cases, it can therefore be said that: Canadian sovereignty, at present, has no real essence or substance, what there is of control over national sovereignty<sup>72</sup> has been eroded by international trade agreements and further compromised by way of foreign debt. We, the citizens of Canada, just don’t know it, or, if we do, we have yet to fully comprehend what the collective impact of international trade agreements and “structural adjustments by stealth” mean to state sovereignty in a world dominated by global economics at the expense of national politics.<sup>73</sup> The experience of the Third World saw banking practices followed by

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evidence, see: Ginsberg, C. (1993), “Witches and Shamans” *New Left Review* 200, pp. 2 -12. On page 2: “The great French sinologist, Marcel Granet, once said that ... method is the road after one has travelled it.” On page 12 Ginsberg concludes “... history and morphology are not juxtaposed... but interwoven: two voices that alternate, debate, and finally seek an agreement...” For additional thoughts on the “rainbow” metaphor as a concept, see: “rainbow abstract” and “rainbow metaphor” in the “glossary” [138] and [138/39].

<sup>70</sup> See: “Structural Adjustments Programs” in the “glossary” [140/41] for a description of the impact of these policies.

<sup>71</sup> This form of state sovereignty has less substance than that of a rainbow but it can be considered a necessary illusion to the world of globalization. States are necessary regulatory actors in the world which is governed by international agreements as drafted by proponents of neoliberal globalization. See: “Structural Adjustment Changes” in the “glossary” [140] for a brief summary of the impact of structural adjustment policy.

<sup>72</sup> See: “Canadian Trade Policy” in the “glossary” [121/22] for a summary of the ambiguity found in the position of the Federal Government in terms of trade and social and environmental policy.

international trade agreements designed to exploit the resources from each country. In Canada the reverse process has appeared to be true: but, has it been trade agreements which have first opened the way to inequitable banking, or, is that merely a rainbow illusion of state sovereignty as well? The question posed in the text is an artificial one. The point is that it has been the two practices of liberalized trade and private, as opposed to public, forms of banking, acting in tandem, which have eroded traditional conceptual understandings of political sovereignty by economic means.<sup>74</sup>

The significant impact that banking practices have had on government activities has a long history in Canada which clearly predates both the Free Trade Agreement (FTA) and the NAFTA. Accordingly, I have referred to such banking practices with particular contemporary reference to air and water in Canada, when seen in conjunction with trade liberalization, as being “structural adjustments by stealth”. In our ever evolving world of globalization, structural adjustments to government policy are no longer merely Third World phenomena; they are also present in Canadian politics and therefore the impact of such economic logic on political thinking should be recognized for what it is.<sup>75</sup> In Canada we have held the illusion that as citizens of this great country state sovereignty over air, land and water resources has been maintained; but with the existing and pending trade agreements contributing to ever

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<sup>73</sup> Soros, G., (1998), *The crisis of global capitalism: open society endangered*, New York: Public Affairs. Soros puts it thus: “The belief in laissez faire capitalism has elevated the deficiency of social values into a moral principle” (p. 82). And he continues: “The supreme challenge of our time is to establish a set of fundamental values that applies to a largely transactional, global society” (p. 84).

<sup>74</sup> The interaction between trade policy and banking practices was discovered early in the process of free trade by Mel Hurtig in his critique of the FTA (Free Trade Agreement) as the precursor to the NAFTA. Hurtig, M., (1991), *The Betrayal of Canada*, Toronto: Stoddard. See: “Canadian Critique” in the “glossary” [121] for a summary of Hurtig’s analysis on trade and banking.

<sup>75</sup> “*The territorialization of the world has changed*. State operations have become more strongly disciplined by money capital and finance. Structural adjustment and fiscal austerity have become the name of the game and the state has had to some degree been reduced to the role of finding ways to promote a favorable business climate, which frequently means exercising strong discipline over the labor force. The ‘globalization thesis’ here functions as a powerful capitalist ideology to beat upon socialists, welfare statists, nationalists, etc (*emphasis original*).” Harvey, D., (1996) *Justice, Nature and the Geography of Difference*, Cambridge: Blackwell Publishers Inc., p. 423.

increasing public awareness this misconception may well end along with the historical illusion of state sovereignty. The Sun Belt case represents a supreme challenge to the sovereignty of the Canadian state with reference to water (so much so that the Government refuses to address this issue in public discourse). The illusion of state sovereignty over water, as it has been understood in the past, appears to be maintained, on the part of the Federal Government, only through an eerie silence in public discourse.<sup>76</sup> Compensation under Chapter 11 of the NAFTA as set out in the Investor-State provisions, whether in the form of access to water or money (in the form of a debt obligation) regardless of the method of exchange is nonetheless a loss of state sovereignty. A surreptitious payment to corporate interests by the national government would seem to indicate that sovereignty, in the final analysis, might well be a question of making monetary payments in a manner that is more palatable to Canadians than the recognized loss over the control of national water might presently, or, in the not distant future, be. Clearly international trade agreements can now be seen to provide a legal foundation with which international interests may usurp the legal authority over natural resources, as trade law provides a basis upon which to challenge particular forms of authority, in terms of water management, that formerly have been exclusively exercised by all levels of government in Canada.<sup>77</sup>

### **The Illusion Of Sovereignty Yes, But Only If You Can Pay For It**

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<sup>76</sup> The most recent reference in the mainstream media describes the Sun Belt case in this fashion: “In 1998, the U.S.-based Sun Belt Water Inc. also filed a notice of intent to submit a \$10.5 billion US claim against Canada under Chapter 11 because British Columbia banned the bulk water exports. Sun Belt has taken no action since the notice was filed.” Schmidt, S., “Sovereignty versus Chapter 11” in *The Vancouver Sun*, February 15, 2001, on p. A15.

The case was submitted for “arbitration” to a NAFTA tribunal by Sun Belt on November 8, 1999 according to the NOTICE OF INTENT TO SUBMIT A CLAIM FOR ARBITRATION which is exhibit “B” of the solicitor’s affidavit of John Carten submitted in the Supreme Court of British Columbia on February 13, 2001, in the action styled *The United States of Mexico v. Metalclad Corporation* (No. I 002904). This information is not in the press.

<sup>77</sup> See: “Democracy” in the “glossary” [127] for an activist version of the economic directions taken by the state.

The study of Canadian water with particular reference to the Sun Belt case has taken us through the NAFTA, as an example of an international trade agreement, thus resulting in a “structural adjustment by stealth” on the part of the Federal Government

which is very likely serviced through The Bank of America.<sup>78</sup> If “the affidavit” is to be believed the result is the needless accumulation of government debt as it is serviced by private interests to the detriment of the public good.<sup>79</sup> Returning from the world of finance to water in Canada, notwithstanding the claims made in 1987 by Environment Minister McMillan in his introduction to the *Federal Water Policy*, by world standards, Canada must be considered a “water-rich country.”<sup>80</sup> Thus, the perceived fight over water between national interests in Canada and the corporation headquartered in the United States proceeds on both the political and the economic fronts of national policy making. Canadians do not know if they are making payments to Sun Belt Water Inc., and, or, the Bank of America to maintain sovereign jurisdiction over water that is located in Canada.

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<sup>78</sup> For what information is available on the role of the Bank of America in terms of the Sun Belt claim, as it was presented under chapter 11 of the NAFTA, see: Appendix D in #'s 27, 28. Many social activists believe that the case has not been resolved because Sun Belt lacked the resources necessary to advance the litigation as a consequence of the enormous costs involved. Therefore, given the information in “the affidavit” of Mr. Carten it should come as no surprise that The Bank of America has a large interest in the export of Canadian water within the Sun Belt case.

In the words of John Scott the result is obvious as: “Finance capital, then, results in bank control and influence.” [Scott, J., (1997), *Corporate Business and Capitalist Classes*, New York: Oxford Press, p. 13].

“Large corporations and corporate-generated wealth are at the heart of conflicting class interests and privilege-class power. The economic resources controlled by major U.S. corporations are staggering. Although the total U.S. ‘corporate population’ consists of 3.9 million firms with total annual receipts of \$ 11.8 trillion (1993), a few huge companies dominate all major sectors of American business.” [Perrucci, R., Wysong, E., (1999), *The New Class Society*, p. 58].

“The idea of the American state having any significant degree of autonomy from the owners and managers of banks, corporations, and agribusiness is a theoretical mistake based in empirical inaccuracies.” [Domhoff, W., (1996), *State Autonomy or Class Dominance*, p. 3].

<sup>79</sup> See: “Bank of Canada - Ability” in the “glossary” [120] for a brief overview of how the Bank of Canada may be used to fund public expenditure at “nominal interest rates.”

<sup>80</sup> McMillan outlined Canada’s stake of the world’s water using the following statistics, saying: “The truth is that Canada, which occupies 7% of the world’s land mass, has 9% of its renewable water. So we have just about our fair share. Even that fact, however, is misleading. About 60% of Canada’s freshwater drains north, while 90% of our population lives within 300 kilometres of our southern border. In other words, to the extent that we Canadians have lots of water, most of it is not where it is needed, in the populated areas of the country. In those populated areas where it is plentiful, water is fast becoming polluted and unusable. The overall problem in the country is compounded by drought in certain regions. Put simply, Canada is not a water-rich country.”

[Canada, Environment Canada, *Federal Water Policy* (Ottawa, 1987)]. Quoted from: “Water Is In the Deal” by Mel Clarke and Don Gamble as found in Holm, W., (1988) *Water And Free Trade* on page 15.

Furthermore, within the economic context, consider the 1995 statement made by Ismail Serageldin, vice president of the World Bank, who declared, “the wars of the next century will be about water.”<sup>81</sup> Conventional understandings of war and state sovereignty from the past could have easily translated that statement into images of military campaigns supported by cores of engineers whose intent would be to resurrect the diversion plans of the 1960s (NAWAPA, the Grand Canal and others) for the purpose of funneling water down to the United States. Yet, few Canadians would now take such scenarios seriously.<sup>82</sup> However, the bottom line is Canada is “at war” with certain sectors of the United States<sup>83</sup> and this war began long before the international free trade agreements and is not a military or even a trade war over water.<sup>84</sup> At the core of the water war between national interests in Canada and corporate interests in the United States is money and the issue of control over national currency and credit.<sup>85</sup> Control of this medium, the power to create wealth and inject it into the market in various forms of credit<sup>86</sup> sanctioned with state support and regulation,<sup>87</sup> provides a

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<sup>81</sup> See: Barlow, M., (1999) *Blue Gold* San Francisco: International Forum on Globalization, p. 2; and, Turner, S., (2000), “Special Report: Will There Be Enough Water in Next Century,” Microsoft Corporation, p. 4.

<sup>82</sup> For discussion on the prospects of large water diversions in an official forum as late as 1987, see: Nicholaichuk, N., and Quinn, F., (1987), *Proceeding Of The Symposium On The Interbasin Transfer Of Water: Impacts and Research Needs For Canada*, Saskatoon: Environment Canada.

<sup>83</sup> Canadian nationalist, David Orchard, is a strong proponent for protecting the vestiges of Canadian sovereignty. Orchard makes the following remarks with reference to water and NAFTA: “With more than 600 dams and sixty major diversions, Canada already diverts more water than the United States and the former Soviet Union combined. The social and ecological cost of these dams and diversions, in terms of environmental damage and human dislocation, is only beginning to be understood. Canada must not fall into the trap of supplying water to the United States. Once the United States depends on Canada for its water, that tap cannot be turned off without risking an invasion to force continued compliance.” Orchard, D., (1998), *The Fight For Canada Four centuries of resistance to American expansionism*, Toronto: Stoddard. See: [www.davidorchard.com](http://www.davidorchard.com)

<sup>84</sup> Geddes, J., (2000), “Water Wars” *MacLeans* March 6, 2000, pp. 20 -24. Note this article is one of the few in the mainstream of publication which addresses the concerns voiced by civil society. However, it does so in a way which marginalizes the analysis forthcoming. See: “Water Wars” in the “glossary” [143] for quote with analysis.

<sup>85</sup> Kindleberger, C., (1996), *Manias, Panics, and Crashes A History of Financial Crises* Toronto: John Wiley & Sons Inc., p. 59. See: “Credit Control” in the “glossary” [125] for a brief academic summary on the control of credit with an analysis that is taken from Kindleberger.

key for unfettered access to local resources including water (on terms dictated by the market) for transnational corporations in the future. The Sun Belt case demonstrates that the unsustainable predatory nature, which is a product of the ability of banks to create credit, may then be used to pressure national governments for access to natural resources. Sun Belt Water Inc., may be the plaintiff in the NAFTA case against Canada but the Bank of America is the economic engine which made the case a real threat to Canadian aquatic sovereignty. In short, the system of global capitalism and traditional understandings of state sovereignty as they presently function in the world of globalization are not really very compatible. Elements of state sovereignty are now leased (or sold outright) to corporate interests and thus this practice of pressuring national governments is pragmatically and ideologically employed to limit the “excess of democracy”<sup>88</sup> primarily for the benefit of corporations and their shareholders.

Conventional war is unthinkable between the United States and Canada; in fact, economic war is far more effective with far less risk and as it presently stands the U.S. victory over Canadian water in the long term is virtually assured by way of the pressure of economic forces on the traditional structures when coupled with government which acquiesces to market forces (such as bond policies which ignore the Bank of Canada which has in the past been so well used to support our national government). The conflict between the economic realities of global capitalism and the traditional political ideologies of state sovereignty results in a state in crisis torn

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<sup>86</sup> See: “Un-regulated Financial Capital” in the “glossary” [142] for a quote from Noam Chomsky on the social consequences of expanding systems of credit which are not tied to the “real economy”.

<sup>87</sup> “Public debt is a powerful way of assuring that the state remains safely in capital’s hands. The higher a government’s debts, the more it must please its bankers. Should bankers grow displeased, they will refuse to roll over old debts or to extend new financing on any but the most punishing terms (if at all). The explosion of federal debt in the 1980s vastly increased the power of creditors to demand austere fiscal and monetary policies...”

Henwood, D., (1998), *Wall Street: How It Work And For Whom*, New York: Verso, p. 23.

<sup>88</sup> For a discussion of the “Washington Consensus” as the ideology which grew out of the “notion that the Trilateral Commission called and ‘excess of democracy’” see: “Excess of Democracy” in the “glossary” [130].

between the demands of politics imposed by the electorate and the dictates of economics prescribed by the business community. As a consequence, the illusion of state sovereignty is rapidly dissipating under the enormous burden of the edifice of capitalism and it may well be the issue of water, both as a resource and a service, that brings the collapse of the illusion of state sovereignty and erodes the unfounded faith in global capitalism prevalent in the Government in Canada. To regain a semblance of national sovereignty over resources it is necessary to reclaim the federal powers of national banking located in the Bank of Canada to provide a public source of the money supply and fund the expenditures of government.

Much of the federal debt, held outside of the control of the Government of Canada, is the product of a choice when it is not financed through the Bank of Canada<sup>89</sup> the result of which imposes severe restrictions on the political ability to govern.<sup>90</sup> Walter Stewart says this about the development of debt:

In the three decades from 1965 through 1995, federal government spending on programs - health care, air-traffic control, whatever - was less than government revenues, except for the years 1975 -85. The program spending spree during those thirty years added \$40 billion to the national debt. However, interest charges added \$490 billion to the debtload; 92.3 per cent of the increase was due, not to the wages of hospital workers, or social-security payments, but to the huge interest charges which banks argue were necessary to curb government spending. If those interest charges had been paid in large part to the Bank of Canada on borrowings from that body, we would have no national debt.

Let us put the case bluntly: the banks kept, and keep demanding cuts in public spending to bring the national debt under control, but nine out of every ten dollars of the debt that has been created in the past three decades has been due to the interest charges, the vast majority of which were paid over to the same banks who called for the cuts. If we can instead borrow money through the Bank of Canada, paying less than 1 per cent, and instead borrow most of it through the commercial banks at many times that, whose debt is it? (Stewart, W., 1997 *Bank Heist*, Toronto: Harper-Collins, pp. 102 -103).

<sup>89</sup> See: "Bank of Canada - Act" in the "glossary" [120] for an academic overview of this constitutional mechanism which may be used to fund public expenditure without having the finances of the nation being subject to compound interest charges that further accumulate national debt.

<sup>90</sup> Persistent references to the policies and practices of government debt with reference to the fiscal mechanism of The Bank of Canada - made with reference to questions around water in Canada - are crucial to develop a significant understanding of the Sun Belt case under the NAFTA. Payments in this regard (government obligations) which were financed through the Bank of Canada would avoid interest charges and allow government to make payments on debt.

Government maintains that it cannot tender to the requirements of its most disadvantaged segments of the population because of a lack of economic resources. Meanwhile, the economic control inherent in banking - which sets out core control over natural resources - is rapidly being consolidated away from government so as to be almost solely within the purview of private chartered banks without any regard whatsoever for the public interest.<sup>91</sup> The connection within the Canadian state between financial obligations and the impact on water resources and services is direct: All of this unseen economic underpinning, in terms of debt financing and punitive trade sanctions, within the financial affairs of the state has a profound effect on the control of water resources as well as the delivery of water and wastewater services which have traditionally been coordinated through all levels of government and implemented as public utilities on the part of the state. Public debt, accumulated through structural adjustments whether conducted by stealth or in public, inevitably leads to calls for privatization from the private sector; and, water and wastewater delivery systems represent lucrative markets to business interests.<sup>92</sup> The inefficiency of indebted governments, regardless of the inequities of the system which prescribe such policy, is used by corporate interests to justify private ownership over public resources.

Canadian society privileges the rights of corporate entities over people as well as the environment and many considerations which surround water are not exempted from this practice. Therefore, it first remains to be understood how corporations have achieved greater rights than those of "natural persons".<sup>93</sup> In the Ethyl case, the

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<sup>91</sup> See: "Bank of Canada - Bonds" in the "glossary" [120/21] for the recent fiscal impact that the decision taken by the Bank of Canada not to hold government bonds has had in terms of transferring (and increasing) government debt to private chartered banks.

<sup>92</sup> Note: "Four of the top ten water companies are ranked among the 100 largest corporations in the world by the Global Fortune 500: the RWE group (no. 63), Vivendi (no. 69), Suez-Lyonnaise (no. 70) and Enron (no. 85)." "Thirsting For Profits" Canadian Perspectives, Summer 2000, Ottawa: Council of Canadians, p. 9.

<sup>93</sup> See: "Corporate Property Rights" in the "glossary" [123] for a discussion of the ability of government (in this case the US government which has stronger environmental protections than does Canada) to ban toxic substances.

economic realities called for by practitioners from within the marketplace are themselves codified in ideological texts commonly enforced within the legal jurisdiction of both domestic and international law which are becoming less and less compatible with one another.<sup>94</sup> The inequities of private ownership over water are equally insidious whether they are constructed under domestic or international trade law (both can result in the private control over water resources).<sup>95</sup> The state retains a large measure of control over natural resources, however, international trade organizations and financial institutions exercise enormous influence over governments and by extension resources such as water.

Canadian civil society social activists have a decided interest in exposing the ramifications of the Sun Belt case under the NAFTA in terms of state sovereignty and provincial jurisdiction, not to mention how these matters intersect with domestic considerations of water resources, services and delivery. Therefore, even unseen but nevertheless understood, the Sun Belt case under the NAFTA has the potential to be precedent setting - in terms of creating a platform for a unified understanding of the impact of international trade policies on natural resources and the quality of human life

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<sup>94</sup> For activist perspectives produced by way of video, see: Brecher, J., "Global Village or Global Pillage" (1999) World Economy Project, Preamble Center; "Beyond McWorld" (1998) Just in time Productions brought by The Council of Canadians and the Polaris Institute. For an academic overview, see: Bowman, S, (1996), *The Modern Corporation and Political Thought: law power and ideology*, Pennsylvania State University Press. See: "Free Trade Ideology" in the "glossary" [132] for a summary of Bowman's conclusions on state sovereignty.

<sup>95</sup> Under the subheading "Fresh Water" Canadian social activists Barlow and Clarke make the following observations with reference to water and institutional debt in the international context by noting:

*Ironically, World Bank officials have predicted that "the wars of the twenty-first century will be fought over water," while at the same time estimating that water will become an \$800 billion industry.*

*Suddenly, for-profit corporations are appearing everywhere, providing water-delivery services, bottled water, and bulk water transfers or specializing in river diversions and dam construction. The world's two leading corporations in the delivery and sale of water services, Vivendi and Suez Lyonnaise des Eaux, were ranked sixty-ninth and seventieth in the Fortune Global ratings for 1998. At the same time the World Bank has facilitated the corporate takeover of water services in Nonindustrialized Countries like Bolivia, Mozambique, and Kenya by making privatization a condition of its loans. At the WTO, meanwhile, the current round of GATS [General Agreement on Trade and Services under WTO] negotiations is preparing an additional set of rules to pry open water services and turn them into profit-making enterprises."*

[Barlow, M., and Clarke, T., (2001), *Global Showdown: How The New Activist Are Fighting Global Corporate Rule*, Toronto: Stoddard Publishing, p. 128.]

- as a means of uniting the interests of civil society around water as a focal point for the expression of a collective movement with progressive social and environment policies and practices for sustainable changes. State sovereignty must transcend the requirements of economic considerations<sup>96</sup> as well as the simple allocation of resources such as clean air and water by the marketplace if it is to ensure a sustainable environment for its citizens. At present, essential elements which are necessary to sustain life, such as air and water, appear to be merely considered commodities for exchange within contemporary Canadian capitalism under our present forms of government. In the context of international trade agreements and private institutional forms of finance, we can only speculate as to the outcome for national sovereignty (and naturally provincial jurisdiction) over resources in the long run might be. Nothing can be considered more fundamental than air and water to human existence and to truly understand that for what it is, requires a paradigm shift in public consciousness. The perceived practices of “structural adjustments by stealth”, as weapons of globalization in the west, which serve to undermine contemporary forms of state sovereignty are not sustainable from either an environmental or social justice perspective. The Federal Government has been co-opted on the record in the Ethyl case and the Sun Belt case has yet to be reviewed in the light of day. The appeals from progressive academics for the national government to oppose the onslaught of the forces of globalization, appear to have fallen on deaf ears within the Federal Government. Not surprisingly, then, it is civil society social activists more so than academics who put these issues front and center before the Canadian public to draw attention to collective issues of equity and social justice; and they do so by way of a variety of methods. And, in turn, the state

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<sup>96</sup> The present case study on water is an anecdotal example of how banks and governments might collude in secret, make payments to honor an international trade agreement and thus extract money and credit from the economy and store it in bank vaults. Instead of the market mechanism of inflation reducing the value of the money supply as is typical of the pattern employed in banking, as described by Kindleberger, government payments thus tax dollars and interest charges are extracted from government coffers and paid in American dollars to foreign corporations (i.e., Sun Belt) and the international institutions (i.e., the Bank of America) which finance the legal proceedings and otherwise. See: “Anecdotal Evidence” in the “glossary” [119/20] for a brief summary of the methodological defence used by Kindleberger in his work entitled, *Manias, Panics, and Crashes A History of Financial Crises*.

responds.

### **The Federal Government Maintains Its Sovereignty As Usual**

A review of the contents of the “Water Accord Backgrounder”<sup>97</sup> for what I have labeled the Federal / Provincial Water Accord, but which is technically entitled, *Accord For the Prohibition of Bulk Water Removal From Drainage Basins*, appears to preserve sovereignty rights to water but upon closer inspection is, more than likely, simply a mirage. The Federal / Provincial Water Accord [hereinafter the “Accord”] was undoubtedly a response to the NAFTA challenge brought by Sun Belt Water Inc. From the perspective of civil society, as a result of the collaborative efforts of social activists on the water issue, government had to be seen to be acting in a way which reinforced conventional understandings of state sovereignty over water resources and the “Accord” fulfills such a mandate in admirable fashion. Our question is now whether the “Accord” has any impact in terms of state sovereignty over water and what the “Accord” may now mean for water in terms of state sovereignty in Canada.<sup>98</sup> Unfortunately, the simple answer to the two part question is not too much. The following nine jurisdictions have endorsed the “Accord”: 1) Canada, 2) New Brunswick, 3) Newfoundland and Labrador, 4) Northwest Territories, 5) Nova Scotia, 6) Nunavet, 7) Prince Edward Island, 8) Ontario, 9) Yukon. The following four jurisdictions have reserved their position: 10) Alberta, 11) British Columbia, 12) Manitoba, 13) Saskatchewan; and, Quebec will set out its position in its own communique. The necessary support for the Federal / Provincial Water Accord is nowhere near unanimous!

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<sup>97</sup> The information in the “Water Accord Backgrounder” and thus cited in the text of this paragraph is located at:

[http://www.ccme.ca/le\\_about/leg\\_communique/leg7\\_water.html](http://www.ccme.ca/le_about/leg_communique/leg7_water.html)

<sup>98</sup> The accord does not hold water! See: “Legal Opinion” in the “glossary” [134] for a brief summary of the legal opinion written by Steven Shrybman with reference to the Federal / Provincial Water Accord.

The two most relevant sections of the Backgrounder, for our purposes of understanding the Sun Belt case, include a particular passage from the Annex of the Accord and the *1993 Statement by the Governments of Canada, Mexico and the United States*. The passage in the Annex to the 1999 Accord reads:

Bulk removal of water is the withdrawal and transfer of water out of its basin in quantities which individually or cumulatively could result in damage to the ecological integrity of the system. In general, this could include removals of water by interbasin transfer, pipeline or tanker ship, but not small-scale removals such as water packaged in small portable containers.

And more significantly the *1993 Statement by the Governments of Canada, Mexico and the United States* which reads:

*The governments of Canada, the United States and Mexico, in order to correct false interpretations, have agreed to state the following jointly and publicly as parties to the North American Free Trade Agreement (NAFTA):*

The NAFTA creates no rights to the natural water resources of any Party to the Agreement

Unless water, in any form, has entered into commerce and become a good or product, it is not covered by the provisions of any trade agreement including the NAFTA. And nothing in the NAFTA would oblige any NAFTA Party to either exploit its water for commercial use, or to begin exporting water in any form. Water in its natural state in lakes, rivers, reservoirs, aquifers, water basins and the like is not a good or product, is not traded, and therefore is not and never has been subject to the terms of any trade agreement.

International rights and obligations respecting water in its natural state are contained in separate treaties and agreements negotiated for that purpose. Examples are the United States-Canada Boundary Waters Treaty of 1909 and the 1944 Boundary Waters Treaty between Mexico and the United States.

These documents surely give the illusion of state sovereignty rights to water and may have been designed precisely for that purpose to appease the critics of free trade policies and water rights. But, with closer inspection are rights to water maintained only by way of payments as is probably the case in the Sun Belt challenge? Water was sold, by way of provincial government licenses in British Columbia, long before the Annex was drafted in 1993.<sup>99</sup>

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<sup>99</sup> See: "Water Licenses" in the "glossary" [143] for a summary of water licenses granted by the B.C. Government.

Clearly a review of these documents in light of the history of licensing and sale of water shows that no real protection exists in the 1993 statement from the governments. A very plausible reading of the Annex to the Accord would be that the Accord was a definite barrier to trade which was not protected by the 1993 exemption of water from the NAFTA because of the fact that water licenses were definitely granted long before the 1993 Annex was drafted.<sup>100</sup> Therefore, there would be no protection available to the respective parties found in the Annex for claims to water under the NAFTA. Consequently, it is logical to determine that while water may in future be for sale under the terms of international trade agreements, water can not presently be seen to be protected by these documents. Regardless of the actual efficacy of these instruments, in the words of Maude Barlow: “on June 6, 2000 the voluntary accord was dead.”<sup>101</sup> In the final analysis, the matter of water being protected from international trade by way of the Accord is therefore a moot point. The Accord does not maintain sovereign rights for the Government of Canada to the water found within national borders.

We have seen the case for state sovereignty as it pertains to water presented by the Government of Canada with reference to the Federal / Provincial Water Accord and not seen it with reference to the Sun Belt challenge. We must therefore conclude that state sovereignty in terms of ownership rights and control of water is essentially an illusion or at least severely threatened. If this is the case, then the illusion of state

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<sup>100</sup> The Sun Belt case is undoubtedly concrete evidence of water licenses which were granted before 1993. Water licenses were granted to Snowcap in 1990. In the video Thompson, J., (2000), “Captured Rain: Canadian Water/ American Thirst” [referenced in footnote 33] Jack Linsey, CEO of Sun Belt, in making his claim under the NAFTA, says: “We had a joint partner in the venture [Snowcap] and the government paid them cash.” I understand that Snowcap Water Ltd., was paid \$300,000.00 to settle their claim [my understanding comes from a seminar held on the WTO at the University of British Columbia on November 11, 1999 as conducted by Steven Shrybman and I have no reason to believe that it is not accurate]. Therefore, by virtue of their partnership with Snowcap, the claim of Sun Belt Water Inc., is not protected by virtue of the Accord.

<sup>101</sup> Barlow, M., (2001), “Water: The Threat of Exports and the Right to Safe Water” in *Canadian Perspectives, Annual Campaign Report 2000*, Winter 2001, p. 7.

sovereignty must in some way fit the larger agenda set by globalization. A schematic<sup>102</sup> of such an agenda might read as follows:

- 1) Business makes the rules; 2) When there is a dispute over the rules, trade experts interpret the rules by way of a tribunal, in secret, without a process of open review or recourse to appeal; 3) Government either lives by those rules to which it has agreed or makes payment to business; 4) Neither government nor business is obliged under the rules to inform the public.

In short, these are the rules and the illusion of state sovereignty a necessary feature of globalization which portrays these rules in a manner acceptable to the populations of nation states. From the perspective of government, as we have seen with reference to clean air, and the less said about matters of water and state sovereignty in the media, academia, or alternative forms of civil society the better: The illusion of state sovereignty is thus maintained to serve corporate interests and a general agenda of globalization.<sup>103</sup> At present, states protect the corporations from the people and leave the people to fend for themselves against the corporations.<sup>104</sup>

Neither air nor water (either alone or collectively), as essential requirements for all forms of life, have the special standing in a court of law that is afforded to the “corporation” in both domestic and international trade law: the corporation is given the right of “natural persons”<sup>105</sup> in both areas of jurisdiction and by virtue of the fact they are not limited in the same ways as “natural persons” (having to breathe air or drink water) thus, in a very human sense, they enjoy legal protections which are superior to those of “natural persons”. As witnessed in the Ethyl case, Canadians

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<sup>102</sup> “Social science can succeed as alchemy.” [Soros, G., (1998), *The crisis of global capitalism: open society endangered*, New York: Public Affairs, p. 34].

<sup>103</sup> Wade, R., (1997), “Globalization and its Limits: Reports of the Death of the National Economy are Greatly Exaggerated” in *National Diversity and Global Capitalism*, (ed) Suzanne Berger and Ronald Dore on pp. 60 -88. Also see: “State System” in the “glossary” [140] for a perspective on the centrality of states to global processes.

<sup>104</sup> See: “Modern State” in the “glossary” [136] for dissident perspectives on the manner by which the state is employed in elite practices to benefit the few at the expense of the many.

<sup>105</sup> Bowman, S, (1996), *The Modern Corporation and Political Thought: law power and ideology*, Pennsylvania State University Press, p. 50; Karliner, J.,(1997), *The Corporate Planet*, San Francisco: Sierra Club Books, p. xiii.

concerned with clean air have the option to make payments (\$13 million U.S. or \$20 million Canadian dollars) to maintain air quality for existing national standards for a short period. But then it becomes cost prohibitive so we relax our environmental standards in spite of scientific evidence that MMT is unsafe. Furthermore, we tell the world that MMT is acceptable in Canada and thus the illusion of sovereignty can not be maintained because we can no longer afford to pay for it. With reference to water, our governments have had little to say publicly as to whether Canadians should endeavor to commodify and sell water on the open market as a form of “blue gold”, thus subjecting a essential requirement for life to the predatory dictates of the market. If the case made by Sun Belt is to be believed, then our governments have surreptitiously endeavored to consolidate water resources in the private hands of privileged persons for personal profit.<sup>106</sup> If the facts as alleged by Sun Belt before the NAFTA tribunal are true, then it is entirely plausible that payments are being made to comply with the agreement and because of the commitment on the part of the Canadian Government to the principles of “Free Trade” this will ensure that the story remains hidden from the Canadian public and social activist organizations. It is the job of academics and activists both to determine the merits of the Sun Belt claim and the ramifications for the state sovereignty of Canada in the future.

So if, in fact, Canadian citizens have a claim to water in Canada which can be said to transcend a legal bureaucratic definition which allows water to be privately owned, then water policies and practices must be constructed with regard to criteria which transcend the narrow economic parameters prescribed by international trade agreements and the collective machinations of both private and government banking

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<sup>106</sup> “Jean Chretien (Mr. Laing’s successor), seemed to be harboring similar sentiments when he said, according to Time magazine of May 2, 1969: ‘Within 25 years we will be exporting water.’ Quoted in: Bocking, R., (1972) *Canada’s Water: For Sale?* Toronto: James Lewis and Samuel Publishers, p. 33. “We want to maintain the control, our control over our own water. Anyway it is not for sale and if we want to sell we will decide.” A quote from Jean Chretien from the early 1990s with reference to free trade as shown on: Thompson, J., (2000), “Captured Rain: Canadian Water/ American Thirst” (see footnote 33).

practices. As Canadian citizens in a democratic society, we have the right to ask of our governments what the present status of the Sun Belt case is, especially when one begins to consider the outrageous claim for billions of dollars made by Sun Belt at the tribunal. If our government is making secret payments to Sun Belt Water Inc., in order to protect certain individuals who endeavored to sell water from British Columbia, then, we as citizens of this country certainly have a right to know how much we are paying and why. The continental trade agreement, the NAFTA, in addition to exercising severe economic discipline in favour of corporate property rights over the recognized rights of the nation state is now joined with the prospect of additional present and future global

trade agreements. Although the Multilateral Agreement on Investment (MAI) failed,<sup>107</sup> the agreement (for 34 countries) negotiated in April in Quebec entitled the Free Trade Agreement of the Americas (FTAA),<sup>108</sup> as well as the newly evolved World Trade Organization (WTO) which has its origins in the General Agreement on Tariffs and Trade (GATT) are all committed to liberalized trade which further undermines what remains of state sovereignty. As a consequence of the fiscal commitments on the part of governments, civil society has assumed many of the traditional roles, once provided by governments, which defend the integrity of the social and ecological environments. Each of these agreements and organizations has enormous power which is duly regulated and maintained through international principles that are ultimately contingent on the exercise of state sovereignty to enforce the agenda prescribed by business. Each set of processes has an impact relative to water. Canadian civil society social activists contest international trade agreements<sup>109</sup> as well as oppose the further integration of both domestic and international banking practices within international institutions.<sup>110</sup>

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<sup>107</sup> Civil society is right to celebrate the defeat of the MAI, witnessed in the quote taken in a Canadian context, when activists refer to the recent failure of the Multilateral Agreement on Investment (MAI) in October 1998 and credit this to a process of educating governments and in particular to the corresponding actions of the Government of France. See: “Civil Victory” in the “glossary” [122/23] for a quotes taken on the failure of the MAI.

<sup>108</sup> With a month remaining before the April 20-22, 2001, Summit on the Free Trade Agreement on the Americas, the text of the agreement had not been released to the Canadian public (it was released a month after the Summit). However, according to the *Globe and Mail* the Canadian Government sold access to the event to corporate interests which included those involved with bottled water. See: “Sale At FTAA” in the “glossary” [139].

<sup>109</sup> Canadian social activists lead by the Council of Canadians, the Sierra Club, David Suzuki and many others conducted extensive nation-wide hearings into the nature of the MAI and what citizens across Canada thought of the agreement that had been negotiated between national governments and corporate executives in secret. The report is entitled *Confronting Globalization & Reclaiming Democracy* and provides alternatives visions of the future in the section entitled “Recommendations”.

<sup>110</sup> The Council of Canadians actively campaigned against bank mergers as were being considered by Finance Minister Paul Martin in 1998. “On December 14 he rejected both bank mergers [between the Royal Bank and Bank of Montreal as well as between Toronto Dominion and Canadian Imperial Bank of Commerce]. He also promised greater accountability by the banks, a promise the Council is monitoring for compliance.” Barlow, M., (1999) “The Bank Mergers: Bigger is not Better”, in *The Year In Review: A Look Back at 1999*, Council of Canadians.



The precedent of Chapter 11, as was originally incorporated within the NAFTA, is dangerous and could be downright deadly if it is finally accepted within the framework of the FTAA, as is proposed. For under the NAFTA, the WTO, and FTAA with a proposed chapter equivalent to chapter 11 of the NAFTA most certainly included within the pending hemispheric trade agreements, all of these existing trade agreements will have one particular characteristic which they are to hold in common: namely, that they consistently privilege economic interests over the realization of sustainable development by advancing rules which consistently favor business interests over concerns for labor or the environment. A review of the Canadian experience with NAFTA,<sup>111</sup> complete with an analysis of the pernicious chapter 11 feature which allows corporations to directly sue governments, shows that this “free trade” agreement has been decidedly detrimental with reference to considerations within the natural environment. The legal mechanism of chapter 11, has been used to undermine the environment (air, water, PCBs, wood); and, in the other prominent trade regime to which Canada is a party, the WTO has also been employed to extensively limit labor practices which have perfectly acceptable to nation state governments of the past.<sup>112</sup> Under the tribunal process of the WTO, in which a similar dispute resolution practice to that of the NAFTA exists but is instead presently available only to representatives from member governments, it is somewhat more difficult to understand why many of the rulings from within this particular trade body have been used to restrict national labor practices. The contemporary practices of “free trade” demonstrated within the existing NAFTA and WTO regimes, and conceivably the future of FTAA, are decidedly not developed with regard for healthy human principles, which would otherwise provide for equitable social development coupled with consistent care demonstrated to maintain a sustainable environment. The bottom line of trade is, instead, measured

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<sup>111</sup> See: “NAFTA in Canada” in the “glossary” [136/37] for questions posed on CBC Newsworld to Prime Minister Chretien and International Trade Minister Pettigrew on Chapter 11 in NAFTA and its application to Canada.

<sup>112</sup> See: “WTO and Canada” in the “glossary” [144] for five cases involving the WTO and Canada as taken from: “What’s all the fuss about?” (2000) *Canadian Auto Workers*, p. 5. Also see: [www.caw.ca](http://www.caw.ca)

only in dollars (and increasingly in U.S. dollars).

In my view, it is safe to conclude that at the basis of all current trade regimes and the future FTAA lies the inequitable practice of international banking which is reinforced with the present practices of government financing. Collectively it is these two specific practices (deficit financing and trade compensation) which contribute to the indebted nature of nation state governments and thus decisively detract from sustainable principles of local development. The costs of doing business are externalized onto the environment within the natural world. It is a credit to the power of banks that national governments pursue their monetary interests over and above those intrinsic interests held by their own citizens. Credit, and by extension the control of everything else including water, originates from within the economic engines of the market (the banks); and, the legal rules that are written for the “free trade” agreements are designed to maintain and perpetuate structured forms of inequality, such as debt financing of national governments, which is only possible with the support of nation state governments and within these parameters, contemporary concerns of civil society are effectively silenced.<sup>113</sup> Social activists refer to this as a practice of economic determinism in which the dictates of the market unfairly determine winners and losers in economic terms with no regard for intrinsic social values, not to mention any meaningful consideration given to environmental integrity. If an early trend can be determined from the Canadian experience, particularly with reference to the traditional considerations that pertain to labor and the environment, then the general pattern is clear from a review of emerging practices under trade regimes. As a general observation, corporations are only too willing to regulate in terms of the environment. The private sector needs government to ensure public compliance within rules designed to maintain structured inequality and thus to set legal parameters which are favorable to business to facilitate the continued exploitation of the natural world by corporations. A leading Canadian activist, makes the following observation with reference to a Chapter 11 case under the NAFTA involving a Canadian company and water:

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<sup>113</sup> See: “FTAA and Canada” in the “glossary” [132] for a summary of the conclusions offered by Maude Barlow on the proposed FTAA.

Linda Mc Quaig: I don't think these type of [Chapter 11] disputes should even come up. Let's get to some of the cases cause that's where the really shocking stuff is. Let's take the case of Methanex, for instance, Methanex is a Canadian corporation which is suing the United States for over a billion dollars; and, this is why they are suing... Methanex produces a gasoline additive that has in the state of California, and in a number of locations, leached into the water supply. That's considered a health hazard by the state of California. The state of California therefore imposed a ban on this product. Now in normal logic, well, people would think that's very unfortunate and the company probably should apologize; and, that's probably what would have happened in the old days. Under NAFTA, the corporation has a powerful set of new rights that allows it, get this, to sue the United States for a loss of business opportunities because they can't sell their product there (because the state of California considers it a health hazard). And they get to take that to one of these private tribunals to decide. So I mean, I guess my point is that surely matters of health, human health, and the environment are of such importance that we would like democratically elected governments to be able to make decisions on that. But NAFTA allows, you know, the corporation in this case to actually sue. I mean it would be equivalent to in the Walkerton situation, if that had been a foreign corporation contaminating the water, and the product got banned, that the corporation would turn around and sue Canada. I mean, how ridiculous is that? [April 11, 2001 Interview: broadcast on CBC radio with host Shelia Rogers and Barry Appleton].

The bottom line in all of this is simply that: civil society social activists do not distinguish between the abusive actions taken by domestic or foreign corporations in terms of the environment on the basis of nation state boundaries or the sovereignty of the state; appeals to considerations of nationalism are helpful only as a means by which to endeavor to protect the environment by tapping into existing streams of sentiment which have proven in the past to be successful strategies for forging alliances within existing communities, in their efforts to create conditions of solidarity, in order to confront the juggernaut of business that threatens to destroy the planet.<sup>114</sup> Canadian social activists recognize that the business practices of the past if they are to continue in

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<sup>114</sup> Businessman-turned-environmentalist, Paul Hawken, says: "There is no polite way to say that business is destroying the world." [Quoted from: Barlow, M., (1998), *The Fight of My Life Confessions of an Unrepentant Canadian*, Toronto: HarperCollins Publishers, p. 192]. The functionaries of capitalism are asked to consider the wisdom presented by George Soros as follows: "The belief in laissez faire capitalism has elevated the deficiency of social values into a moral principle... The supreme challenge of our time is to establish a set of fundamental values that applies to a largely transactional, global society." [Soros, G., (1998), *The crisis of global capitalism: open society endangered*, New York: Public Affairs, pages 82 and 84]. If we continue on our present course of development it is certain that we will find in the future there are some things that capitalist practices will be unable to secure, namely clean air and water (fit for all inhabitants of the planet) at any price.

the present and on into the future represent an enormous threat to sustainable development and the quality of “water for people and nature.”<sup>115</sup> Social activists are far less interested in determining the nature of political economy as a framework for analysis with specific reference to the nation state than are traditional academics. Instead, social activists are far more concerned with determining the nature of political economy as a discourse of the specific relations that exist in terms of political efforts and economic relations pursued on behalf of the state, relative to the policies and practices which pertain to water in Canada. Consequently, activists endeavor to take the

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<sup>115</sup> “On July 5-8 [2001], in Vancouver, we held the first international civil society summit to save the world’s water. Over 800 delegates from 30 countries gathered for four days in early July on the beautiful campus of the University of British Columbia for *Water for People and Nature* - an intense event filled with testimony, research and information sharing, and strategic planning. By all accounts it was a major success [*emphasis original*].

While there are many conferences on the state of the world’s water, this one was unique. First, we were not sponsored by government, the private sector or official agencies like the United Nations. We conducted and paid for the whole event ourselves. Second, we took great care to bring together farmers, peasants, indigenous peoples, human rights activists, public sector workers, environmentalists and youth in order to form a broad-based citizens’ coalition to take back water for people and nature... Physically exhausted but personally replenished, we returned to our homes, more dedicated than ever to protecting and cherishing the world’s freshwater heritage. May we be successful. Our lives depend on it.” [Barlow, M., “On the Road”, *Canadian Perspectives*, Summer/Fall, 2001, p. 4].

“...And so we must prepare ourselves for the water wars of the 21st century. it seems to me that we need to gear up for battles along at least five fronts over the next few years. 1) *Local Community Front*: Throughout this conference we have been inspired by the stories of what local communities have been able to do - witness the expulsion of Bechtel by the people of Cochabamba, Bolivia and the recent resolution against water privatization passed in the greater Vancouver area. Whether we are fighting against the depletion of a local watershed, the damming of a river, the privatization of water services or the bulk export of lake water, we know we can defend humanity’s and nature’s rights to water by acting as if we were in power, as self-governing peoples. 2) *Corporate Takeover Front*: The time has come to begin unmasking the corporations that are pushing for the takeover of our water systems. new tools, strategies and tactics are now being developed that can be utilized by citizens and workers to effectively confront and dismantle the operations of corporations, even the giants. Within the next two years, I predict we will see an international campaign being mounted against two of the biggest, Vivendi and Suez. 3) *Water Politics Front*: The next few years will see several major political events: The Rio Plus 10 meetings in Johannesburg, South Africa, in September 2002; the World Water Forum in Kyoto, Japan, in March 2003; and the World Water Forum in Montreal, in 2006. At each of these events, it is imperative that the Blue Planet Project and allied groups be present, organizing around an alternative agenda that includes the Global Water Treaty and Water Manifesto. 4) *Global Rule-Making Front*: At the same time, we must wage our fight for water rights at the global governing bodies of the IMF, the World Bank and the WTO. The use of Structural Adjustment Programs (SAPs) to force water privatization must be stopped, and this demand should be put to the IMF and the World Bank meetings upcoming. similarly, we must mobilize to stop the new GATS rules from including water services under the WTO, by focusing on the next WTO ministerial meeting in Qatar this November. 5) *National Government Front*: Although peoples’ movements in many countries have, quite understandably, given up hope in the nation-state as a vehicle for transformation, our national governments still enact laws and sign treaties. as long as our governments make legislation like the water Act in France or support rules promoting water privatization through the IMF and the WTO, we have an obligation as citizens to be there, holding the feet of our legislators to the fire. It is through our actions on these five fronts that the stage will be set to build the movement for a Blue Planet, not Blue Gold!” Excerpts from closing speech at “Water for People and Nature”: [Clarke, T., “Five Fronts in the Global Water Fight”, *Canadian Perspectives*, Summer/Fall, 2001, p. 10]. The proceedings of the forum may be reviewed at: <http://vancouver.indymedia.org/>

theoretical understandings that are forged through academic analysis and disseminate them as means by which to create meaningful changes in social policy within the natural world of the state.

## Chapter 4: Activism Around Water In Canada.

### Water, Civil Disobedience and the Law

A social movement is the developing collective action of a significant portion of the members of a major social category, involving at some point the use of physical force or violence against members of other social categories, their possessions, or their institutionalized instrumentalities, and interfering at least temporarily - whether by design or by unintended consequence - with the political and cultural reproduction of society.

[Foss, D., & Larkin, R., (1986), *Beyond Revolution A New Theory of Social Movements*, South Hadley: Bergin and Garvey Publishers, p. 2].

The radical analysis offered by Foss and Larkin fifteen years ago has become embodied as standard practice for social activists today. One need only consider the protest movements in recent years, including: APEC in Vancouver, WTO in Seattle, the IMF and World Bank in Washington, FTAA in Quebec and the G8 in Genoa to see efforts of “physical force or violence” designed to interfere “with the political and cultural reproduction of society.” Efforts of social activism which pertain to water are no exception to this evolving practice of civil disobedience. The precedent case on the role of state sovereignty relative to water and the natural environment and acts of civil disobedience - designed to protect the environment - is codified in case law within the action brought forward by Slocan Forest Products; (a select quote is found on page 13) which specifically pertains to the conflict over perceived rights to clean water and the established traditional rights of property. It is worth repeating that a complete review of the various sets of legal reasons in these cases<sup>116</sup> demonstrates that by virtue of a complete lack of legislative oversight such rights to clean water, as such rights may exist within the cases brought before the learned trial judge, are, by necessity, subordinate to the established rights of property. Therefore, a review of the Slocan Forest Products cases clearly demonstrates that the rights of property transcend the rights of living “natural persons” in Canadian law.

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<sup>116</sup> Six decisions of the Honorable Mr. Justice Mc Ewan were rendered pertaining to issues surrounding water rights considered against the rights of property on the following dates: June 9, 2000, June 16, 2000, June 20, 2000, July 21, 2000, August 1, 2000, and October 27, 2000. Four of the six cases involved Slocan Forest Products. These case may be found at: <http://www.courts.gov.bc.ca>

Practices of civil disobedience are recognized in the law<sup>117</sup> (but such practices are also punished for not conforming to rights to property) which by any measure other than that of the doctrine of economics in capitalism is patently inhuman as well as ultimately being unsustainable in terms of the natural environment. The law, as illustrated here, reflects a misguided sense of priorities - for without a quality of human life which can be sustained within a healthy environment the rights of property are, in effect, academic. Considerations which are fixated on the economic administration of government and thus the concerns over the market allocation of natural resources are meaningless, and perhaps if we consider the Walkerton tragedy, lethal. While the law is said to protect the right of people to peacefully protest, the law as it presently pertains to water rights in Canada takes care of business by expressly punishing acts of civil disobedience, irrespective of the fact that such acts were designed to protect the water supply of the local community;<sup>118</sup> and in so doing the law does not specifically address the concerns of people for the integrity of the environment. This mandate of privileging property over living "natural persons" reflects the will of government but not necessarily the majority of the people. However the practice of civil contempt charges, as the preferred method by which to discipline social activists in British Columbia, has now given way to criminal proceedings lodged against protesters on the part of the Attorney General in defence of corporate property.<sup>119</sup>

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<sup>117</sup> On July 21, 2000 the Honorable Mr. Justice McEwan outlined the position of the state in terms of civil disobedience with particular relevance to water in the case involving Slocan Forest Products. See: "Civil Contempt" in Appendix E for a summary of the decision.

<sup>118</sup> On October 27 the Honorable Mr. Justice McEwan sentenced the activists for their actions against the interests of the state in terms of civil disobedience with particular relevance to water in the case involving Slocan Forest Products. See: "Civil Contempt" in the "glossary" [122] for a summary of the decision.

<sup>119</sup> In the case of *Texada Land Corporation v. David Shebib et. al.* the Honorable Mr. Justice Lowry found the defendants guilty of criminal contempt charges. The case is described in the local media in this way: "Saltspring activists ask court to save water from loggers" as found under the heading written by Malcolm Curtis in the *Victoria Times Colonist* December 16, 2000. The learned trial judge issued two sets of *Reasons For Judgement* on February 28, 2001 and March 2, 2001, respectively. See: "Criminal Contempt" in the "glossary" [125/26] for a summary of the decisions.

Without any doubt, as prescribed and practiced in the Province of British Columbia, property rights trump human rights in the canons of domestic law with specific reference to water. The theory of such a practice (of privileging “money and power” above everything else) may be interpreted as follows:

This process [the practice of privileging monetary interests] represents a kind of colonization of the life world by the logic of the system; it is a form of domination in which *money and power displace communicative action as the basis for reaching decisions* and coordinating actions within the life world. Such colonization of the life world means that open debates that might otherwise occur in the public sphere as one expression of communicative rationality are squeezed out by the role of money and power that intrudes on this sphere. It also means that experts using economic and administrative rationality play an increasingly predominant role in the life world, gaining control over the practical tasks of cultural transmission, social integration, and personality development (*emphasis added*). [Buechler, S., 2000, *Social Movements in Advanced Capitalism*, New York, Oxford University Press, p. 84].

Under the present neo-liberal system of free trade, the law is a difficult medium through which to make meaningful changes to reverse the increasing divisions found within the class structure between those who derive their primary source of benefit from private property and those who do not. Activists recognize that the possible sale of water as prescribed by the NAFTA would be no exception. The law favours the economic rights of corporations (foreign or domestic) over the legal, political rights of persons.

### **Movement For Change Which Flows From Unified Oppositional Politics**

A social movement is a sustained and self-conscious challenge to authorities or cultural codes by a field of actors (organizations and advocacy networks) some of whom employ extrainstitutional means of influence... Movements often have a range of actors pursuing numerous strategies in both institutional and extrainstitutional venues. [“Framing Political Opportunity” by Gamson and Meyer as found in *Comparative Perspectives on Social Movements* McAdam et al, 1996: 283].

Actions of civil disobedience alone will not, in and of themselves, bring about meaningful social change in Canada with reference to clean drinking water or structured systemic inequality. Profound changes to the system, such as those actions that seek to recognize and redress the absurdity of privileging property rights over the rights of living “natural persons” (thus excluding the fiction of corporations as “natural

persons”), will require concerted action on many fronts of social activism. Diverse groups of Canadian social activists have enormous concern for fresh clean water.<sup>120</sup> Certainly social activists have heard rumors of a possible case for damages, which are claimed on the basis of improper “expropriation” under chapter 11 of the NAFTA, with reference to water that has been brought by Sun Belt Water Inc., but, up until the affidavit of Carten surfaced, any official information that had been made available was sporadic, likely inaccurate, and not delivered to the public in a timely fashion. For example: civil society social activists who met for the weekend in Ottawa on September 17, 1999, through to September 19, 1999, around their shared concern for Canadian water had no idea what the Federal Government was involved with under the NAFTA challenge.<sup>121</sup> In my opinion, had the information pertaining to the Sun Belt / Federal Government case under the NAFTA, addressed and contained within Carten’s affidavit, been made available to the public during the time of the process of submissions before the NAFTA tribunal, that is the Fall 1998, or even with the second submission in Fall 1999, then the efforts by social activists around issues of water stewardship would have been supported by the evidence and thus Canadian concerns for water would have achieved much a higher profile within mainstream civil society. History has shown that knowledge is power and such knowledge developed and distributed democratically can defeat monetary interests and authority:<sup>122</sup> the trick is to unify divergent interests around a single issue movement and here in Canada as we proceed into the new millennium that issue is water.<sup>123</sup> Many Canadian social activists, by virtue of their

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<sup>120</sup> One esteemed theorist of social movements has postulated that movement politics generally suffer if fragmented by multiple goals and thus he “finds single-issue groups to be more successful than those addressing multiple goals.” [Gamson, 1990: 44 -46, in *Comparative Perspectives on Social Movements* McAdam et al, 1996: 15].

<sup>121</sup> Here I speak from experience, as I was the delegate on behalf of the Council of Canadians sent from Victoria to attend the Water Watch Summit. The summit is described in some depth within the text of the essay which follows.

<sup>122</sup> Perhaps the most often cited historical example is the American Revolution.

<sup>123</sup> “The most promising direction for framing research would thus involve deploying the notion of master frames in a multilevel analysis that links groups, and structures in a more historical and contextualized fashion... [In this essay, the issue of water has been used to explore the macro processes of banking, finance and trade where the] concept of master frames extends the social constructionist analysis of framing toward macrolevel social processes.” Constructed from: Buechler, S., (2000), *Social Movements in Advanced*

interest in the progressive sustainable development of society, do not believe that Canadian water should ever be privately owned and that therefore water should remain a public resource which is commonly available to all forms of life regardless of the ability one has to pay for it; water is too important to life to be subject to the unsustainable dictates of the market which would see it distributed strictly on the basis of economic logic.

### **The “Water Watch Summit”**

I attended the three day “Water Watch Summit” [hereinafter the “Summit”] which was convened in Ottawa on September 17th, 1999. The “Summit” brought together delegates from diverse organizations, including: the Canadian Labor Congress (CLC), the Canadian Union of Public Employees (CUPE), the Canadian Environmental Law Association (CELA), the Council of Canadians (COC) as well as members of other environmental and social justice organizations. Each delegate was provided with a conference kit and a media kit and additional publications were also made available to those who attended. The common theme of the “Summit” was the protection and preservation of Canadian water resources for purposes of public good rather than the interests of private profit. The “Summit” was structured around three central themes: 1) *Water Export and Trade*, 2) *Protecting Municipal Water*, and 3) *Protecting Water in the Environment*. The “Summit” format included: an evening of prominent speakers from the sponsoring organizations who made general comments on the orientation and purpose of the “Summit”; delegates who provided background information for the three central themes; an afternoon workshop designed to address the concerns and considerations which emerged from within the three central themes; and, on the last day a general assembly in which the substance of a “Water Watch Declaration” and general recommendations of the afternoon workshops were discussed and debated. The following is a brief summary of the proceedings of the “Summit” designed to introduce the reader to the potential of water to unite diverse

interests for a common cause of social justice.<sup>124</sup>

### **The Common Theme of Water as a Public Resource**

Marion Dewar, chairperson for Oxfam Canada, welcomed delegates to the “Summit” with comments to the effect that citizens would provide the agenda to set policies for Canada which would begin by saying “no” to privatized or commercial water with the central message being that water was instead “to serve everyone”. Dewar introduced the four speakers from the sponsoring organizations, including: Hassan Yussuff (executive vice-president of the CLC), Judy Darcy (national president of CUPE), Paul Muldoon (executive director of CELA) and Maude Barlow (volunteer chairperson of COC). An impressive oversight committee for the stewardship of water and social justice.

Hassan Yussuff, speaking on behalf of 2.3 million workers of the Canadian Labor Congress,<sup>125</sup> was adamant that water belonged to the “commons” and suggested the fact that Canadian water is *not* a commodity for sale was a key to economic justice. He called for efforts which link research with advocacy for the purpose of formulating strategic responses to counter the growing movement of corporate concentration to commodify water, and chastised the Federal Government for the 1998 cancellation of funding to the National Infrastructure Program. He stressed the need to mobilize unions and politicians around the issue of water as a fundamental right of economic justice.

Judy Darcy, speaking on behalf of nearly one half million public employees of CUPE,<sup>126</sup> called for one common action against the privatization of water and

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<sup>124</sup> The information provided on the “Summit” is in large part constructed from the personal notes which I took during the event. To supplement the cursory overview provided of the “Summit” in the text: a working draft of the “Water Watch Declaration” along with a list of the recommendations made by participants of the “Summit” - categorized within the following designations: “Personal”, “Educational”, “Political” and “Legal” - complete with a list of the references of materials which were provided at the “Summit” are all found at Appendix F.

<sup>125</sup> See: The Canadian Labour Congress Environmental Department at [dbennett@clc-ctc.ca](mailto:dbennett@clc-ctc.ca)

wastewater services. While recognizing that water is Canada's "Unrecognized Treasure" coupled with the fact that the commodification of water put us on the brink of a world class disaster she stressed the need for public ownership of essential services. Using a variety of case studies, she identified the model of Public Private Partnerships (what she called PPP's)<sup>127</sup> as the means by which transnational corporations sought to open the door to outright privatization. Cash strapped municipalities and provinces were vulnerable to promises of financial support from the private sector and were continually being approached in this manner. She called on the Federal Government instead to pour \$2 billion of the \$15 billion surplus into an infrastructure program to rebuild aging water and wastewater systems. The strong message that the voice for Canadian public employees gave to delegates of the "Summit" was that of "no water for profit as it is a public resource". Canadian water was a birthright of all Canadians and should be respectfully treated as such; not to be exploited for benefit of personal gain.

Paul Muldoon, speaking on behalf of environmental lawyers and the Canadian Environmental Law Association in particular, sought to debunk the myth that Canada has lots of surplus water and criticized the lack of political leadership which leads to (what he called the 3 D's) downsizing, deregulation and devolution. He advocated ways to maximize present resources - with water as a symbol which represents basic democratic principles - and concluded by suggesting the need for "Water Principles"<sup>128</sup> in pursuit of environmentally sound public policy objectives (see table 2)

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**Table 2**

**Ten Water Principles**

- 1) recognize water as a basic human right;
- 2) comprehensive strategy for the conservation of water;
- 3) efficiency codes (plan locally) in the use of water;

<sup>126</sup> See: [www.cupe.bc.ca](http://www.cupe.bc.ca) for the BC website of CUPE.

<sup>127</sup> A summary of the presentation made by a representative from EPCOR at the Victoria Labor Council on June 5th, 2001 provides a concrete example of "PPPs". See: "Public / Private Partnerships" in the glossary [137].

<sup>128</sup> See: Table 2 in the text for reference to Muldoon's Ten Water Principles. Also see: [www.web.net/cela/](http://www.web.net/cela/)

- 4) oppose privatization of water and waste-water facilities;
- 5) ban the export of bulk water;
- 6) consider climatic changes in terms of water;
- 7) concern for quality of water;
- 8) must empower communities to protect community issues with reference to water;
- 9) talk about an “Ethic of Conservation” which pertains to water;
- 10) Water to be seen as a surrogate for Canadian values (who / what we are).

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Muldoon’s central message, with reference to water stewardship, was the practical pursuit of the public good rather than being motivated by aspirations of private profit so that naturally water policy would be decided by way of social and environmental considerations rather than simply by means and method of economic calculation.

Maude Barlow, the voluntary chairperson of the Council of Canadians, on behalf of the largest nonpartisan social movement in Canada gave a speech entitled, “Blue Gold - The Corporate Assault on Canada’s Water”,<sup>129</sup> in part, saying:

We have started down this path with the creation of this coalition and with this historic gathering this weekend. We will be searching for a new global ‘water ethic’ based on the principle that water is a part of the earth’s heritage and must be preserved in the public domain for all time and protected by strong local, national and international law. At stake is the whole notion of ‘the commons,’ the idea that through our public institutions we recognize a shared human and natural heritage to be preserved for future generations. Citizens in communities around the world must be the ‘keepers’ of our waterways and must establish community organizations to oversee the wise and conserving use of this precious resource.

In the opening paragraph of her speech, Barlow explained the purpose of the “Summit” in this way: “... Because our governments, particularly the federal government, have failed to implement the kind of policies and programs to protect our water resources, we, the citizens of Canada, have taken on the task.” At this time one should consider that the participants of the “Summit” were completely unaware of the ramifications of the Sun Belt proceedings under the NAFTA. Barlow’s words seen with the benefit of hindsight are exceedingly prophetic.

### **Water Export and Trade**

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<sup>129</sup> A copy of the text of Barlow’s “Blue Gold- The Corporate Assault on Canada’s Water” speech was available at the “Summit”.

Four panelist spoke to the issue of “Water Export and Trade” including: the executive director of the West Coast Environmental Law Association,<sup>130</sup> Steven Shrybman,<sup>131</sup> Louise Vandelac of Eau Secours, David Brubaker of the Committee for a Global Water Contract,<sup>132</sup> and Tony Clark of the Polaris Institute.<sup>133</sup> The need to develop “trade literacy”<sup>134</sup> and for case studies of the corporate players of the water industry<sup>135</sup> were advocated in order to combat the ignorance of the population and the collusion of government with corporations. People were identified as the “trump card” in the fight against “crony capitalism” with the biggest battle to date scheduled for The Hague in March, 2000. Water was identified as a perfect medium to expose the inequities inherent in the present practices of internal trade regimes. With the current knowledge which has surfaced with reference to the Sun Belt challenge under the NAFTA we see that in retrospect the activists are right to be concerned about the implications of international trade law for local sustainability.

### Protecting Municipal Water Systems

Three people formed the panel on “Protecting Municipal Water Systems”, including: Mary Lou Tanner of CUPE Local 167,<sup>136</sup> Max Christie of the Ontario

<sup>130</sup> See: [www.wcela.org/international/trade](http://www.wcela.org/international/trade) for the West Coast Environmental Law website.

<sup>131</sup> For an overview of the WTO and the water issue, see: Shrybman, S., (1999) *A Citizen's Guide to the WTO*, The Canadian Center For Policy Alternatives, in Chapter VI entitled “Forests, Fish and Water”, pp. 59 - 72.

<sup>132</sup> See: [www.FactoryFarm.org](http://www.FactoryFarm.org) for a copy of the *Global Water Contract*.

<sup>133</sup> Tony Clarke of the Polaris Institute may be reached at: [tclarke@web.net](mailto:tclarke@web.net)

<sup>134</sup> Specific trade rules to be concerned about, from the perspective of civil society, included: - Article XI of GATT: *blanket prohibition of export taxes*; Article 315 of NAFTA: *proportional sharing rule*; Article 1102 of NAFTA: *national treatment rule*; and Article 1110 of NAFTA: *expropriation and compensation rule*.

<sup>135</sup> Contained within Tony Clarke's book published by the IFG in 1999 entitled *By What Authority!* is section 8 entitled, “Water Resources” page 25. It provides the following information: “1) Vivendi SA, France, \$35.3 billion, 2) Suez Lyonnaise des Eaux, France, \$34.9 billion, 3) Enron, USA, \$31.2 billion, 4) RWE Group, Germany, \$36.6 billion, 5) Bouygues/SAUR, France, \$17.billion, 6) Bechtel, USA, \$12.6 billion.” At the “Summit” Clarke also listed 7) United Utilities, USA 8) Thames Water, UK 9) Severn Trent, UK 10) Anglican Water UK.

<sup>136</sup> In addition to the case study on the Hamilton-Wentworth case study on privatization addressed by Mary Lou a CUPE document entitled *Privatizing Water Treatment: The Hamilton Experience* was provided to

Municipal Water Association,<sup>137</sup> and Cameron Duncan of Public Service International.<sup>138</sup> Municipal wastewater facilities were identified to be amongst the first targets of Public Private Partnerships (PPP's) in efforts to privatize water. A broad social alliance with international links to present alternatives to corporatism, with case studies like Hamilton-Wentworth, was advocated to stem the corporate tide. Exposing the inequities inherent in private ownership of what were formerly public utilities (where business accumulated profits and governments remained accountable with fewer resources to monitor the environment) was seen as a productive means of enlightening the public in efforts to foster social justice. Understanding that the systemic orientation of domestic and international financial institutions like the chartered banks, Inter-American Bank, the IMF, and World Bank which, by virtue of their ability to create the money supply, creates inequalities (in the accepted practices of maximizing profit) and through that understanding endeavoring to find a means by which to forge alliances in order to challenge the inequitable features of the system - by using regulatory frameworks and supporting alliances with nongovernmental organizations (NGOs) - was identified as a very significant method in which to achieve and sustain considerations of social justice.

### **Protecting Water in the Environment**

Three individuals formed the panel on "Protecting Water in the Environment", including: Chief Ralph Akiwenzie of the Chippewas of Nawash, Richard Bocking an agricultural economist, journalist and author of *Canada's Water: For Sale?*, with Jamie Linton an environmental writer and author of *The State of Canada's Water*. The panel

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delegates of the "Summit". This document along with others provided at the "Summit" is referenced in Appendix F.

<sup>137</sup> Mr. Christie, as a representative of the Ontario Government, advocated a "best available practices" model in which he did not rule out the possibility of Public Private Partnerships (PPP's) in the interests of "stewardship".

<sup>138</sup> <http://psi@world-psi.org> For a brief summary of some of the research with reference to water which is available from Public Service International, see: "Public Services International" in the "glossary" [137/38].

unanimously proclaimed the need to protect water in its natural environment with specific references made to the special relationship between the First Nations and water. Panel members stated that the Government of Canada has a fiduciary responsibility to protect both First Nations and Canadian water. They argued that citizens must hold government accountable for the impact of water policies and practices on the environment because of the precious nature of water. The best place to start was to protect water in the environment and not to subject water to the dictates of international trade agreements and thus to allow for debt arrangements which inevitably lead to calls for the privatization of water and wastewater from sectors within the market.

### **“Water Watch Declaration” and a List of Recommendations**

The last day of the “Summit” was chaired by Cindy Wiggins of The Canadian Labor Congress who introduced the “Water Watch Declaration” as a redraft of the original Covenant.<sup>139</sup> Delegates were encouraged to use the “Declaration” to produce local print media publications. The final words of the “Summit” were spoken by Maude Barlow who noted that the efforts within the symposium were designed to counteract the effects of corporate involvement in government decision making, saying words to the effect that we must set public debate by providing the first available information detailing the threat of trade agreements on water sovereignty. The Citizens’ Agenda advanced by Barlow requires that activists shape public debate on critical issues, and, as was the case with the MAI, it is simply not enough to know there are problems; possible remedies and solutions must be explored.

### **Personal Reflections on the “Summit”**

In retrospect, the actions of the civil society social activists at the “Summit” might

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<sup>139</sup> The original two way covenant between citizens and government was soundly criticized for a variety of reasons, including considerations of: length, a lack environmentally sensitive language, etc.

well have pre-empted the Federal Government from consummating the sale of Canadian water to the California based company Sun Belt Water Inc., under the terms and conditions of the NAFTA. Even before the terms of the Sun Belt challenge were announced to the Canadian public (on October 22, 1999), the participants of the “Summit” had made the dangerous connection between trade agreements and control over the nation’s water supply crystal clear. Control over the nation’s water supply and wastewater services, if subjected to the dispute mechanisms within existing trade regimes (both within the NAFTA<sup>140</sup> and the WTO<sup>141</sup>), would undoubtedly become prohibitively expensive or they would be privatized on terms which ultimately favor foreign ownership. Neither prospect of free trade is too appealing. Delegates at the “Summit” understood the dismal future facing Canadian water under international trade agreements but we did not know that a case for water was about to enter the arbitration phase before the NAFTA or just how much money was at stake.<sup>142</sup> Instead, we discussed the voluntary water accord, a rainbow form of water sovereignty, and thus never truly considered the pot of gold at the end of the rainbow destined for Sun Belt Water Inc., of Santa Barbara California.

The “Summit” was less than successful in explicating sources of inequality which

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<sup>140</sup> For a clear summary of Chapter 11 in the NAFTA in terms of the environment, see: “NAFTA’s Chapter 11 And The Environment: Addressing The Impacts Of The Investor-State Process On The Environment” written by Howard Mann and Konrad von Moltke of the International Institute for Sustainable Development at: <http://iisd.ca> The Sun Belt case is described by Mann et al., in this way: “Allegedly biased treatment by provincial government of US partner in a joint water-export venture.”

<sup>141</sup> Specifically the General Agreement on Trade in Services (GATs) within the WTO is of great concern to public water resources and services. See: “WTO Threat” in the “glossary” [144/45] for a concise overview provided by Ellen Gould of *Trading Strategies* in Vancouver, Canada at: [ellengould@telus.net](mailto:ellengould@telus.net)

<sup>142</sup> At the time of the “Summit” the best available information on the Sun Belt case was as follows: “The first NAFTA Chapter 11 case on water was filed in the fall of 1998. Sun Belt Water Inc. of Santa Barbara, California, is suing the Canadian Government because the company lost a contract to export water to California when the Canadian province of British Columbia (B.C.) banned the export of bulk water in 1991. Sun Belt alleges that the ban contravenes NAFTA and is seeking \$220 million in damages.” Barlow, M., (1999) *Blue Gold* San Francisco: International Forum on Globalization, p. 33. However, while the fact that a case had gone before the NAFTA tribunal was known the true nature of the claim was not made clear to the public. In the revised 2001 edition of *Blue Gold* on page 36, Barlow writes: “Sun Belt alleges that the ban contravenes NAFTA and is seeking \$10 billion in damages.”

impact on water quality and services and thus in showing the connection between trade agreements and the banking system which structures the inequitable agreements. The role of credit in government spending was not clearly explained<sup>143</sup> at the “Summit” nor were the newly developing party political efforts designed to challenge the status quo and inequitable forms of banking encouraged or supported.<sup>144</sup> Activists require a conceptual understanding of the fundamental connection between banking practices and corresponding international trade agreements in order to sustain local development and control over water and wastewater services and this requires that all groups interested in social justice and environmental sustainability must share information and work together.<sup>145</sup> It must be understood that the benefits of public ownership in the case of water and wastewater facilities is not possible without publicly funded infrastructure. If infrastructure were funded through the Bank of Canada it would not result in the interest payments which I have labeled “structural adjustments by stealth” paid off to private interests. Canadians cannot sustain what we cannot pay for and the payment of interest charges to chartered banks siphons off money which is badly needed elsewhere in the economy.<sup>146</sup> While the “Summit” may have pre-

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<sup>143</sup> The best first step to understand the role of credit (in terms of government) as it is found in the contemporary global capitalist system is advanced by the COMER (Committee on Monetary and Economic Reform) and CCRC (Canadian Community Reinvestment Coalition) associations which advocates government control of the money supply and credit system. Email and Web Addresses: Comer: wkrehm@ibm.net or [www.monetary-reform.on.ca](http://www.monetary-reform.on.ca) and the CCRC: <http://www.cancrc.org> See: “Credit” for explanatory text on this most fundamental issue of the creation of the money supply in the “glossary” [124/25].

<sup>144</sup> The foundation for a new political party called the Canada Action Party had been set earlier in the summer of 1999 with “The Save Canada Conference” to discuss political action as a means of recapturing economic direction for Canada. See: “Canada Action Party” in the “glossary” [121] for an inventory of materials available from the conference. The website of the Canada Action Party is [www.canadianactionparty.ca](http://www.canadianactionparty.ca)

<sup>145</sup> There is a growing recognition that the study of social movements is itself becoming a viable commercial endeavor. “McCarthy and Zald (1987) have pointed out that as a result of massive growth in funding, it has become possible for a larger number of professionals to earn a respectable income committing themselves full-time to the activities related to social movements” (McAdam, et al., (1996), *Comparative Perspectives on Social Movements*, p. 366 and in (ft. 8). My point is only that activists themselves are subject to the economic pressures and costs involved in acquiring and disseminating information. This restricts the sharing of information in a timely fashion.

<sup>146</sup> See: “Bank Credit” in the “glossary” [120] for a brief description of the problems for government associated with a private money supply for public expenditures.

empted the outright sale of water it did not adequately address the fundamental underpinnings of a system which can and does contemplate commodifying the necessities of life.<sup>147</sup>

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<sup>147</sup> See: “Capitalist System” for a quote from Mc Murtry with relevance to water in the “glossary” [122].

Social activists like myself are in the struggle against the commodification of the commons which is prophetically conceptualized in the words of Dr. Shiva:

The future is possible for humans and other species only if the principles of competition, organized greed, commodification of all life, monocultures, monopolies, and centralized global corporate control of our daily lives enshrined in the WTO [in conjunction with the operations of international banks] are replaced by principles of protection of people and nature, the obligation of giving and sharing diversity, decentralization and self-organization enshrined in our diverse cultures and national constitutions.

[“Beyond the WTO Alternatives to Economic Globalization” A Preliminary Report by a Task Force of the International Forum on Globalization, November 26, 1999, p. 10.]

Later, at a symposium dedicated to human rights<sup>148</sup> on first day of the “Battle of Seattle” (on November 30, 1999) Shiva related the story of the struggle of Indian peasants against the privatization of water by a large US based multinational and the incredible fact that: *the US based company, ENRON, wants to own water in India!* Canadian social activists have great faith in Canadians citizens (and other citizens of the world) to assist in the construction of a sustainable form of civil society with respect for planet earth, if the citizenry of the world can be properly informed of the facts which surround the corporate privatization of water and wastewater services. As is very likely the case with Sun Belt, and is certainly the case in parts of the Third World, the fact is that banks are at the heart of structured inequality and thus are prime movers in the push to privatize water and wastewater systems. The emphasis on banking institutions with international trade agreements as the engines destined to bring us a commodified commons can not be overstated. Water is too precious to all forms of life to simply allow it to be commodified for the benefit of a few at the expense of the many: and this message was crystal clear to all of us at the “Summit” even though we were unaware of the details in the Sun Belt case. The proceedings of the “Summit” may have stopped the

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<sup>148</sup> For whatever reason, water is not listed as a human right in the *UN Declaration of Human Rights*. Note: “Council [of Canadians] Chair Maude Barlow calls for water to be recognized as a basic human right at a press conference at the Second World Water Forum in The Hague, World Water Day, March 22, 2000.” [Barlow, M., (2001), “The Council of Canadians Annual Report 2000” in *Canadian Perspectives, Annual Campaign Report 2000*, Winter 2001, p. 7.] For additional information see: “Water As Human Right” in the “glossary” [142].

sale of water but we certainly did not know how close to being sold it truly was (or may well have been).

### CUPE POLICY STATEMENT ON WATER: "Not For Sale!"

According to statements made by the leadership of Canada's largest public sector union, nearly half a million CUPE workers are prepared to defend and maintain the public's right to access to clean water services and sanitary wastewater facilities.<sup>149</sup> There is tremendous political strength that is possible in the unified action around considerations of water and wastewater facilities to remain public resources;<sup>150</sup> and, in this respect, CUPE is not alone in the struggle to maintain public control and ownership over water in the face of global corporate pressure to privatize it.<sup>151</sup> Pressure to privatize water is the inevitable result of international trade agreements which are agreed to by national governments who have relinquished their traditional mechanisms of state sovereignty, both within their own economic forum (The Bank of Canada)<sup>152</sup> as well as in the political arena of the Ministry For International Trade. Corporations derive big benefits<sup>153</sup> from such political decisions (laissez faire trade and banking practices) and public employees are right to build coalitions with other sectors

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<sup>149</sup> Excerpts from the CUPE statement from the National Convention, Montreal, October 18 -22, 1999 are referenced in "CUPE At The Water Watch Summit" in the "glossary" [126].

<sup>150</sup> "The federal government's commitment to supporting water and wastewater systems isn't enough to upgrade and build reliable systems. And in a new twist on previous infrastructure programs, this round opens the door to costly public private partnerships... The Canadian Council for Public-Private Partnerships calls the new infrastructure plan 'a program that has been designed to include private sector partners and innovation in finance, delivery and services'." "Dollars and democracy", *CUPE's 2001 Annual Report on Privatization*, Ottawa: p. 5.

<sup>151</sup> CUPE leadership and members from the union participated in solidarity with other sectors of Canadian civil society at the Water Watch Summit in September of 1999. See: "CUPE At The Water Watch Summit" in the "glossary" [126] for a brief summary of the event from the Statement from the CUPE National Convention, Montreal, October 18-22, 1999 on page 3.

<sup>152</sup> "[Bank of Canada Governor Gordon] Thiessen who in 1995 told a parliamentary committee that the multiplier that gauged the the ratio of money created by private banks to their legal tender no longer existed. In fact the ending of the banks' statutory reserves has moved the denominator of the ratio substantially towards zero, and hence the value of the ratio in the direction of infinity" Krehm, W., (1997) *It's Your Money*, p. 130. If a particular entity in capitalism has the privilege of creating wealth without regard for equity where does it end?

<sup>153</sup> "Foreign-controlled companies - mostly American, some British - accounted for about 31.5 per cent of the \$1.3-trillion in corporate revenue (excluding the financial sector) generated in Canada in 1996. That's up from 27 per cent in 1988, just before NAFTA came into effect..."Reguly, E., "The devouring of corporate Canada," *The Globe and Mail* September 4, 1999 p. B1.

of civil society to confront the pending corporate commodification of the commons. CUPE is at the forefront in its protection of Canadian public services against the spectre of international agreements and, in particular, a recent case brought under the investor-state mechanism of the NAFTA<sup>154</sup> as well as in the unsuccessful application for intervener status made in *The United States of Mexico v. Metalclad* case heard in late January 2001 in the Supreme Court of British Columbia. At all levels, CUPE continues to endeavor to protect water and CUPE is supported in its legal efforts by other sectors of civil society. Activists and academics have found that trade policies and international agreements<sup>155</sup> are an obvious place to start in an effort to reclaim the benefits of national sovereignty in the public interest and have also found that water is a perfect issue with which to do so. Therefore, in any given opportunity to expose the inhuman practices of international trade regimes, the subject of water is definitely a preferred legal choice for demonstrating the devastating social and environmental consequences of current trade policies and government action. CUPE defends water as a public right.

In the *Metalclad* case, which will come to be seen as the precedent setting review of the Investor-state process as it is found in Chapter 11 of the NAFTA, CUPE made written presentations,<sup>156</sup> with particular reference to water, in their unsuccessful efforts to intervene in the commercial arbitration case heard by Justice Tysoe in the Supreme Court of British Columbia . With a truly unique perspective to bring before the Court, CUPE - irrespective of its strong commitment to the integrity of the social and ecological environment, with particular concerns expressed before the Court with reference to water - was denied the opportunity to participate in the first domestic

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<sup>154</sup> In the affidavit of Vanessa Payne dated January 3, 2001, which was filed in the *United States of Mexico v. Metalclad* case in support of the application for intervenor status made by CUPE information on the Chapter 11 challenge brought by the United Parcel Service (UPS) against the Government of Canada is revealed. See: “CUPE In Court” in the “glossary” [126] for details from the affidavit.

<sup>155</sup> See: “Coalition-building” for a quote from Rose on the emerging free trade regimes in the “glossary” [123].

<sup>156</sup> See: Appendix G for a summary of the CUPE submission for intervenor status in the *Metalclad* case.

judicial review of arbitration law as codified in Chapter 11 of the NAFTA.<sup>157</sup> CUPE was not granted intervenor status. The Honorable Mr. Justice Tysoe was “not satisfied that CUPE has a sufficient interest to warrant intervention in this proceeding.” The learned trial judge decided that CUPE’s “participation will be more distracting than of assistance” in the arbitration matters involving Mexico and the Metalclad Corporation.<sup>158</sup> In the words of Connie Fogal of the “Defence of Canadian Liberty Committee” the review by the Honorable Mr. Justice Tysoe with reference to “The Mexican Appeal to a British Columbia Court is *not* a challenge to the legitimacy of NAFTA. It is a claim that the NAFTA Tribunal did not apply the facts of the case to the rules of NAFTA properly. Mexico asks our domestic court to set aside the judgement of the Tribunal so that Mexico does not have to pay the money to Metalclad.”<sup>159</sup> Perhaps this explains why the Court chose to deny CUPE’s application as it is merely concerned with the rules of international trade law. CUPE values water and not the unsustainable inhuman economic dictates advanced by international financial institutions as found within international trade agreements. In this regard CUPE would not be helpful in the present issues before the Court where, as a result of the commitments made under the NAFTA, the Federal Government has effectively abrogated the long standing constitutional right and responsibility to protect Canadian citizens and the environment. CUPE was denied a voice in the defence of public services and government accountability in the case that went before the Honorable Mr. Justice Tysoe because the case was strictly to be determined on the merits of the

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<sup>157</sup> See: “CUPE Judgement” in the “glossary” [126/27] for a summary review of the Oral Reasons For Judgement Mr. Justice Tysoe As Pronounced in Chambers January 31, 2001.

<sup>158</sup> The tribunal financial award to Metalclad of \$16, 685, 000. 00 (US) was an award ostensibly to compensate the American corporation for the “expropriation” caused when the local ecological decree, passed to close the toxic waste facilities, resulted in the closure of the toxic waste facilities that were operated by the Metalclad Corporation.

<sup>159</sup> NAFTA AND A U.S. COMPANY TRASH MUNICIPAL AUTHORITY (Report reproduced by reading the Court file and attending a hearing January 31, 2001 by C. Fogal who can be reached: cfogal@netcom.ca)  
Note: Defence of Canadian Liberties Website at: [www.canadianliberty.bc.ca](http://www.canadianliberty.bc.ca)

application of trade law and was concerned with protecting and maintaining public values.<sup>160</sup> However, it is truly significant that in its subsequent endeavors to protect water by way of legal efforts in the courts, CUPE has successfully relied upon the legal opinion written by Steven Shrybman to convince municipal officials in British Columbia of the dangers involved in privatizing water and wastewater facilities.<sup>161</sup>

### **Environmental Water**

Although the Canadian Federal Government has never been a particularly strong advocate in favour of environmental sustainability as an alternative to resource extraction, the period of time between the implementation of the FTA and the NAFTA saw a further reduction in the role of meaningful federal enforcement of environmental legislation with more of the burden for protecting the environment falling to the provinces.<sup>162</sup> Six years later, with the “fundamental shift in federal-provincial relations and the redefinition of the nation state” forecasted by Barlow and Campbell,<sup>163</sup> coupled with the cutback in federal transfer payments to the provinces, we now see the provinces are unable (or unwilling) to maintain their former practices for regulating the environment.<sup>164</sup> Consequently, in just over a decade there has been a decline in

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<sup>160</sup> Judge Tysoe refused to set aside the breach in relation to issuance of the Ecological Decree without compensation. He ordered compensation including interest be paid from the Date of the Decree.” Personal correspondence from Fogal, C., (June 2001) entitled “Condensation of an 8 page summary by Connie Fogal of the 48 page judgement...” in the case of Mexico vs. Metalclad SCBC Vancouver, BC I002904.

<sup>161</sup> Specifically, the Shrybman legal opinion has been relied on by municipal officials from Kamloops, Oliver and the Greater Vancouver regional district “to recently nix public-private partnerships in water facilities”. Lalonde, P., “Don’t swallow CUPE’S water arguments”, *National Post*, August 13, 2001, p. A15.

<sup>162</sup> See: “Environmental Cutbacks” in the “glossary” [129/30] for a description from Barlow and Campbell of the cutbacks in funding at the federal level and the impact for the provinces with reference to environmental regulation.

<sup>163</sup> Maude Barlow of the Council of Canadians and Bruce Campbell of the Canadian Center For Policy Alternatives. The Canadian Center For Policy Alternatives and the Council of Canadian must be considered two of the leading organizations designed for movement towards a sustainable society founded on principles of justice.

See: Canadian Center For Policy Alternatives: <http://www.policyalternatives.ca> Council of Canadians: <http://www.canadians.org>

<sup>164</sup> Here is one example: “A crisis in morale has gripped the Ontario Ministry of Environment since

government enforcement of environmental infractions; first at the federal level and then later at the provincial level. Naturally, this is reflected in the quality of drinking water found in Canada and it has been civil society social activists who have stepped into the role of monitoring the environmental impacts of agriculture and industry on drinking water; a role that has recently been relegated to private testing facilities as a consequence of funding cutbacks by the Federal Government and the subsequent decisions made by various provincial governments in their efforts to spend less money on the maintenance of public water resources.<sup>165</sup> According to SLDF:

Clean Waterways  
 “Lifeline to the Future”  
 [Sierra Legal Defence Fund Bumper Sticker]

At the “Water Watch Summit” there were a number of representatives from a variety of environmental organizations gathered to participate in the discussion pertaining to Canadian water, including members from the Sierra Club. The Sierra Legal Defence Fund (SLDF) is at the forefront of protecting water by way of legal challenges and public education campaigns.<sup>166</sup> Success in these venues (the courts as

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government cut a swath through its ranks, eventually chopping 30 per cent of the ministry’s jobs...

Stories of doctored samples by municipalities, kickbacks paid for fudging sample results and the like are common throughout the ministry, said the investigator.

‘... Privatizing the labs and downloading most of the responsibilities to municipalities, it was incredibly frustrating for us to watch. It was like the government was putting the fox in charge of the henhouse.

‘I knew that it was just a matter of time before something like this happened [Walkerton]... There are other time bombs out there just waiting to happen,’ the investigator added.”

Bourette, S., “Civil Servants became zombies, official says” *Globe and Mail*, June 3, 2000, p. A3.

<sup>165</sup> “Several witnesses [before the commission inquiry into water in Walkerton] testified this spring that the government ignored warnings about the confusion in reporting bad water caused when the province hastily privatized the testing laboratories in 1996.” [Perkel, C., “Water manager shifts blame to policies of Ontario Tories”, *Victoria Times Colonist*, August, 16, 2001, p. A6].

<sup>166</sup> “The Sierra Legal Defence Fund (SLDF) is a charitable organization that provides free legal advice to environmental groups across Canada. SLDF aims to enhance public access to the legal system, set important legal precedents that will strengthen existing laws, and provide professional advice on the development of environmental legislation. SLDF’s lawyers have brought cases on behalf of concerned citizens on a wide variety of issues including forest management, endangered species habitat protection, water pollution, environmental impact assessment, and national parks protection. SLDF is funded primarily through public donations and private foundation grants. It has over 20, 000 individual supports across Canada.

well as the proverbial “court of public opinion”) for the SLDF, is not measured in economic terms (traditional dictates of dollars and cents) but is quantified with reference to standards of social and ecological sustainability i.e., whether we can live in society in a way which shows greater respect for the Earth. What follows is a brief summary of some of the recent SLDF efforts<sup>167</sup> geared towards the protection and preservation of Canadian water from an environmental perspective rather than a commercial one. My brief review of SLDF actions endeavors to call into question the legal and political idea of value assigned to water in which water is seen as an exchangeable commodity and codified as such in the law.

Over the past year the 2000 Sierra Legal Defence Fund *Annual Report* claims a number of successes in legal actions and educational campaigns which pertain to water and does so with a great deal of justification. The *Annual Report* on pages 5 and 6 (see Table 3 below) addresses the following: Walkerton, water use, water sheds, rivers/fish habitat, aquifers and urban sprawl, mining pollution, Taku / transboundary watershed, natural gas pipeline, ocean dumping and sewage.

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**Table 3**

**Actions of SLDF referenced (by page #) in the 2000 *Annual Report* include:**

**Walkerton:** “Won the right for a coalition of three national and international organizations to participate at Walkerton’s inquiry to address systemic problems facing municipal water supplies (5).”

**rivers/fish habitat:** “Filed submission resulting in the North American Commission for Environmental [www.sieralegal.org].” Quoted in the inside cover of the Sierra Legal Defence Fund publication entitled: “Who’s Watching Our Waters? A Report on who’s polluting and the government that’s permitting it” [Based on information obtained from the Ontario Ministry of the Environment under the Freedom of Information and Protection of Privacy Act].

<sup>167</sup> A review which makes reference to the following Sierra Legal Defence Fund (SLDF) publications 1) “Who’s Watching Our Waters? A Report on who’s polluting and the government that’s permitting it” [Based on information obtained from the Ontario Ministry of the Environment under the Freedom of Information and Protection of Privacy Act] (1999 or later); 2) 2000 Sierra Legal Defence Fund *Annual Report*; 3) Parfitt, B., & Brewster, L., (2000), *Muddied Waters: The Case for Protecting Water Sources in B.C.*; 4) “Stream Protection Under the Code: The Destruction Continues”, February 1997; 5) “The National Sewage Report Card (Number Two) Rating the Treatment Methods and Discharges of 21 Canadian Cities”, August 1999; 6) Christensen, R., & Parfitt, B., (2000), *Water Proof Canada’s Drinking Water Report Card*.

Cooperation issuing factual record that harshly criticized Canada for failing to enforce its own Fisheries Act and allowing B.C. Hydro to destroy fish and fish habitat. Set to challenge in Federal Court the issuance of permits without an environmental assessment by National Energy Board to an arm of B.C. Hydro for power exports (5)...”

**aquifers and urban sprawl:** “Won right to appeal municipal plan that lays the groundwork for a development explosion that would drain aquifers in ecologically sensitive moraine and erode a rare green corridor north of Toronto. Also filed request with the Ontario government to review the environmental assessment of a major sewage pipe extension based on new information about the potential effects on the headwaters of the Humber River, a National Heritage River ...(5).”

**mining pollution:** “Filed formal complaint with the North American Commission for Environmental Cooperation alleging that three abandoned B.C. mines are violating the Fisheries Act by leaching effluent into fish-bearing waters...” (5).

**water use:** “Assisted on Cheakamus consultation committee and multi-stakeholder Fisheries Technical Committee in an effort to improve water flow fro B.C. Hydro’s installations” (5).

**water sheds:** “...Brought an application for judicial review of governmental refusal to grant designated watershed protection to local uses” (5).

**raw sewage:** “Laid charges against the Capital Region District for the discharge of raw sewage into the Strait of Juan de Fuca. B.C.’s Attorney General intervened, then stayed charges” (6).

The “Summary of Findings” found in “Who’s Watching Our Waters? A Report on who’s polluting and the government that’s permitting it” provides disturbing documentation about the practices of industry. In addition, an analysis of the results of those practices in the province of Ontario which are known to impact on the health of water is presented in a variety of tables (by region and sector). Thus, an observable trend within the environment has occurred, in part, as a consequence of the years of decreasing levels of government funding for environmental regulation and enforcement. As a result, the Sierra Legal Defence Fund has endeavored to document some of the problems in the provincial water supply. The findings of the SLDF found on pages 7 through 9 are as follows:

- 1) Water Pollution Offences up over 200 % in 2 years: [from just over 1000 in 1996 to 2234 in 1997 and to well over 3300 in 1998].
- 2) 70 % of Offending Polluters are Repeat Offenders and 10% have been breaking the law for 5 years running: [of 167 violators of the law 116 had done so on at least one occasion between 1992 and 1998].

- 3) The number of Violators has [been] increasing year after year: [A total of 167 facilities violated Ontario's wastewater discharge laws in 1998. The number of violators has increased steadily, up from 154 in 1997 and 134 in 1996].
- 4) [Ministry of Environment] MOE, once again refuses to disclose the number of prosecutions resulting from the wastewater discharge offences: [the indication is that it was 4 in 1996 no data was released for 1997 or 1998 but there may have been 1 in 1998].
- 5) Government gives violating facilities immunity from prosecution while they continue to offend: [The MOE has with increasing frequency, taken to issuing "Program Approvals" to facilities that violate the law].
- 6) Ontario's No. 1 violator of wastewater pollution laws has been operating under the immunity of a program approval for over 2 years.

SLDF explain their decision to take on the task of documenting the "violators" as they colloquially label them because "the Ministry of the Environment decided it would no longer produce its annual report of water pollution violators... the MOE report, which can be viewed on the MOE website, fails to provide the reader with any of the information necessary to know just how serious the infractions by any of the polluters are, just how frequently they are failing to meet the various parameters, and just what the government is doing to ensure that the pollution stops... [so] Sierra Legal decided it must provide the public with the whole story."<sup>168</sup>

The story of *Muddied Waters*, as it was written in March, 2000, is "The Case for Protecting Water Sources in B.C." and is delivered as the product of a collaborative effort on the part of a variety of environmental and social justice organizations.<sup>169</sup> Of particular relevance is the information provided in Appendix 1 that is entitled "Water Protection and the Law" which can be considered, from the perspective of the environmental activists, to have been designed to demonstrate "several things water users must consider when contemplating using legal tools to help protect or repair threatened or degraded water supplies (p. 43)." Appendix 1 outlines (on pages 47- 49)

<sup>168</sup> "Who's Watching Our Waters? A Report on who's polluting and the government that's permitting it", p. 3.

<sup>169</sup> The B.C. Tap Water Alliance: [www.alternatives.com/bctwa](http://www.alternatives.com/bctwa)  
 The B.C. Watershed Stewardship Alliance: [www.bcwsa.bc.ca](http://www.bcwsa.bc.ca)  
 The Red Mountain Residents Association: [www.watertalk.org/SVWA/redmountain/](http://www.watertalk.org/SVWA/redmountain/)  
 Sierra Club of B.C.: [www.sierraclub.ca/bc](http://www.sierraclub.ca/bc)

the following relevant statutes, with particular reference to water, including: (1) *The B.C. Fish Protection Act*,<sup>170</sup> (2) *The Federal Fisheries Act*,<sup>171</sup> (3) *The Federal Navigable Water Protection Act*,<sup>172</sup> (4) *The Canadian Environmental Assessment Act*,<sup>173</sup> (5) *The B.C. Water Act*,<sup>174</sup> (6) *The B. C. Waste Management Act*,<sup>175</sup> (7) *The B. C. Environmental Assessment Act*,<sup>176</sup> (8) *The B. C. Health Act*,<sup>177</sup> and (9) *The B. C. Forest Practices Code Act*<sup>178</sup> as potentially useful legal tools. In each case, SLDF provides insight as to what protections are available for water in the various statutes of domestic law.<sup>179</sup> In a more in depth analysis entitled: “Stream Protection Under the Code: The Destruction Continues”, February, 1997, the SLDF undertakes an in depth analysis of the Forest Practices Code which endeavors to determine “whether the *Code* is delivering change on the ground or is merely a public relations tool for industry and government.”<sup>180</sup> If the Honorable Mr. Justice McEwan is to be believed, under the constructs of contemporary conventional law all of the rights that may well be contained within these statutes are subordinate to the clearly defined rights of property. However, concurrent with the efforts to add strength, by way of legal precedent, to environmental law, SLDF also endeavors to get government to maintain the environmental standards that have been set to regulate business.

The Sierra Legal Defence Fund has issued three “report cards” which are relevant

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<sup>170</sup> The B.C. Fish Protection Act: [http:// www.qp.gov.bcca/bcstats/97021\\_01.htm](http://www.qp.gov.bcca/bcstats/97021_01.htm)

<sup>171</sup> The Federal Fisheries Act: [http:// www.founder.library.ualberta.ca/FTP/EN/Regs/Chap/F/F14/](http://www.founder.library.ualberta.ca/FTP/EN/Regs/Chap/F/F14/)

<sup>172</sup> The Federal Navigable Waters Protection Act:  
[http:// www.founder.library.ualberta.ca/FTP/EN/Regs/Chap/N/N-22/](http://www.founder.library.ualberta.ca/FTP/EN/Regs/Chap/N/N-22/)

<sup>173</sup> The Canadian Environmental Assessment Act:  
[http:// www.founder.library.ualberta.ca/FTP/EN/Regs/Chap/C/C15.2/](http://www.founder.library.ualberta.ca/FTP/EN/Regs/Chap/C/C15.2/)

<sup>174</sup> The B.C. Water Act: [http:// www.qp.gov.bcca/bcstats/96483\\_01.htm](http://www.qp.gov.bcca/bcstats/96483_01.htm)

<sup>175</sup> The B. C. Waste Management Act: [http:// www.qp.gov.bcca/bcstats/96482\\_01.htm](http://www.qp.gov.bcca/bcstats/96482_01.htm)

<sup>176</sup> The B. C. Environmental Assessment Act: [http:// www.qp.gov.bcca/bcstats/96119\\_01.htm](http://www.qp.gov.bcca/bcstats/96119_01.htm)

<sup>177</sup> The B. C. Health Act: [http:// www.qp.gov.bcca/bcstats/96179\\_01.htm](http://www.qp.gov.bcca/bcstats/96179_01.htm)

<sup>178</sup> The B. C. Forest Practices Code Act: [http:// www.qp.gov.bcca/bcstats/96159\\_00.htm](http://www.qp.gov.bcca/bcstats/96159_00.htm)

<sup>179</sup> The aforementioned acts which pertain to water are referenced with their summaries in Appendix C.

<sup>180</sup> “Stream Protection Under the Code: The Destruction Continues”, February 1997, p. IV.

to the state of water in Canada: two with reference to wastewater discharge, and one which pertained to drinking water. In “The National Sewage Report Card (Number Two) Rating the Treatment Methods and Discharges of 21 Canadian Cities”, August 1999, SLDF set out to follow up from their first report (published in 1994). SLDF continue in their efforts to document the efficacy of the treatment of municipal wastewater systems and they do so in terms of monitoring the qualitative and quantitative measurements which may be considered pertinent to the discharge of sewage, with particular reference to results as they are evaluated from specific parameters.<sup>181</sup> The results are ultimately designed to measure the impact on water quality, upon the local environment, by the treatment process as it is found in each Canadian city.<sup>182</sup> The results are, once again, astounding.

**Table 4**

“The National Sewage Report Card (Number Two) Rating the Treatment Methods and Discharges of 21 Canadian Cities”, August 1999, where on page 19 is found “Excremental’ Process At A Glance” which grades and provides details the 21 cities with reference to sewage treatment - beginning in the west with Victoria heading east and ending in Canada’s north with Dawson as follows:

|               | 1994  |       | 1999  |   |
|---------------|-------|-------|-------|---|
|               | Grade | +/-   | Grade | Comments  |
| Victoria      | F     | -     | F-    | No change (preliminary screening, no treatment)                 |
| Vancouver     | D-    | +     | C-    | Two plants upgraded from primary to secondary treatment         |
| Edmonton      | B-    | +     | B+    | 30% upgrade from primary to tertiary, switch to UV disinfection |
| Calgary       | A-    | +     | A     | 100% UV disinfection added to 100% tertiary treatment           |
| Regina        | C+    | +     | B     | Switch from chlorine to UV disinfection                         |
| Saskatoon     | D     | +     | C+    | Upgrade from primary to secondary treatment                     |
| Brandon       | C     | -     | D     | No discernible improvement despite \$\$ spent                   |
| Winnipeg      | C-    | - (?) | C     | Switching from chlorine to UV disinfection                      |
| Hamilton      | C+    | -     | C-    | No discernible improvement in quality of treatment              |
| Toronto       | B-    | +/-   | C/B*  | No discernible progress/good plans formalised                   |
| Ottawa        | B     | -     | C     | No discernible improvement in treatment                         |
| Montreal      | F/C   | -     | F+    | 100 % of population now connected, no progress on treatment     |
| Quebec City   | C     |       | C     | Combined sewer overflow events reduced                          |
| Saint John    | D-    | -     | E     | No discernible improvement in treatment                         |
| Fredricton    | C     | +     | B     | Switching from chlorine to UV disinfection                      |
| Charlottetown | D-    | -     | E     | No discernible improvement in treatment                         |

<sup>181</sup> Criteria by which cities were evaluated with reference to sewage included: 1) Population, 2) Percentage of population served by sewage treatment plant, 3) Volume generated, 4) Treatment, 5) Receiving Water, 6) Permits, 7) Combined sewer %, 8) Overflows Annually, 9) Toxicity testing, 10) sludge disposal, 11) Sewage-related Charges, 12) Additional Facts, 13) Changes since 1994.

<sup>182</sup> “The National Sewage Report Card (Number Two) Rating the Treatment Methods and Discharges of 21 Canadian Cities”, August 1999, where on page 19 is found “Excremental’ Process At A Glance” which grades and provides details the 21 cities with reference to sewage treatment - beginning in the west with Victoria heading east and ending in Canada’s north with Dawson. This table is reproduced as Table 4 in the text.

|             |     |     |       |   |
|-------------|-----|-----|-------|---|
| Halifax     | F   | +   | E-/C* | No discernible progress/good plans formalised       |
| St. John's  | F   | -   | F-    | No change (no treatment)                            |
| Yellowknife | B-  | +   | B+    | 30% reduction in volume                             |
| Whitehorse  | D   | +   | B-    | From 2% secondary treatment in 1994 to 100% in 1999 |
| Dawson      | N/A | N/A | F-    | No change (preliminary screening, no treatment)     |

In a subsequent publication to the two "sewage" reports, in the document entitled: *Water Proof Canada's Drinking Water Report Card*, written by Christensen & Parfitt, the SLDF provide a comprehensive evaluation of the present status in each of the provinces and territories of Canadian drinking water by evaluating the various water policies and practices<sup>183</sup> with particular regard for the social and ecological implications.<sup>184</sup>

**Table 5**  
**Drinking Water Report Card**

**Jurisdiction**

**Standards and Testing Requirements**

- 1) Alberta: **B** Disinfection is required for both groundwater and surface water. Chemically-assisted filtration or slow-sand filtration is required for surface water. The province regulates treatment techniques.
- 2) British Columbia: **D** Disinfection (chlorination or other approved disinfection) is required.
- 3) Manitoba: **C-** Chlorination is required.
- 4) Newfoundland: **D** There is no mandatory treatment requirement.
- 5) New Brunswick: **C-** There are no mandatory requirements for treatment, although treatment may be required through the approval for individual municipal water systems.
- 6) Northwest Territories: **C** Chlorination is required.
- 7) Nova Scotia: **B-** No treatment required.
- 8) Nanavut: **C** Groundwater must be chlorinated. Surface water must be chlorinated and subjected to chemically assisted filtration.
- 9) Ontario (pre-Walkerton **D**) (post-Walkerton **B**) Groundwater must be chlorinated. Surface water must be chlorinated and subjected to chemically assisted filtration.
- 10) Prince Edward Island: **F** No treatment required.
- 11) Quebec: **B** There are no specific treatment requirements, but water quality must meet specific parameters (there are currently 46 parameters and there is a proposal to increase that number to 77).
- 12) Saskatchewan: **C** Chlorination is required.
- 13) Yukon: **D-** No treatment required.

<sup>183</sup> In section III entitled "Four Safety Barriers" on pages 17 through 24 of *Water Proof Canada's Drinking Water Report Card* the following four processes for clean water are identified: 1) Protected Water Sources (pp. 18- 20),

2) Water Treatment (pp. 21 -22), 3) A Clean Distribution System (pp. 22 -23, 4) Comprehensive Testing (p. 23).

Also see: Footnote 184.

<sup>184</sup> The marks are as follows: Alberta: B; British Columbia: D; Manitoba: C-; New Brunswick: C-; Newfoundland: D; Northwest Territories: C; Nova Scotia: B-; Ontario (pre-Walkerton D) (post-Walkerton B); Prince Edward Island: F; Quebec: B; Saskatchewan: C; Yukon: D-. This table is reproduced as Table 5.

**Recommendations:**

\* *Disinfection should be required for all water supplies, and provinces and territories should explore using disinfection methods other than chlorine where applicable.*

\* *Filtration should be required for all surface water supplies and groundwater supplies subject to the influence of surface waters.*

[Source: Sierra Legal Defence Fund quoted Victoria Times Colonist, January 18, 2001, p. A7 (with grades added).]

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Written only months after the tragedy in Walkerton, the timeliness of *Water Proof Canada's Drinking Water Report Card* and the potential by which it may be used by social activists to leverage progressive action from provincial governments (in terms of the environment and social and economic policy) can not be overstated. SLDF has had a significant presence in the public policy debate on matters of Canadian water but it has been unable to exact meaningful change for public policy by way of legal challenges. However, the SLDF "report cards" have greatly increased the public's awareness for policies and practices which pertain to water. More than that, SLDF provides a series of recommendations<sup>185</sup> designed to greatly enhance Canadian water quality (see Table 6 locate on the following page).

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<sup>185</sup> The seventeen recommendations made by SLDF are contained within Table 6 as found in the text.

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**Table 6**

Recommendations (with page #'s) from *Water Proof Canada's Drinking Water Report Card*:

- 1) Testing for all parameters in the *Guidelines for Canadian Drinking Water Quality* should be part of the approval process (26).
  - 2) All jurisdictions should have mandatory protection for watersheds and wellfields that supply drinking water. This protection should include a mandatory designation of the land areas that influence water quality as well as an assessment of all existing and potential risks to drinking water quality. Further, watershed or wellfield representatives should have authority to fully participate in government decisions about land-use activities that may affect the watershed (26).
  - 3) Provinces and territories should require testing, at appropriate frequencies, for all contaminants listed in the *Guidelines for Canadian Drinking Water Quality* (28).
  - 4) Exemptions from testing for certain contaminants should be granted only where there is a history of clean tests and there are no ongoing human activities which could affect drinking water quality (28).
  - 5) Provinces should require that all water testing is performed at accredited labs, or when testing is performed by the water supplier, by accredited personnel (29).
  - 6) Disinfection should be required for all water supplies, and provinces and territories should explore disinfection methods other than chlorine where applicable (30).
  - 7) Filtration should be required for surface water supplies and groundwater supplies subject to the influence of surface waters (30).
  - 8) Provinces and territories should enact binding standards for the design, construction and operation of drinking water treatment facilities and distribution systems (31).
  - 9) The federal government should enact binding standards or approval processes for materials used in drinking water treatment and distribution (31).
  - 10) The federal government should evaluate and approve drinking water testing and treatment methods (31).
  - 11) Province and territories should require that drinking water treatment and distribution facilities are operated by adequately trained and certified personnel (32).
  - 12) Province and territories should require that water suppliers report test results, missed sampling and equipment failures to provincial or territorial agencies (34).
  - 13) Province and territories should require that water suppliers make system approvals and testing results readily available to the public, and that suppliers prepare right-to-know reports (34).
  - 14) Province and territories should develop programs for random sampling and inspection, with clear follow-up actions required in cases of non-compliance (34).
  - 15) Province and territories should require the preparation of plans to deal with water quality emergencies and should require water suppliers to keep back-up treatment parts on hand where appropriate (34).
  - 16) The federal government should enact binding drinking water quality standards (35).
  - 17) The federal government should increase federal funding for the construction and renewal of water treatment and delivery infrastructure, and make the funding contingent on meeting water protection requirements (35).
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## Chapter 5: A Personal Academic Study With An Activist Orientation:

### The Value of Personal Experience Within The Journey of Discourse.

The value of personal experience<sup>186</sup> as the genesis for understandings designed to foster just, sustainable changes within society should not be underestimated. Therefore, in that spirit, I share my own experience in terms of awareness as it developed with reference to the Sun Belt NAFTA challenge: an understanding of the magnitude of the case, came at the conclusion of a three part lecture series given by John Bellamy Foster which, in part, endeavored to claim Karl Marx as an early environmentalist. After listening to sentiments such as: “Live your politics” and “every revolution is impossible until it happens” or a paraphrase of Allan Greenspan (chairman of the Federal Reserve) which expressed growing fears of “cascading bankruptcies”, I left the classroom the afternoon of October 22, 1999, and turned on the radio to be promptly informed of the chapter 11 challenge under the NAFTA for \$10.5 billion (US) with reference to water. The reader should keep in mind this is after attending the “Water Watch Summit” in September and nearly a year after the case was originally submitted before the NAFTA tribunal. Thus, in my understanding the old adage - set in the awkward language of politically correct discourse - remains true: that ‘(s)he who has the gold makes the rules.’ And is not knowledge a form of power which is clearly evident in the dispute resolution tribunal process which has the power to with-hold knowledge from both the academic and activist reach of critical analysis. International trade negotiations are not conducted in public and the chapter 11 cases that may result from such agreements are decided in secret, oftentimes without a public record, as has been the reality of the Sun Belt case; this control over the knowledge with particular reference to international trade and private banking practices in the Sun Belt case is a product of the cooperative collective power of a corporation coupled with a bank.

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<sup>186</sup> For contemporary academic contributions on the merits of personal experience from within the scholarship of feminism, see: “Feminist Method” and Feminist Pedagogy” in the “glossary” [131] and [131] for theoretical contributions taken from Himani Bannerji and Anne Louise Brooks, respectively.

Canadians need to fully understand the ramifications of such policy, particularly with reference to the sale of water set within the context of contemporary banking practices under existing and future trade regimes, before they consent to concede their national aquatic sovereignty into the hands of trade lawyers, businessmen and international bankers. Prime Minister Chretien has recently mused, in caucus, about a possible public debate to consider the potential merits of the sale of bulk water<sup>187</sup> but he has not formally extended the possibility of such a dialogue to the public. Academics have the power, position and respect in society to voice concerns and therefore must not be afraid to expose the truth about the intrinsic nature and revolutionary potential of water as are found within contemporary Canadian capitalism. Knowledge of water finds its most pure expression when freely shared not when it is constructed as a commodity for sale.

With the collective action that is possible around issues of water, demonstrated with participation of divergent groups represented at the "Water Watch Summit" in Ottawa in September, 1999, the future in terms of meaningful change with reference to water and social justice in Canada is not only possible, it can and will become a reality. Consider the level of participation of members of civil society who participated in the "Water Watch Summit" relative to the total population of Canada. Membership in those organizations who were represented at the "Summit" (including: CUPE, CLC, the Council of Canadians and many environmental organizations) tallies well in excess

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<sup>187</sup> "Chretien also reportedly hinted that, despite long-standing federal opposition to bulk water exports, the issue could be opened for public discussion. That part of his musing sparked a furor Thursday, with the New Democrat House leader Bill Blaikie contending the prime minister has a hidden agenda. 'It sounds to me like the liberals are trying to orchestrate a scenario, over the next year or so, in which they would come to the conclusion that it's just fine to export water in bulk to the United States after all,' said Blaikie.

Environment Minister David Anderson said the government still believes water 'should not be treated as a matter of trade.' He recalled the Liberals fought to ensure water resources would be excluded from the North American Free Trade Agreement in 1994. But Anderson admitted there is talk of forming a special parliamentary committee that could examine the matter as part of a broader look at water issues. 'A decision will be made in due course, and we'll see whether such a committee is struck,' he said.

Caucus sources said Chretien did not endorse the creation of such a committee, but he did suggest a free-wheeling debate might be a good thing." Brown, J., "Bush erecting protectionist walls, Chretien tells assembled Liberals," *Victoria Times Colonist*, April 6, 2001, p. A6.

of ten percent (10%) of the population in Canada. Consequently, a high level of “potential”<sup>188</sup> support already exists, in place, around concerns and considerations of water and the prospects for organic growth are unprecedented in Canada. Water is fundamental to all forms of life. Money is not and it is time that such principles and practices are established within current political thinking and codified in the law. Questions which surround principles and practices of water management may teach society what is truly of value and dissipate the current fascination of government for inequitable banking practices and trade agreements; the Sun Belt case is a logical place to further such an academic study with an activist orientation. The actual monetary settlement inherent in the Sun Belt case of the NAFTA is unknown by the Canadian public. Canadians do not know the true costs of the Sun Belt case.

Nevertheless, the Sun Belt case litigated under Chapter 11 of the NAFTA provides substantive evidence of the dangers to national sovereignty that are incurred within international trade agreements particularly when the adversary of the state, in this case Sun Belt Water Inc., has the support of an international bank (as it does with The Bank of America). My analysis of the case has been offered as a reference pattern for academics and thus in the final analysis has been designed to expose the inequities presently involved within doctrines of classical economics (see: Figure 2 on page 39 for specific details interpolated from documents in the Sun Belt case). In the greater scheme of government budgeting the amount of dollars involved - somewhere between \$100 million Canadian and \$150 million U.S. - merely represent a drop in the bucket;<sup>189</sup> yet,

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<sup>188</sup> The word “potential” is used here to denote an awareness of the argument “that those 10% have contradicting interests such as membership in pension funds which depend on globalization for profits.” This argument, using the logic of economic allocation, that labor organizations and environment social activists are somehow so dependent on capital and the “market” so as to compromise their interests of sustainable development does not really hold water.

<sup>189</sup> “Ottawa- The federal government paid off a record \$17.1 billion of debt last year, which Finance Minister Paul Martin said will help it deal with any fallout from the terrorist attacks on the U.S.... The government still owed a staggering \$547.4 billion, not including \$237.8 billion owed by the provinces, at March 31 end of the 2000-01 fiscal year.” Southam Newspapers, “Government makes record debt payment”,

an interim settlement for millions of dollars would conclusively illustrate the decisive influence that private financial institutions have on government policy; for this payment of money would be used to service the obligations under chapter 11 of the NAFTA, interest payments and nothing else; a recognition that any future money that might be saved with interest by using the Bank of Canada for government financing would benefit academics and activists alike and certainly must be considered a welcome addition of knowledge to the sectors of civil society in their struggles for social justice. Concurrently, it should be noted that with reference to members of government it would appear that progress is being made; when seen from the perspective social activists it is significant that after the Summit of the Free Trade Area of the Americas, held in Quebec City in April of 2001, an official position of the Canadian Federal Government in terms of the relative value of protesters was as follows: "Environmental movement offers essential challenge to capitalism, minister says".<sup>190</sup> The task of the future for academic activists is to question whether the rhetoric of the government is matched by actions which facilitate sustainable development for Canada within the evolving contemporary global economy.<sup>191</sup> Perhaps we can begin by determining what sustainable development might mean in Canada with reference to water, international trade and private banking practices. Sustainable development certainly should not entail surreptitious payments that are made to service the international obligations made by way of secret deals which further the interests of corporations; this is not even economically sustainable.

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*Victoria Times Colonist*, September 19, 2001, p. C1.

<sup>190</sup> Reported in the header under the title of the article found in *The Globe and Mail*.

Valpy, M., "Pettigrew sees value of protesters", *The Globe and Mail*, August 13, 2001, p. A5.

<sup>191</sup> "OTTAWA\* The federal government is studying a bill drafted by Jerry Grafstein, a Liberal Senator, that would make Ottawa responsible for regulating the safety of drinking water under the Food and Drugs Act.

David Anderson, the Minister of the Environment, confirmed his department began reviewing the proposal after Mr. Grafstein launched Senate debate over the bill early last month and began lobbying for support in the Liberal caucus." Naumetz, T., "Ottawa Asked To Regulate Drinking Water Safety 'National Emergency,'" *National Post*, April 9, 2001, p. A4.

## **Water As A Medium By Which To Create A Process Of Sustainable Development**

What would you do if you wanted a clean drink of water? Would you take a polluted source, then add still more chemicals and perform expensive filtration to make it drinkable? Or would you start with water that was already clean and healthy?

The answer is obvious, yet the ecology of source water ecosystems has been largely ignored says UVic biologist Dr. Asit Mazumder, "because government and water utilities tend to concentrate on treatment and distribution."

Mazumder is an expert in the field of aquatic ecology. Two years ago, he was awarded the Natural Sciences and Engineering Research Council (NSERC) Industrial Research Chair in the Environmental Management of Drinking Water.

The chair - unique in Canada - is the focal point of a major research program on the ecological processes that contribute to safe, clean and reliable sources of drinking water.

Two years into the project, "we are developing predictive models of water quality," Mazumder explains. "These models will take proposed land and water uses and make predictions about the resulting water quality. Once government and utilities have this tool," says Mazumder, "they can make science based decisions."

Milne, M., "The biology of clean water", *UVic Knowledge, Victoria Times Colonist*, October 29, 2001, p. A6.

Mazumder has been an outspoken critic of the science-based methods of government research with particular reference to drinking water. With reference to a 170 page report conducted by the former provincial government of British Columbia with the federal government, Mazumder made the following comments: "If I wanted to publish that report in a scientific journal, it would be rejected without a review."<sup>192</sup> Mazumder's website is: [web.uvic.ca/biology/people/mazumder.html](http://web.uvic.ca/biology/people/mazumder.html)

Social activists are extremely critical of the science-based decisions that are made using economic logic as the basis for measurement when determining government policy and, with specific reference to water as embodied within Bill C-6, the strategy of creating an economic inventory of water in Canada. This concern for economic quantification is succinctly summarized in the critique from the Council of Canadians which is found within Table 7 that follows.

<sup>192</sup> Brown, S., "UVic expert slams water report", *Saanich News*, August, 9, 2000, p. 4.

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**Table 7****The Standing Committee on Foreign Affairs and Trade Hearing on Bill C-6, An Act to Amend *The Boundary Waters Treaty Act*. Submission by: The Council of Canadians.****Summary**

Bill C-6 is part of a three-part strategy by the Canadian federal government to avoid bulk water exports. The Council of Canadians has several concerns about the efficacy of this bill. These concerns focus on the bill itself and its role as part of an overall strategy that seems to do more to allow water exports than to avoid them.

**Bill C-6**

- \* Bill C-6 creates a permit system to allow water exports.
- \* Bill C-6 encroaches on provincial jurisdiction.
- \* Bill C-6 would apply to boundary waters only. It would do nothing to prevent coastal water water exports and diversions originating from non-boundary waters, nor does any other part of the government strategy.
- \* Bill C-6 relies on the concept of "Drainage Basins" as a barrier to water diversions and exports, which is not an environmental concept but an engineering concept. This is not a sound environmental approach.
- \* Bill C-6 is domestic legislation and therefore does not alter or affect The Boundary Waters Treaty or any other international treaty.
- \* NAFTA, and soon the FTAA, supersede The Boundary Waters Treaty. Therefore Bill C-6 does not address the problem of Canada's international commitments concerning its water.

**May 15, 2001, Appearing On Behalf of the Council: Jamie Dunn, Water Campaigner.**

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Social activists, lead by Maude Barlow, are looking to the Government of Canada to create a policy for water which places value on water over and above that which can be quantified by the market. These efforts are reflected in the two pages which are found in Table 8.

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**Table 8****“A Water Policy for Canada”**

*Following the tragic E. coli outbreak in Walkerton, Ontario, and a second failed attempt by federal Environment Minister David Anderson to persuade provinces to sign a voluntary water accord, the Council called on Ottawa this spring to implement a comprehensive national water policy. The following is an outline for a national water policy released by the Council on June 7, 2000.*

The time has long passed when Canada’s precious water can be left to an inadequate patchwork of municipal and provincial regimes. People are dying. Our water supply, which is limited, is being polluted, depleted and diverted at an alarming rate. The Council of Canadians is calling on the federal government to implement a comprehensive, national water protection policy with the following components:

**1. Water Preservation**

We are all responsible for the destruction of our water systems and must collectively, through our democratic institutions, reclaim, conserve and preserve water. Our federal government, in concert with the provinces, must undertake immediate measures in the following areas:

- a) **Testing** of drinking water and federal legislation to establish national safe drinking water standards.
- b) **Conservation**, including targets for industry agriculture and cities. Groundwater extractions should not exceed recharge.
- c) **Preservation**, including setting aside large tracts of aquatic systems for protection. This includes the need to create watershed management and regulatory frameworks to protect watersheds.
- d) **Reclamation**, including the cleanup of polluted river systems and wetlands. The whole issue of clear-cutting must be addressed, as must the disposal of raw sewage into waterways.
- e) **Restoration** of the cuts made in the 1995 budget to many water-related programs, including the freshwater and acid rain research programs.
- f) Climate change commitments must be met with strict enforcement.
- g) Alternative sources of power like solar energy must be explored and alternatives found to mega-power projects like dams, diversions and hydro-electric facilities.
- g) Standards for industry and agribusiness. Every level of government must commit itself to creating and enforcing strict laws against industrial dumping, the use of pesticides and the discharge of toxins into waterways or landfills.
- h) Federal water policy must consider the other ‘water stakeholders,’ including aquatic species and future generations in any laws that affect water. No decisions about water use should ever be made without a full consideration of the impacts on the ecosystem.

## 2. Public Trust

Water is a public trust and a human right to be guarded by all levels of government, and should not be privatized, commodified or traded on the open market for profit. Therefore:

- a) The federal government must enact a federal ban on the commercial export or diversion of bulk water. It must give up on the flawed and unworkable provincial accord and pass legislation that it has the exclusive jurisdictional authority to undertake. This does not mean that Canada is opposed to 'water sharing' (as opposed to 'water trading') for countries in water crisis.
- b) NAFTA and WTO must be renegotiated to exempt water altogether. Water should be exempted from all existing and future bilateral and international trade and investment agreements. The negotiations on the FTAA currently underway provide an excellent opportunity for this negotiation.
- c) Municipal water and wastewater privatization must be banned. Funding must be initiated or restored to provide full protection to all municipal and rural water users. Adequate reporting of water testing to trained water experts must be established or restored.
- d) The federal government must work with the provinces and municipalities to undertake a full infrastructure repair program with tight timeframe commitments.
- e) Legislation must guarantee access for every Canadian to clean water; the legislation must spell out the ways in which governments commit to ensure this right. This should include a 'local sources first' policy.
- f) Industry water-access preference and subsidized water rates must end. Corporations and the wealthy must pay a more equitable share of taxes in order to help pay for the infrastructure repair and water reclamation.
- g) Legislation must be initiated to regulate bottled water. This should include requiring these companies to pay fees and rate structures for water-taking and for the use of roads. Additional legislation could give preferential access to local bottling companies that will guarantee local job creation.

## 3. Shared Stewardship

The best advocates for water are local communities and citizens. The public must participate as an equal partner to protect water. We need federal commitments on the following:

- a) public consultation, local water governance councils and provisions for governments to report back to communities;
- b) local watershed governance systems;
- c) the guarantee of First Nations' water rights and self-governance on issues of water management;
- d) 'local people and farmers first' legislation, whereby local communities have first rights to local water;
- e) provisions for independent, publicly funded research into all aspects of policy governing water.

[“A Water Policy for Canada” in *Canadian Perspectives, Who owns water? The global struggle for water as a human right* Summer 2000, Council of Canadians, p. 5. (emphasis in the original).]

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Throughout the discourse explicit references to Canadian nationalism, environmental integrity, First Nations' people,<sup>193</sup> and considerations of gender<sup>194</sup> have all been made with reference to water as a means of unifying diverse segments of the population in an effort to create cooperative solidarity by using the strategic resources available to each group of people. Implicit references<sup>195</sup> to corporate agents in Canada, the prominent role of knowledge and most importantly a definition of the role of "love" to strengthen the efforts of social activists in their quest for economic justice and environmental integrity round out the strategic resources which could help create greater solidarity within the community of academics and activists in Canada. With reference to love and power the following observation remains useful to promote considerations of social justice in today's modern world of nation-states in the context of international affairs:

It was Simone Weil, I understand, who defined power as a force which transforms a person into a thing. I would like to define love as a force that transforms a thing into a person. Love may thus appear to be something radically opposed to power, and love and power may be regarded as mutually exclusive, so that where there is power there cannot be any shadow of love, and where there is love no power can ever intrude upon it.

This is true to a certain extent, but the *real truth is that love is not opposed to power; love belongs to an order higher than power, and it is only power that imagines itself to be opposed to love*. In truth, love is all-enveloping and all for-giving; it is a universal solvent, an infinitely creative and resourceful agent. As power is always dualistic and therefore rigid, self-assertive, destructive, and annihilating, it turns against itself and destroys itself when it has nothing to conquer. This is in the nature of power, and is it not this that we are witnessing today particularly in our international affairs? [*emphasis added*].

(Suzuki [1958] (1980), "Love and Power" in *The Awakening of Zen*, Boulder: Prajna Press, p. 69).

<sup>193</sup> The cursory references to water and the First Nations' people that are found in the text do not do justice to this issue. The Water Watch Summit in Ottawa and the International Forum on Water in Vancouver were both opened and closed with prayers offered by respective First Nations' spiritual leaders. Note: Individuals interested in exporting water for profit have also recognized the privileged position of First Nations' people with reference to water. For example: "Some First Nations groups have been approached by brokers talking up multimillion-dollar schemes to export water from treaty lands, says a report [from the 1998 symposium] obtained under Access to Information law."

Bueckert, D., "Natives offered millions for water," *Victoria Times Colonist*, August 23, 2001, p. B3.

<sup>194</sup> Following in the philosophical tradition of Immanuel Kant, I believe that women will play a significant role in the natural evolution of peaceful sustainable development for human society [Kant, I., (1798) *Anthropology From A Practical Point of View*, ed. Rodnick, H., trans. Dowdell, V., Carbondale: Southern Illinois University Press (1978), pp. 219-220]. "'Culture' in the modern sense was first used by Immanuel Kant". Bloom, A., (1988), *The Closing of the American Mind*, Toronto: Simon and Schuster Inc., p. 185.

<sup>195</sup> For a list, complete with a brief summary, of "The Top Ten Corporate Agents of the Corporate Agenda in Canada, see: Appendix H.

In the words of prominent Indian Activist, Vandana Shiva, “the challenge that I believe is the most fundamental in the world today is the challenge of re-inventing the governments who love us.”<sup>196</sup> Love is the necessary strategic resource for efforts to constitute meaningful social change, which is presently absent in large measure from governments in Canada, and far too fragmented within a variety of causes embraced by sectors within civil society. A concerted action which originates from the protection of water would (in the long run) serve each of the individual causes equally well and not allow for considerations of: labor, social justice, ecological sustainability and environment integrity to be traded off against each other in an economic system of structured inequality; with the consequence that each consideration is viewed as a commodity of value, by way of accepted economic measurement, so that one component can be traded in terms of another. Water can not be created as money can.

It was suggested by Ricardo Petrella, Secretary General of the Global Water Contract, at the International Forum on Water For People and Nature, held In Vancouver on July 5 -8, 2001, that: “We invent a new system of finance that supports the rights to life.”<sup>197</sup> Paul Hellyer has long advocated that very principle to be advanced by political action in Canada.<sup>198</sup> A political coalition as envisioned by Paul

<sup>196</sup> The quote is from Vanda Shiva is cited in context within the “glossary” [139/40] in “State Sovereignty”.

<sup>197</sup> Recorded in the personal notes of the author taken from the forum in the opening remarks of July 6, 2001.

<sup>198</sup> “To put flesh on these dry bones would mean winding up the IMF, liquidating the World Bank or reducing it to an aid agency, reducing the leverage of the banking system and using the occasion to pay off all Third World and developing country debt, abrogating or renegotiating all of the myriad bilateral or regional trade treaties, including NAFTA, in order to eliminate the ‘national treatment’ clause, and winding up the WTO and subsequently replacing it with new Marquis of Queensberry trading rules that would guarantee ‘fair trade’ for all countries rather than ‘free trade’ which is tailor made for the benefit of giants.

Listing all of these items in one paragraph may diminish the immediate impact, but what is being suggested is an intellectual and political revolution comparable to the industrial revolution or the knowledge revolution. We have become so caught with the information age that we forget than knowledge can be used for good or evil, and that it can be quite useless if it isn’t applied with wisdom. Getting everyone hooked up to the Internet is a wonderful idea, but it won’t feed the hungry, clothe the naked, provide shelter for the homeless or make the sick well. These needs can only be met if the essentials for survival are given a priority comparable to the non-essentials which add lustre to life but don’t provide for life itself.” Hellyer, P., (2001), *Goodbye*

Hellyer of the Canada Action Party, constituted with the collective support of, for example: credible organizations such as the Canadian Center For Policy Alternatives, Citizens Concerned About Free Trade, the Council of Canadians, the Sierra Club, the Suzuki Foundation, and labor organizations would be considered a leading social activist organization which, if it engaged in coordinated academic study with an activist orientation to further objectives designed for unified movement towards a sustainable society founded on principles of justice, would be a dominant political force to be reckoned with.<sup>199</sup> My personal quest throughout this discourse which may be described as a discursive effort to meet “the challenge of re-inventing the governments who love us” and to do so by way of exposing the systemic features of inequality which are institutionalized in contemporary Canadian capitalism; this is done by discursively charting the course of water relative to social activists, from several perspectives, while keeping in mind that the dominant logic of a capitalist society like Canada is found in economic doctrines. The pervasive nature of economic thinking in contemporary society, brought by way of the corporate influence on government policy, when it is evaluated in terms of the consequences which face dissident sectors of civil society, absolutely requires that academic courage<sup>200</sup> be manifest in the present and on into the future as a most successful means of exposing the corporate agenda.<sup>201</sup> Economic logic

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Canada, Toronto: Chimo Media, p. 127.

<sup>199</sup> The precedent of Canadian social activists lead by the Council of Canadians, the Sierra Club, David Suzuki and many others who conducted extensive nation-wide hearings into the nature of the MAI and what citizens across Canada thought of the agreement that had been negotiated between national governments and corporate executives in secret has already been established. A technological connection by way of website with multiple external links to each of these organizations for the purpose of advancing political action is a logical evolution in opposition to the practices of corporate managed trade presently pursued by government on behalf of the state. For example: Canadian Center For Policy Alternatives: [www.policyalternatives.ca](http://www.policyalternatives.ca) Citizens Concerned About Free Trade: [www.davidorchard.com](http://www.davidorchard.com) Council of Canadians: [www.canadians.org](http://www.canadians.org) Sierra Legal Defence Fund: [www.sierralegal.org](http://www.sierralegal.org) “Suzuki Foundation” [www.davidsuzuki.org](http://www.davidsuzuki.org), etc. Again see Appendix K for a complete list of websites.

<sup>200</sup> The difficulties of speaking “truth to power”, to borrow the phrase from Foucault, is well conceptualized by: Ashley, R., and Walker, R.B.J., (1990), “Speaking the Language of Exile: Dissident Thought in International Studies”, *International Studies Quarterly*, pp. 199-268. For a history of dissident thought taken from Bowman, see: “Dissident Academics” in the “glossary” [127/28].

<sup>201</sup> For a synopsis of the free trade regimes of the FTAA and WTO taken from Mc Murtry, see Appendix I.

which forms the foundation of the corporate agenda is inherent in the proposed agreements of the FTAA which will inevitably be supported by the contemporary banking practices provided by the Inter-American Development Bank in the form of structural adjustment loans. Pervasive economic thinking, as the dominant mode by which decisions are made by governments on behalf of society, brings with it the collective certainty that dire social and ecological consequences will have to be paid if such thinking is sustained in the future; and, ultimately, water is not exempt from the unsustainable processes mandated by capitalism which are ostensibly pursued in the name of progress.<sup>202</sup>

The Inter-American Development Bank has agreed to finance, primarily by way of institutionalized loans through national governments, many of the costs involved in making the countries safe for democracy and thus their participation in the proposed free trade agreements. The reader should draw from personal experience with deficit financing (mortgage, car payments, etc) and recognize that for large payments made over extended periods of time the debtor (in the international context, the nation state) will often pay the credit agency double or more of the original debt - in interest charges (for the privilege of borrowing nevermind the actual ownership). In essence, the Inter-American Development Bank stands ready to generate enormous revenue from nation states by virtue of the privileged position of the bank in terms of lending money to countries foolish enough to enter into such agreements. Consequently it is clear that trade agreements, as they presently exist, are inevitably drafted following economic logic which is ultimately prescribed by banks and executed by national governments. Therefore, when it is evaluated by the standards of the state, the FTAA Summit held in

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<sup>202</sup> At the International Forum on Water For People And Nature contemporary examples of indigenous people from Bolivia and Ghana responding to issues involving their water supply were provided. The theme which is particularly relevant with reference to indigenous people has a long academic history. See: Bodley, J., *Victims of Progress*, Mountain View, California: Mayfield Publishing, 1990; Wright, R., *Stolen Continents*, Toronto: Penguin Books, 1993; Wolfe, E., *Europe and the people without history*, London: University of California Press, 1982.

Quebec must be considered a success because 34 heads of state from each of the member governments unanimously agreed to pursue, negotiate and complete a Free Trade Area of the Americas by January 1, 2005.<sup>203</sup> It is also apparent that rather than focus on the economic ramifications of the FTAA<sup>204</sup> and thus on the issues which ultimately determine national sovereignty, government leaders have, instead, touted the “democracy clause”<sup>205</sup> as was incorporated within the framework agreement of the FTAA as evidence that governments are now listening to sectors of civil society. Yet it would appear that the truly dissident voices of civil society, as were expressed at the Peoples’ Summit,<sup>206</sup> remain to be heard. For as it stands, from the perspective of civil society, the agreements forthcoming under the FTAA will include a version of Chapter 11 taken from the legal doctrine of the NAFTA.<sup>207</sup>

Therefore, in my view, it is safe to conclude that at the basis of all current trade regimes, the NAFTA, WTO and the future FTAA, lies the inequitable practice of international banking which is facilitated by economic means within present practices of

<sup>203</sup> If we accept, from the perspective of the state, that the Summit was successful it is incumbent on the investigator to determine the cost of the FTAA Summit. See “Costs of FTAA” in the “glossary” [124].

<sup>204</sup> For a list of websites including references to the FTAA review Appendix K.

<sup>205</sup> See: “Democracy Clause” in the “glossary” [127] for a critical perspective of the efforts to insert the requirement of democracy into the FTAA as a pre-condition for participation in the regional economic trade regime.

<sup>206</sup> “Southam newspapers QUEBEC- Participants in the Peoples’ Summit have marginalized themselves with their declaration opposing a proposed free-trade area of the Americas, International Trade Minister Pierre Pettigrew said yesterday.

‘The brutal conclusions of the Peoples’ Summit yesterday, I think, in my view, has isolated them, has marginalized them in a very serious way,’ Pettigrew told reporters...

Pettigrew’s comments came after the 2,300 delegates from 35 countries attending the people’s Summit rejected a proposal that would create a new free-trade area of the Americas, describing it as ‘neo-Liberal, racist and destructive of the environment.’

Participants in the Peoples’ Summit called for a continent-wide referendum on the current trade talks and said the FTAA proposal should be replaced by new paths of continental integration based on democracy, equality, solidarity and respect for human rights and the environment.” Thompson, E., “Pettigrew attacks ‘brutal conclusions’ of activists,” *Victoria Times Colonist*, April 22, 2001, p. A3.

<sup>207</sup> Maude Barlow: “We just got a hold of the leaked text because we couldn’t get it from [the government]. It shows us that you are keeping chapter 11; the FTAA is going with a full chapter 11 investment clause....” April 22, 2001, *Counterspin* on CBC television.

government financing. Collectively it is two specific practices, deficit financing and trade compensation, which contribute to the debt of nation state governments. It is due to the power of banks that national governments pursue their monetary interests over and above those intrinsic interests held by their own citizens within their territorial expression. Credit, and by extension the control of everything else, including water, originates from within the economic engines of the market, the banks. The legal rules that are written for the “free trade” agreements are designed to maintain and perpetuate structured forms of inequality which is only possible with the support of nation state governments. Thus government, in the service of business, creates a rainbow version of state sovereignty where sovereignty over water and air create an illusion which does not reflect a true picture of the actual state of affairs of the nation.

The official perspective that Canada could withstand a trade challenge to its national sovereignty with particular reference to water resources, that is currently held by the Government of Canada, is not shared by social activists and many prominent academics with expertise in issues pertaining to water. “Water experts who attended a federally sponsored symposium in 1998 [a full-day symposium convened by Thomas Gow and Associates, a public policy consulting firm, at the initiative of the departments of Environment and Foreign Affairs] stated grave doubts about Canada’s ability to assert sovereignty over its water resources, says the report, obtained under the Access to Information Act.”<sup>208</sup> Prime Minister Chretien and Federal Environment Minister Anderson have both said Canadian water was not for sale, yet there has been talk of a parliamentary committee to study the possibility of the sale of Canadian water, as witnessed in the following remarks:

Chretien appointed Toronto MP Dennis Mills to head an all-party committee. Mills had lobbied for the post by selling himself as a staunch opponent of water exports. But environmental and free-trade critics produced a 1991 flyer Mills sent to his constituents talking about the possibility that Canada could be a supplier of water in the future. After Mills’

<sup>208</sup> Bueckert, D., “Experts warn Canada could be forced to export water,” *Victoria Times Colonist*, August 22, 2001, p. B3.

apparent flip-flop was made public, talk of the parliamentary committee was put to rest.<sup>209</sup>

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<sup>209</sup> Anthony, L., Ross, J., “World water crisis looms as Canada debates sales,” *Victoria Times Colonist*, August 13, 2001, p. A2.

The underlying rationale for the decision not to proceed with the parliamentary committee is summarized by Mitchell, reporting for *The Globe and Mail*, as follows: “Were the free-trade body to focus on such a controversial topic as the sharing of food and water, it [trade policy] would likely come under even more intense scrutiny.”<sup>210</sup> The fact is that opposition to trade policy has already proven to have been a decisive factor in the decision-making processes of local levels of government<sup>211</sup> but it is also not a topic which has received widespread public attention.

Throughout my academic investigation, which has been guided with an activist orientation into the policies and practices with reference to water, I have employed an unorthodox mixture of information gathering techniques which has included making videotapes for such events as the opening night of speeches of the International Forum on Water For People and Nature, namely the featured speeches of Judy Darcy, Maude Barlow and Vandana Shiva.<sup>212</sup> Throughout my discursive analysis of water policies and practices in Canada, I have endeavored to focus on anecdotal representations of events, oftentimes with activists at the heart, as such events have transpired and been reported on rather than fully develop academic theoretical explanations and methodological frameworks (e.g. within the traditions of political economy). Consequently, I have,

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<sup>210</sup> Mitchell, A., “Canadian water on tap for future trade talks,” *The Globe and Mail*, August 13, 2001, p. A4.

<sup>211</sup> “Doug MacKay-Dunn, a North Vancouver district councillor who sits on the GVRD water committee, said scrapping the privatization plan was the right move - no matter how small the risks are.

‘Under no circumstances should we risk something as precious as water,’ he said. ‘It’s not worth it.’

Murray Dobbin, head of the Vancouver chapter of the Council of Canadians and a critic of international trade agreements, said the GVRD’s decision is noteworthy because it marks one of the first times that trade agreements - usually seen as a benefit to corporations - have actually hindered the privatization of a public service.

‘Free trade was supposed to make easier to privatize public services,’ Dobbin said. But in this case it was the threat of free trade that made them back off.” Skelton, C., “Trade pact deters privatization plan”, *Vancouver Sun*, July 7, 2001, P. A1.

<sup>212</sup> Again the proceedings of the forum may be reviewed at: <http://vancouver.indymedia.org/> Note: It was announced at the International Forum that Dr. Shiva has recently completed a forthcoming book to be entitled: “Water Wars” (which I have yet to review). However, this incomplete reference is included to further future analysis.

instead, advanced a “rainbow” discourse on the systemic nature of inequality as demonstrated with policies and practices which pertain to water and air. In my opinion, the Sun Belt case for water in Canada clearly and practically demonstrates the political and economic vulnerability of the Canadian Government to pressures of international trade and the coercive forces in the nature of private forms of government finance which, in turn, demonstrates the destructive “systemic nature”<sup>213</sup> inherent in both the processes as well as the institutions of globalization. Academic activists, if they choose to review public documentation filed in open court, can learn many things from the Sun Belt case which has been the major focus of this thesis. My “rainbow” model of structured discourse provides a discursive explanation of state sovereignty in Canada, and thus embodies an academic activist orientation which values practical change over theoretical development or an evaluation of doctrinal integrity. To avoid the modern debates associated with marxist labels and discursive terminology<sup>214</sup> I have employed the “rainbow” metaphor to develop a discourse which begins to expose the policies and practices of inequality as they presently exist in Canada, in essence, using the collective interests which pertain to water as a “strategic resource”.<sup>215</sup>

## **Strategic Resources Associated With Water**

### **The Walkerton Tragedy**

So great was the confusion in the Mike Harris government last Wednesday that mere minutes before the Premier was to announce that he had finally decided to launch a public inquiry into the tainted-water deaths in Walkerton, he gave the job to someone else.

That morning Mr. Harris admitted to his cabinet that he had made a mistake by stonewalling demand

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<sup>213</sup> I have hesitated to research allegations made by Sun Belt against the various individuals referred to in the affidavit of February 13, 2001, simply because I am not looking to apportion responsibility to individuals for any compensation which may be forthcoming in the Sun Belt case. See: “systemic nature” for a quote from Parenti with reference to the influences of money on the system found in the “glossary” [141].

<sup>214</sup> I am much less concerned with an analysis of how information is communicated, hence the construction of models within the discipline of linguistics, than I am with providing relevant details on the subject of water in Canada.

<sup>215</sup> I am indebted to my supervisor, Dr. T. Rennie Warburton, for the theoretical concept of “strategic resource”. The thesis is arguably an effort to use water as a strategic resource as a means of coalition-building in efforts to develop a just, sustainable society with reverence for the environment.

for a public inquiry into how at least seven people and possibly as many as 11 died from water infected with a strain of E. coli bacteria in the southwest Ontario town. Everyone assumed the Premier would announce the decision in the House.

Instead, an aide hurriedly informed Jim Flaherty that he would have to break the news. A few minutes later, reading from a hastily improvised statement, the Attorney-General informed the legislature of the inquiry.

That inquiry may buy the Conservative government a short-term respite from questions and accusations surrounding its role in the Walkerton tragedy. But the long term price could be high.

If previous academic research and off-the-record interviews with senior officials are any indication, the inquiry will hear troubling evidence of haste and mismanagement in the Tories' handling of environmental policies over the past five years.

Decisions taken at Queen's Park may have helped poison Walkerton's water...

[Ibbitson, J., "Deaths cast Tories into chaos" in *The Walkerton Tragedy The Globe and Mail* June 3, 2000, p. A3].

The water supply in Walkerton Ontario has recently provided concrete evidence to document the concerns and considerations which have been voiced for many years by social activists, environmentalists and enlightened academics in terms of the compromising relationship which presently exists between business and government.<sup>216</sup> Circumstances around water in Walkerton have raised the public consciousness of Canadians with reference to issues surrounding the water supply in Canada. With at least seven deaths and the illnesses of thousands of inhabitants from the small Ontario town came the national awareness that contrary to a "doctrine of legitimate expectations"<sup>217</sup> all was not well with water (and government). A commission to determine how the water in Walkerton was allowed to become lethal (set up as a result of public pressure) was constituted to investigate issues of relevance to the water supply so that senior government officials were called to testify.<sup>218</sup> The

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<sup>216</sup> See: "Activist Forecast" and "Academic Forecast" in the "glossary" [119] and [119] for evidence which describes the precarious nature (social and environmental dangers facing citizens) when business and governments make decisions on the basis of economic rationale and this process is not actively and effectively challenged.

<sup>217</sup> I have argued that clean water is definitely a legitimate expectation for citizens of Canada. See: "Doctrine of Legitimate Expectations" for a quote from Ursula Franklin in the "glossary" [128] for evidence which sets out what may be reasonably expected in the relationship which is mutually constituted between citizens and government.

<sup>218</sup> On June 29, 2001 Premiere Mike Harris was called to testify before the commission investigating water in

tragic situation of water in Walkerton has forced Canadians to search for answers from a variety of sources in order to understand and thus endeavor to call into account the actions taken by their governments with reference to current questions which pertain directly to water in Canada.<sup>219</sup> The Walkerton tragedy advanced the sales of bottled water in Canada, but the inquiry has yet to report. Events in Walkerton have already greatly increased public awareness with reference to water policy and practices and thus as a means of enhancing public consciousness the tragic event has proven invaluable.

In Canada, we must become increasingly aware of the structural considerations which surround water and thus our ability to speak openly and honestly on such matters, including the ability to speak critically against the institutions of the state in opposition to a practice which has been labelled the “Criminalization of Dissent”.<sup>220</sup> A working definition of dissent complete with a practical overview is offered as an applicable model for a politics which, if implemented, would ensure corporate accountability. A call for solidarity coupled with a decisive action plan are offered (respectively) as follows:

*The Criminalization of Dissent*

(1) We of the Santa Cruz I.W.W. hold that recent attacks on the poor, homeless and activist street communities are not merely the result of a local aberration. These attacks are part of a national effort to manage the radicalization and social protest of an increasing number of

Walkerton. The testimony was broadcast on CBC Newsworld. It was also reported that the commission was expected to make public its report at the end of the year. This report will be an invaluable resource for the future.

<sup>219</sup> Perkel, C., “Walkerton water tragedy cost at least \$64.5 million”, *Victoria Times Colonist*, November 26, 2001, p. A5.

The Walkerton tragedy is not an isolated event. In May 2001 an additional three deaths were linked to water in North Battleford Saskatchewan. Zakreski, D., “3 Deaths Linked To Tainted Water”, *National Post*, May, 4, 2001.

<sup>220</sup> Connie Fogal of the Defence of Canadian Liberty Committee quotes Rocco Galati who says: “by reference to economic and financial security and when you go over to the Official Secrets Act you see that anybody who voices an opinion converse to the government of the day is a terrorist under this (Bill C 36).” The effect of Bill C 36 (in conjunction with Bill C 35 and Bill C 142) presently before parliament serves to criminalize dissent and conceptualize such actions of legitimate protest as acts of terrorism.

people experiencing poverty...

In the I.W.W. we understand that the employed and the unemployed are both part of the same labor pool subject to the tides of the capitalist economy and other webs of exploitation regardless of whether we currently have a job. Solidarity between employed and unemployed workers means the difference between and employed class with teeth, and an expendable work force easily replaced by unorganized labor. This sort of solidarity can also mean the difference between ineffective short-term resistance and more sustainable revolutionary movement. We will only be effective against those in power when we have built on our solidarity between those that the ruling elite depends on, as well as those it is willing to discard.

[Industrial Workers of the World Santa Cruz General Membership Branch 1994]

(2) The democracy clause may say that we don't want military juntas in the OAS or in the hemispheric summit but what it doesn't say is that the trade deals create governments that have less and less power and corporations that have more and more... We have a democracy that says we can pass laws but when a transnational [corporation] sues us we are going to dump them. That's what's wrong with these agreements is that they create a veneer of democracy but a reality of corporate control...

I am in favor of an international program of rules and regulations under the United Nations that mandates minimum standards for environment, health and safety, child labor and human rights that all transnational [corporations] must abide by or we execute them. I want corporations to face capital punishment if they will not protect the environment and human rights... [To execute them] We pull their corporate charter.

... it is a societally endowed privilege to operate as an unnatural person (a corporate fiction) and we have created these entities. And we act as if they have real lives and real rights: they don't; we do! And that corporate behavior is killing the planet... We need to talk about real issues.

[Elizabeth May, Sierra Club of Canada, April 22, 2001, *Counterspin* on CBC television]

Maintaining a meaningful public dialogue and in so doing challenging the existing corporate practices by ultimately calling on governments to account for the health and human safety of their citizens (rather than allow governments to escape responsibility with the excuse that they merely seeking to improve the bottom line of government ledgers by economic measures) is an academic legacy which can somewhat mitigate against the tragic events of Walkerton Ontario. In reality, the tragic events of Walkerton and North Battleford provide a solid academic activist foundation by which

to challenge the orthodox methods in which business is conducted relative to the environment. It is clear that current business practices that have been endorsed by governments are proving to be unsustainable.

### **Limitations of the Discourse**

The most obvious limitation inherent in my discourse is that I can not definitively answer the question of alleged compensation to be awarded under the chapter 11 NAFTA challenge brought by Sun Belt Water Inc., against the Federal Government of Canada. Undoubtedly, there are individuals within the Federal Government who have answers and there may well be those in private practice, such as Barry Appleton, who have access to the details of the resolution of the case, but I do not. The best that I can do is to circulate the information submitted in domestic court on behalf of Sun Belt that I was able to retrieve from the Metalclad case heard in Vancouver.<sup>221</sup> Consequently, I have done so for the express purposes of facilitating academic review and furthering additional public commentary. However, as a product of the secretive practices as a guiding policy for international trade pursued by the Government, my analysis remains in the realm of informed speculation and would under almost any other circumstances be subject to the fate pronounced by Mazumder of documents from the Federal Government, namely: “If I wanted to publish [my] report in a scientific journal, it would be rejected without a review.” Instead, my analysis may prompt a review of the facts of the case if enough public support can be engendered to pressure the government to release the details in the case of Sun Belt Water Inc., versus the Government of Canada.

In addition to the serious limitation of being unable to offer an analysis of the final resolution of the Sun Belt case, the discourse does not offer specific analysis on issues of: (1) the symposium of experts held in 1998 for the purposes of debating the merits of exporting fresh water;<sup>222</sup> (2) from the perspective of British Columbia, an

<sup>221</sup> An additional academic limitation of the discourse is my personal inability to explain how and why the Metalclad case was heard in a domestic Canadian court in this particular circumstance. It is fortunate an affidavit was filed on behalf of the Sun Belt Water Inc., in the Metalclad case.

<sup>222</sup> “The participants are described as ‘10 interested individuals with a breath of information, expertise and perspectives on this important subject.’ The summary does not attribute views to specific individuals. The word ‘draft’ is scrawled in the margins, but no final version of the report was made available.” [Bueckert, D., “Experts warn Canada could be forced to export water,” *Victoria Times Colonist*, August 22, 2001, p. B3].

analysis of the “Drinking Water Protection Act” and how it fits within existing legislation;<sup>223</sup> (3) an in depth analysis of the forthcoming Commission report from Walkerton;<sup>224</sup> (4) an overview of efforts in the international arena, including evaluating recent statements made by President Bush on Canadian water at the G8 conference in Genoa Italy;<sup>225</sup> (5) efforts in the international arena around the protection and preservation of drinking water quality, such as the forthcoming World Water Forum scheduled for March 2003 in Kyoto;<sup>226</sup> and, (6) from a social activist perspective the fact the discourse is presented as text rather than in a website format with external links to the organizations referenced. Each of the discourses, inherent in the thesis as a whole,

<sup>223</sup> “Deputy provincial health officer Dr. Shaun Peck spent two years researching and writing the water quality report. Peck’s study, titled *Drinking Water Quality in British Columbia: The Public Health Perspective*, was started in 1999 when the B.C. auditor-general reported on inadequate protection of drinking water sources.” Simpson, S., “Water-related health problems are highest in B.C., says report”, *Victoria Times Colonist*, November 20, 2001, p. A2.

“The Liberal government has appointed a nine-person panel to review drinking water legislation passed by the NDP this year in the dying days of its mandate.

‘Current legislation was passed in haste by the pervious government,’ said Water, Land and Air Protection Minister Joyce Murray in a release on Tuesday.

‘This review is needed to guarantee we have strong and effective protection for our drinking-water resource.’

... The panel is to deliver a preliminary report by November 30 with final recommendations by January 15, 2002.

The review of the enabling legislation means B.C. will likely remain without provincial protection of watersheds and wells until at least next spring.

... Reporters asked the premier - in light of the experience last year in Walkerton, Ontario, where seven people died from tainted water supply - whether B.C.’s water is adequately protected.

Campbell said he believed it is. ‘I think the fact of the matter is that we are going to undertake a major, comprehensive review of drinking -water strategy. We have been calling for that for a decade. British Columbians can be safe and secure in the fact that we have excellent drinking-water and we will have a piece of legislation which will work for everybody.’” Curtis, M., “Government names panel to review NDP water law”, *Victoria Times Colonist*, September 26, 2001, p. A6.

<sup>224</sup> “[Ontario Court of Appeal Justice Dennis] O’Connor said he intends to finish his report and recommendations before the end of the year [2001] and will ‘encourage’ Ontario’s Conservative government to release it publicly as soon as possible after that. A senior cabinet minister has told The Canadian Press the public roll-out will likely be in April [2002].” Perkel, C., “Judge offers no answers at the end of Walkerton inquiry,” *Victoria Times Colonist*, August 28, 2001, p. A5.

<sup>225</sup> “It’s official. The United states wants Canadian water - George W. Bush said so this week. In response, David Anderson, Canada’s Environment Minister, said, in essence, that the President could have as much water as he wanted so long as it came in plastic bottles and a straw; as for bulk water exports, forget it. The exchange was followed by the usual barrage of media reports about water sovereignty, or lack thereof, water policy, water legislation, economics and politics. the end result was a torrent of half-truths that left the impression that the only person talking sense was Mr. Bush.” Reguly, E., “Porous water policy is no protection from U.S. thirst”, *The Globe And Mail*, July 21, 2001, p. B7.

<sup>226</sup> See: The document produced for “kick-off meeting” which is entitled: *Water, Source of Life, Pathway to Democracy and Peace: The Citizen’s House of Water, Its Parliament and Gardens of Governance Or Establishing a Process for Democratic Debate and Knowledge Sharing*, Kyoto, May 2001.

are properly thought of as components of a work in progress.

### **A Just Conclusion for Water and Social Activism in Canada**

The counterhegemonic practices of social activists that are facilitated by way of contemporary means of communication, including fax machines and the internet, are addressed by Peter Evans who concludes his analysis with the following reflections, written before events transpired in Seattle, which provides an accurate forecast of the possibilities of successful resistance on the part of sections of civil society as follows:

Is it possible that a ragtag set of activists who have managed to turn fax machines, Internet hook-ups, and some unlikely long-distance personal ties into a machinery for harassing transnational corporations and repressive local politicians might foreshadow a political process that could reconfigure the rules of the global political economy so as to foster equity, well-being, and dignity? It may be utopian to contemplate such a possibility, but it is certainly foolish not to take the elements of counter-hegemonic globalization that are already in place and push them as far as they can go. Evans, P., (1999), "Fighting Marginalization with Transnational Networks: Counterhegemonic Globalization," *Contemporary Sociology*, p. 241.

Reflecting on the "Battle of Seattle," with the benefit of hindsight, the actions of social activists are suggested to have been successful in derailing the process of agreement within the WTO (which is confirmed by official reports). A similar forecast with reference to issues surrounding water in Canada may be possible at this time if it can be developed further within the academic community. The state is becoming more successful at dealing with the tactics of activists, therefore, it is time that the scholars of the country made a meaningful contribution towards sustainable development and social justice in opposition to the present economic policies and practices as are being endorsed by the state in the service of corporate interests. Water in Canada provides an essential medium which is a fundamental requirement for human life and thus a natural place in which to concentrate efforts designed to facilitate considerations of sustainable development and social justice.

Politicians in Canada<sup>227</sup> continue to consider exchanging life-generating natural water (with a measured finite supply) for artificially constructed economic compensation which international financial institutions (can and do) create at will. Perhaps, the activists are right that water has no proper place within the dictates of political economy and, instead, the proper place of water is as part of the commons - exempt, as far as is possible, from the inequitable influences of international trade agreements and dictates of modern banking practices. Naturally, I think so, as water is essential to all forms of life... the question remains what does the reader think should be done with reference to water in Canada? I have tried to demonstrate with my "rainbow" discourse what the activists think - with reference to water in Canada - however, the questions remain to be answered by academics.<sup>228</sup> Water policies from

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<sup>227</sup> The new Premier of Newfoundland is considering revisiting the question of sales of bulk water exports proposed by the McCurdy Group to be taken from from Gisbourne Lake - with a provincial commission report on this issue expected in September 2001.

"What Mr. Grimes is proposing would sell out the interests of all Canadians [not to mention let the Federal Government off the hook for Sun Belt]; what he's proposing would set a precedent to allow the export of bulk water - and potentially open the door to successful challenges under international trade treaties. All Canadians should object in principle; but Newfoundlanders should be additionally wary because their Premier is fudging the project's potential benefits." Mittelstaedt, M., "Don't go with the flow", *Globe and Mail*, March 29, 2001, p. A11.

While it is now evident that Newfoundland is not likely to engage in the sale of local water this does not mean that other provinces have completely abandoned such an idea. "Newfoundland poised to back away from bulk water export", *Victoria Times Colonist*, October 18, 2001, p. A8; "Water exports could make Manitoba rich", *Victoria Times Colonist*, September 29, 2001, p. A6.

<sup>228</sup> Chomsky offers these observations on: the moral responsibility of the writer in an open society; the effects of wealth and privilege (observed in the intellectual community during the experience of Vietnam) coupled with a cause for optimism from within the general population in terms of independent thought; and a call to intellectual integrity as a means by which we can endeavor "to claim to be entering the civilised world" which are cited as follows:

*"The observation generalises. The moral culpability of those who ignore the crimes that matter by moral standards is greater to the extent that the society is free and open, so that they can speak more freely, and act more effectively to bring those crimes to an end. And it is greater for those who have a measure of privilege within the more free and open societies, those who have the resources, the training, the facilities and opportunities to speak and act effectively: the intellectuals, in short" (p. 65)(emphasis added).*

*"It is worth mentioning the effects of education and privilege. Among American intellectuals, even at the height of protest against the [Vietnam] war, the harshest criticism - with the usual marginal exceptions - was that the war was a 'mistake,' a case of good intentions that went awry because of ignorance, naivety, and failure to understand Vietnamese culture and history. In contrast, since the question has been asked in polls from the mid-1970s, about 70% of the general population has taken the position that the war was 'fundamentally wrong and immoral', not 'a mistake'. The figure is remarkable, not only because it is unusually high for an open question on a poll with many choices, but because those who expressed the view had very likely come to it on their own. They are unlikely to have seen or heard*

the past must be re-examined in the present and developed with concern for the future.<sup>229</sup> Any course of academic study into the presence (or absence) of water within political economy may lead towards the “Just Society” depending on the nature of the answers we seek and the questions we ask. I propose that we use the issue of water to fundamentally re-evaluate the socio-economic nature of modern political and institutional practices, particularly trade agreements which are coupled with international banking regimes, that privilege considerations of private profit over the public good; and, instead, by charting the course of water in Canada, that we embrace principles of justice, and develop sustainable methods, in essence, live in harmony within the natural world.<sup>230</sup> In my view we have clearly forgotten the indigenous wisdom of the past which resonates so well within the contemporary aspirational efforts of social activists. Therefore, in the final analysis as set in the context of water and social activism in Canada, it is worth reflecting on the words of Chief Seattle who

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*it in the media and journals of opinion. It is not the only case, [which] merits some thought” (p. 66 -67).*

“At this point we begin, barely begin, to approach the real questions of the intellectual and moral responsibility of the writer. And we discover that there is, after all, quite a bit to say, and many answers to give. The answers are not exactly flattering to ourselves and the milieu in which we live and work, but should be at the very core of our concerns and activities, in our schools, our journals, and our communities.

If that were to take place, we could claim to be entering the civilised world ” (p. 69)

Chomsky, N., (1997), “Writers and Intellectual Responsibility,” *Perspectives on Power Reflections on Human Nature and the Social Order*, Montreal: Black Rose Books, pp. 65- 69.

<sup>229</sup> “TORONTO - Disease outbreaks spread by drinking water are far more common than has ever been reported, says a new study commissioned by the Walkerton judicial inquiry...

‘It appears that the number of water-borne disease outbreaks and illnesses could be much greater than what is reported,’ the paper says. ‘The reporting of water-borne disease within Canada has been somewhat sporadic, not always specific to source and the information kept in diverse locations.’

The study also warns that current methods for testing water are inadequate to detect many harmful bugs.

The inquiry is investigating how a virulent strain of E. coli and other harmful bacteria seeped into Walkerton’s water system, sickening more than 2,000 people and killing seven.

The review also has been asked to recommend ways of preventing such tragedies in the future. To that end, it’s commissioned a series of background papers by academics.

The University of Ottawa study says that reporting water-borne illnesses and determining the source of them is ‘critical’ to developing programs to lessen the health risks of drinking water...

With such serious outbreaks, authorities should try to notify everyone affected, said the paper by the University of Guelph’s centre for Safe Food.”

Blackwell, T., “Drinking-water illnesses ‘greater than reported,’” *Victoria Times Colonist*, April 3, 2000, p. A5.

<sup>230</sup> Walker, R.B.J., (1988) *One World Many Worlds: Struggles For A Just World Peace*, Boulder: Lynne Rienner; Walker, R.B.J., (1994) ”Social Movements/World Politics” in *Millennium: Journal of International Studies* Vol. 23, No. 3 at pp. 669 -700.

made the following observation on sustainable development, nearly one hundred and fifty years ago, when he stated: “The earth does not belong to man, man belongs to the Earth. All things are connected like the blood that unites us all: man did not weave the web of life, he is merely a strand in it. Whatever he does to the web, he does to himself.” If the earth does not belong to humanity, then surely water cannot be said to belong to humanity and this fundamental recognition needs to be acknowledged by academics, activists, citizens, bureaucrats, so that it is ultimately acted on by politicians in Canada.

It is worth considering the words of Paul Hellyer, author of *Goodbye Canada*, as he introduces the purpose behind his political efforts in the Canada Action Party:

I would like readers to have a better understanding of why thoughtful people would risk so much to demonstrate against the World Trade Organization and the Free Trade Area of the Americas. I would like them to understand the words “free trade”, too, do not mean what they say.

“Free Trade” and “globalization” are really code words for “corporate rule” and “colonization”. And in Canada’s case, due to our unique geographical position vis-a-vis the United States, first colonization and then annexation. The world without borders will be like a zoo without cages. Only the most powerful of the species will survive. Canada will not be one of them.

This book is really to sound the alarm which could lead to the revolution of the intellect and then revolution of the ballot box, essential for survival. Time is short, so I will use as few words as possible in making the case even at the expense of omitting the occasional caveat which might be helpful in a longer treatise.

I will content myself with making the case for a continued important role for the nation state; against unrestricted global investment; against the substitution of a feudal system of elite rule for democracy; for a better distribution of income worldwide and a more just society everywhere; and why, in my opinion, Canada is worth saving. Then it can shed its current mediocrity and become, once again, a progressive and dynamic middle power playing its own, independent role on the world stage while proving that people of different race, language and religion can work together in harmony for the betterment of all.

Hellyer, P., (2001) *Goodbye Canada*, Toronto: Chimo Media, pp. ix -x.

To create government which puts concerns for “natural persons” above those of property (or corporate interests), and also (perhaps more importantly) links the issues

which surround water to the deeper structures found within contemporary capitalist society, I offer a starting point for practical possibilities in what may be conceptualized as a “Aquatic Discourse of Social Activism”. Therefore, in efforts to re-create systemic processes which promote just, sustainable development, civil society social activists, with whatever support may be garnered from local levels of government, must endeavor to:

- 1) supplement the current fragmented approach of social movements so that the movement advances by way of a shared collective vision - unified in the form of a single issue movement<sup>231</sup> - which is constructed around considerations of the social and ecological stewardship of water from a variety of perspectives (with particular reverence for ecological and social considerations above all else); thus the evolving movement must reject the doctrine of classical economics and instead collectively represent multiple social interests in a process designed to achieve meaningful changes within the economic structures of contemporary society;
- 2) challenge the process of structural adjustments and structural adjustments by stealth with academic and activist knowledge and thus see through the official economic perceptions advanced by the state as well as the corporate media;
- 3) support the position currently advanced by CUPE, to ensure that if government is to maintain the financial or other obligations for water quality and wastewater services it must also derive the economic benefits which flow from public ownership of water delivery and wastewater services;
- 4) ensure that water is exempt from present and future trade agreements so that such agreements, as they are designed in the future, foster sustainable community development along the model of the *Global Sustainable Development Resolution* (see Appendix J) rather than continue to allow the present corporate practices where the

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<sup>231</sup> In an essay entitled “Framing Political Opportunity” Gamson and Meyer writing about the “movement framing of opportunity” say the following: “A social movement is a sustained and self-conscious challenge to authorities or cultural codes by a field of actors (organizations and advocacy networks) some of whom employ extrainstitutional means of influence... Movements often have a range of actors pursuing numerous strategies in both institutional and extrainstitutional venues” Quoted from: McAdam et al, (1996), *Comparative Perspectives on Social Movements*, p. 283. Certainly, this academic description of successful social movement strategy may be applied to the issue of water in Canada.

costs of doing business are externalized onto the social and ecological environments with little or no corporate accountability;

5) see that governments use the mechanism of the Bank of Canada to fund (as much as possible) the legitimate social and ecological expenditures as they are forthcoming within present and future practices of government - within the provinces (up to 25%) and the national level (up to 33%) - rather than continuing to employ private banking practices in which debt is accumulate by way of the inequitable methods inherent in the laissez faire practices of government business (in the future, debt financing to private interests can not remain a principle priority of government as is consistently maintained in the present practices of government administration);

6) restore fractional reserve requirements for our private banks; this restores the constitutional obligation and right of our Parliament (not government) to manage Canada's money system and financial institutions;

7) restore some of the WW2 regulations for banks, and for money to flow in and out of Canada; this would include regulations to return our private banks to serving Canadian small business and citizens; it would discourage current emphasis by our banks to speculation-for-profit in foreign investment, in unwise major domestic lending; it would encourage foreign investors in Canada to be good corporate citizens;

8) ensure that governments institute corporate tax accountability so that corporations pay their fair share of taxes and to this end perhaps implement a tax on financial transactions as was suggested by Nobel Peace Prize winner James Tobin (in a form which is commonly known - in both activist and academic circles - as the "Tobin Tax" or in Canada as the "Halifax Initiative");<sup>232</sup>

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<sup>232</sup> "In 1992 in the United States, there were \$114 in stock trades that took place for every dollar raised to finance new corporate investments. That's a lot more trading than there is in investing in new corporate ventures. In 1992 the value of global exports was only 2 percent of all foreign exchange trading. That means that 98 percent of the foreign exchange trading going on in the world doesn't have anything to do with moving goods and services. It's not connected to the real economy."

Alex Michalos as reported in *Hansard Special Committee On The Multilateral Agreement on Investment in Issue 10* at p. 368. Also see: Michalos, A., (1997), *Good Taxes The Case for Taxing Foreign Currency exchange and other Financial Transactions*, Toronto: University of Toronto Press.

- 9) maintain that debt forgiveness (such as was advocated in the Jubilee 2000 campaign)<sup>233</sup> should be forthcoming from private international banks and not be used to create further indebtedness within nation state governments (debt is an artificial mechanism by which to exercise measures of social control and ecological irresponsibility and therefore must be recognized as such by governments);
- 10) provide support for sub-national governments<sup>234</sup> who share similar interests in social justice to those expressed by civil society social activists, rather than adhere to the patently unjust policies of economic liberalism;
- 11) provide support for a change in the current political structure from the existing first past the post system of parliamentary democracy to a mixed system which

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HALIFAX INITIATIVE: “US \$1.5 Trillion (\$1,500,000,000,000) of various currencies are traded everyday, most of which is pure financial speculation as traders bet on whether currency values and interest rates will rise or fall.” [Quoted from: “We Can Stop The ‘Hot Money’ Casino,” *Factsheet* Halifax Initiative p. 1.] <http://www.sieraclub.ca/national/halifax> This issue was addressed by Robin Round of the Halifax Initiative at the International Forum entitled “Water For people and Nature” held at the University of British Columbia. See: “Tobin Tax” in the “glossary” [141/42] for a summary of the progress made to date on this issue in Canada.

<sup>233</sup> Throughout my discourse I have stressed the need to reclaim the creation of the money supply for public purposes. In so doing I, perhaps, have not given enough credit to the efforts which presently exist which struggle to redress the inequalities inherent within the system of global finance. A cursory summary of such programs might include:

(1) “The 635,000 Canadians who signed the Jubilee debt cancellation petition were part of a group of 17 million people from around the world who called on the leaders of the G7 to cancel the debts of the world’ poorest nations. Canadians also demand an end to Structural Adjustment Programs (SAPs), the destructive austerity measures which have historically accompanied the G7 debt relief plans. 50,000 Jubilee activists gathered in Koln, Germany this past June to present the petition to the G7 leaders. The G7 issued a new plan for debt relief at Koln, and plans for its implementation were made at meetings of the World Bank and the International Monetary Fund (IMF) in September.” “Jubilee FactSheet #11” Toronto *The Canadian Ecumenical Initiative* See: [www.web.net/-jubilee](http://www.web.net/-jubilee)

(2) And: The “50 years is Enough Network”, “Center for Economic Justice”, “Global Exchange”, “Rainforest Action Network” “Essential Action”, “Center for Campus Organizing”, and “Student Alliance to Reform Corporation” met December 1, 1999 in Seattle under the heading “Shut down the WTO, Defund the IMF and boycott the World Bank.” See: [wb50years@igc.org](mailto:wb50years@igc.org) Or: World Bank Boycott campaign at [watkinsn@preamble.org](mailto:watkinsn@preamble.org) or <http://www.preamble.org/cej>.

(3) Some, including the COMER Association (Committee on Monetary and Economic Reform), argue that the systemic problem is more fundamental and must address how money is created and distributed. Others advocate a system of micro-credits outside the present system of economic governance. See: Global Resource Bank [www.GRB.NET](http://www.GRB.NET)

<sup>234</sup> The former NDP government in British Columbia tabled provincial legislation for water which may not survive the prospects of the change in government to the newly elected Liberals. “At 73 pages, with 105 sections, the Drinking Water Protection Act stipulates that anyone contaminating drinking water supplies would face a jail sentence and fines of up to \$200,000.” Curtis, M., “Drinking water act yet to be fleshed out”, *Victoria Times Colonist*, April 18, 2001, p. C3.

includes a form of proportional representation;<sup>235</sup>

12) provide educational support in an effort to recalibrate priorities so that social and environmental rights trump economic rights;

13) understand these and other relevant considerations of social justice in terms which transcend economic calculations with reference to values and ideals that are personally meaningful (both from the standpoint of the individual as well as from a collective perspective focused on creating secure sustainable environments).<sup>236</sup>

The one standard by which this thesis should be evaluated is as to whether it increases your awareness of government policies and practices with reference to air and water under the NAFTA and other such agreements and international organizations. If it inspires you to act in defence against the commodification of vital resources such as air and water then it will have truly been successful. The one central message in my thesis it is that with the accelerated rate of change in international developments there is a more urgent need than ever to develop policy understandings of the environmental

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<sup>235</sup> Joan Russow, past federal leader of the Green Party in Canada, is at present involved in a court case which seeks to effect a mixed form of proportional representation within current political structure of democracy in Canada. Her email address is: jrussow@coastnet.com

<sup>236</sup> The Common Front on the WTO employed this philosophy and sponsored a series of Teach-Ins across Canada (St. John's, Halifax, Toronto, Winnipeg, Regina and Vancouver) which were entitled: Take it Personally Teach-In on the World Trade Organizations (Confronting Globalization ... Demanding Democracy). I personally attended the Vancouver session on November 12 and 13, 1999. Many of the members of the Common Front participated in the actions of the "Water Watch Summit".

I participated with The Common Front on the WTO when they launched a caravan across Canada to raise awareness of the WTO: beginning with a information session at the University of Victoria on October 18, 2001, where the audience were given a sixteen page booklet (including front and back cover) entitled, "A Better World Is Possible" and, again when the event began at Mile 0 in Victoria which formally commenced at noon on October 19, 2001. The local media coverage include the following article which is reproduced, in its entirety, as follows:

*Caravan to raise WTO awareness*

Caribbean music and the Ragging Grannies helped launch a cross-Canada caravan at Mile 0 in Victoria. A motorhome is travelling to Ottawa to raise awareness on issues surrounding the World Trade Organization. At the same time, another motorhome left Signal Hill Nfld., with the same goal. The motorhomes will arrive in Ottawa Nov. 9, the same day WTO organizers are scheduled to meet in Qatar. The motorhome and its eight occupants will stop in 60 communities.

"Caravan to raise WTO awareness", *Victoria Times Colonist*, October 20, 2001, p. B2.

The Common Frontiers website is: [www.web.net/comfront](http://www.web.net/comfront)

and social impacts of international trade agreements, complete with the institutional frameworks within which they operate, as well as the methods by which they proceed. Rather than quantify the environment in the logic of economic theory, I have, instead, endeavored by way of a “Rainbow Theory”, in terms understood to pertain to state sovereignty, to bring the perceptions of social activists from the margins of civil society, using water as a symbol of Canadian life. This “rainbow” is to be experienced without traditional forms of deference to the hegemonic economic structures of capitalism, thus facilitating solidarity for the flow of opposition into the mainstream of public consciousness.<sup>237</sup> My express purpose is to move towards completing the “Just Society” that was begun so many years ago by the Honorable Pierre Trudeau (father of the modern Canadian Constitution and Charter of Rights and Freedoms). In Trudeau’s inspiring words: “CANADA MUST BE A JUST SOCIETY.”<sup>238</sup> The “Just Society” is a state that values equity and equality for all.

Therefore, to move further towards the “Just Society” I maintain that air and water must be seen to be fundamental elements of human life and not part of “rainbow” form of state sovereignty as conjured up by the federal government which has been revealed in the Ethyl and Sun Belt challenges under Chapter 11 of the NAFTA. For without air and water there can be no rainbows: and, in the light of my understanding of the Ethyl case as well as for the Sun Belt challenge it is now obvious that the illusion of sovereignty when subject to academic and activist review can not be presently maintained into a future of globalization as we know it. State sovereignty must be substantial if it is to have a positive meaningful impact in the lives of all people

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<sup>237</sup> John Ralston Saul in his book, *The Unconscious Civilization*, specifically within chapter 5 which is entitled, “From Ideology Towards Equilibrium” writes of the need for citizens to challenge the dominant ideology of capitalism in an effort to derive a more sustainable means of human existence. Saul, J.R., (1995), *The Unconscious Civilization*, Concord: Anansi.

<sup>238</sup> “What did I talk about in the course of my campaign? For the most part I spoke about the Just Society, about equalization payments, and about the Department of Economic Expansion that I was proposing to create. I talked about language rights across Canada, about equal opportunity, and about the need to fight abusive speculators.” Trudeau, P., (1994), *Memoirs*, Toronto: McClelland & Stewart Inc., p. 104.

in society and the environments within which they live and not merely be seen as a manifestation located “somewhere over the rainbow.” Consequently, it is incumbent that we, as civil society, need a full re-evaluation of the priorities and values found within society that are presently set by the market and currently followed with very few questions on the part of government. The “Just Society” cannot, by definition, be created in the interests of business; instead of the existing governing processes of late capitalism as are presently experienced in the world today, people living within a sustainable environment must become the governing consideration for human society.<sup>239</sup> This brings me to conclude my discursive thoughts, not insignificantly,<sup>240</sup> with a paraphrase from the American philosopher Ralph Waldo Emerson, who is reported to have said generations ago: “We do not inherit the Earth from our ancestors; we borrow it from our children.” Today, certainly the same sentiments can be said to apply equally for water and, I think, that the practice of social activism in Canada is particularly relevant for the children and future generations. Perhaps the final distinction necessary to clarify the thesis statement inherent in my discourse is the recognition that while academics endeavor to understand the world, activists seek to change the world and academic activists endeavor to change the world with understanding.<sup>241</sup> These are the final thoughts that merit reflection in the “light of the

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<sup>239</sup> Of all of the philosophers to examine the question of creating a just society, including: Plato with his “noble lie” which leads to a “community of pleasure and pain” in the city state; Locke with his fundamental faith in rights to “private property”; Rousseau with passionate expose on the “social contract”; Smith with the belief in the “invisible hand of the market”- in my opinion, it is the philosophy of Immanuel Kant which delivers the most promise with the prognostication made over two hundred years ago in which he envisioned a cosmopolitan federation designed to instil perpetual peace. See: “Kantian Philosophy” in the “glossary” [132/33]. The overall point being, of course, that aspirations of a just society have a very long history in human thought and thus are not necessarily to be considered revolutionary but perhaps are merely better understood as a natural evolution in human consciousness.

<sup>240</sup> A review of my Curriculum Vitae shows I was born in Spain but does not document that, in addition to being a Canadian citizen, I was naturalized as an American citizen at birth. Therefore, the thesis is not anti-American.

<sup>241</sup> David Schindler, an ecologist from the University of Alberta, was awarded the Gerhard Herzberg Gold Medal for Science in 2001 (and monetary award) with reference to his work on water. Schindler argues that existing science is already presently available to make the necessary changes towards sustainable policies and practices which pertain to water. The existing problems are with policy implementation within the existing processes which includes the following: government, education and science. Reference abstracted from: CBC radio on December 1, 2001. Note: This reference is not developed for the thesis but merely offered, after some discussion with my supervisor, as a significant afterthought on academic activist work with

rainbow” contained in the text which is my thesis.

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reference to water in Canada. See “Truth” in the glossary [142] for thoughts which pertain to the dialogic development of water and social activism in Canada.

## Appendix A

### AQUATIC ACADEMIC ACTIVIST GLOSSARY

ACADEMIC FORECAST: (216) Ever “since Grant’s lament [Grant, G., (1965), *Lament for a Nation: The Defeat of Canadian Nationalism* (not referenced)], liberalism and the Enlightenment package of ideals have taken an ever firmer control of Canada and are continuing to challenge its sovereignty. Jean Chretien’s approach to governance is precisely the kind of politics about which Grant complained, and the powerful elites whom he blamed for selling out Canada in the 1950s and 1960s are still controlling the country’s dominant institutions. To Grant’s fears about the motivations of Canada’s elites must now be added concern about the influence and goals of international elites. As Linda Mc Quaig, in *Shooting the Hippo: Death by Deficit and Other Canadian Myths* (1995), has persuasively argued, Canada’s elites are increasingly taking their marching orders from global entities such as the International Monetary Fund (IMF) and the World Bank, a handful of international currency speculators and foreign bond-rating agencies. A select group of corporations and chartered banks are making record profits while everyday people and small business are being buried under mountains of debt because their costs are increasing faster than their income.” [Bolt, C., (1999), *Does Canada Matter? Liberalism and the Illusion of Sovereignty*, Vancouver: Ronsdale Press, p. 32].

ACTIVIST FORECAST: (216) The claim that FTA/NAFTA entailed only a minimal surrender of sovereignty was never credible. The agreement contains scores of provisions that directly or indirectly constrain government policy freedom. It is a masterpiece of deception, asserting in one article that a given policy is permitted while undermining or negating it in other articles.

Constitutional trade law expert Barry Appleton, not someone prone to rhetorical excess, summed up the FTA/NAFTA straightjacket on sovereignty in his 1994 legal text, *Navigating NAFTA*. ‘The NAFTA represents the supremacy of a classical liberal (and United States) conception of the state with its imposition of significant restraints upon the role of government.’ For Canada, he says, this represents a fundamental break with tradition. ‘All international trade agreements entail some self-imposed limitation on government authority. However, NAFTA appears to approach an extreme. It does this by the extensiveness of its obligations which attempt to lock-in on (the American) perspective for *all successive North American governments* [*italics added by the authors*]. There are many examples of how these constraints have played themselves out with regard to specific policy issues...

The real face of free trade is now evident. The corporate oligarchy (with the aid of immensely powerful instruments of persuasion) sold the FTA/NAFTA to the Canadian people under false pretenses. Even then, only a minority supported it, and it passed only because of our flawed electoral system. But talk of turning back is not on the political agenda these days. So confident are leading proponents of its irreversibility that they are now speaking openly about the next stages of integration: common external tariffs, a common currency, common institutions. Some are even hinting at political union...[Barlow, M., & Campbell, B., (1995), *Straight Through The Heart (How The Liberals Abandoned The Just Society)*, Toronto: Harper Collins, pp. 73 - 74].

ANECDOTAL EVIDENCE: (96) A review of the table of contents, footnotes and references of Kindleberger’s *Manias, Panics, and Crashes A History of Financial Crises* [Toronto: John Wiley & Sons Inc.] gives the reader a good first impression of the analysis contained within as it pertains to the mismanagement of money and credit in the economic system of capitalism. Written by the Ford Professor of Economics for 33 years *Manias, Panics, and Crashes* is an authoritative history of banking which shows the health of the economy is related to the availability of the money supply within the economy. Therefore, the theory of the discipline of economics as a manifestation of the “invisible hand” of the market is thoroughly discredited. A review of the table of contents includes:

1) *Financial Crisis: A Hardy Perennial* 2) *Anatomy of a Typical Crisis* 3) *Speculative Manias* 4) *Fueling the Flames: Monetary Expansion* 5) *The Emergence of Swindles* 6) *The Critical Stage* 7) *Domestic Propagation*

8) *International Propagation* 9) *Letting It Burn Out, and Other Devices* 10) *The Lender of Last Resort*  
 11) *The International Lender of Last Resort* 12) *Conclusion: The Lessons of History.*

Of particular note is the subject of the “Science of Economics” as found in Appendix A which is subtitled “Irrationality in Economics”. Here, Kindleberger defends his work against fellow economists on page 198, saying:

**“The preface to the revised edition and a considerable part of Chapter 3 defend the historical approach to financial crisis against the charges that it is anecdotal on the one hand and that relies on irrationality on the other. The anecdotal charge can be dismissed quickly. Anecdotes are evidence, and what matters is whether the evidence is representative or not. Statistical evidence can also be representative or biased. I contend that the historical evidence in this book is sufficiently representative to establish a recurring pattern in economic life under capitalism. Opposition to the claim should avoid attack by pejorative characterization and should focus on demonstrating, if possible, that the evidence is not representative.”**

BANK CREDIT: (146) “The monetarist counter-revolution, followed by the reincarnation of classical economics, created two monumental problems. The first was the mountain of debt caused by slow growth and high interest rates. With debt in most countries growing much faster than the economy it became just a question of time until the inverted pyramid would collapse. The second problem was the return of the private bank monopoly on money creation... In fact, there is no logical reason for business cycles in industrial economies... They are and always have been monetary phenomena directly attributable to the operation of the banking system. I know a few economists who recognize and understand the problem totally. The majority, including many of the most famous, do not. They stoutly defend the right of private banks to create credit money out of thin air when there is no existing mechanism by which it can be repaid with interest. I say this after reviewing several books on macroeconomics to reconfirm my recollection that not one of them comes to grips with these fundamentals.”

[Hellyer, P., (1999) *Stop Think* Toronto: Chimo Media, pp. 80 -83.]

BANK OF CANADA - ABILITY: (79) The ability of the Government of Canada to fund programs by way of the Bank of Canada - thus return any interests payments that might be demanded of the market to general revenue - is contained with section 91 of the Canadian Constitution in: [articles 14, 15, 18, 20 all pertain to the Federal Governments’ exclusive prerogative to create the legal tender money supply needed for business and commerce]; Sections 18c, 18i and 18j of the *Bank of Canada Act* allowed that Government could borrow directly from the Bank of Canada at nominal interest rates which were paid back into government revenue. [Thauberger, (1995), *Billions For The Bankers Debts For The People How Did It Happen?* Fifth edition, Regina: Tri-Way Printing].

“When the Canadian Bank Act was amended in 1991, the government of Brian Mulroney foolishly eliminated the requirements for reserves over a two year period. In doing so he gave up one of the most powerful economic levers the right to raise or lower cash reserve requirements as economic circumstances might demand.” [Hellyer, P., (1999) *Stop Think* Toronto: Chimo Media, p. 118].

BANK OF CANADA -ACT: (89) “For example, the Bank of Canada Act already has, under Article 18, a sixty-year-old constitutional authority to lend money to the federal government at low interest rates up to one-third of its revenues. The Bank of Canada also has this constitutional mandate in regard to the country’s provinces for up to one-quarter of their revenues at any rate of interest it chooses. It has, moreover, the further established right to draw upon mandatory money reserves deposited by private banks, up to 100 per cent of their loans, to use for its own purchase of government bonds without inflationary effects. The Bank of Canada is, moreover, specifically obligated by its general provisions to ‘mitigate fluctuations of employment.’ It is, finally, publicly owned, responsible to the public interest, and its chief executive is a government appointed public servant. All interest payments to it revert to its sole shareholder, the government. In short, all the instruments for serving the common interest of society’s life-requirements are already encoded in existing law.” [McMurty, J., (1998), *Unequal Freedoms The Global Market As An Ethical System*, Toronto: Garamond Press, p. 316].

BANK OF CANADA - BONDS: (91) “The 38 per cent drop in the Bank of Canada’s own holdings of government bonds thereby provided further room for the private banks to create new debt money and interest-demands for themselves, an estimated \$31.5 billions. This massive transfer of debt money to the private banks left the public now paying high interest rates to private banks instead of low interest loans to the public owned Bank of Canada. But increases of money gain are always good in its value program, while losses to public accounts are celebrated as ‘downsizing government.’

In this way, the government gave away interest rates that would have gone to the Bank of Canada’s sole shareholder, the Government of Canada, to the coffers of private banks. The private banks were handed, free of charge, another \$3 billion per year of taxpayers’ interest payments ‘for storing the public debt in their private vaults’ ... taking the life of people and society and giving to the money-investment sequences of the global market.”

[McMurty, J., (1998), *Unequal Freedoms The Global Market As An Ethical System*, Toronto: Garamond Press, found on p. 251 and in explanatory reference from footnote 62 on p. 255]. In this way banks use national and international regulatory systems to enrich themselves at public expense.

CANADA ACTION PARTY: (144) Earlier In August of 1999, a group of economically minded social activists endeavored to establish a political party, the Canada Action Party, for the purposes of implementing economic reform by way of political means in “The Save Canada Conference”. TAPE HIGHLIGHTS FROM THE SAVE CANADA CONFERENCE INCLUDE:

Plenary Sessions: **Day One:** 1) Walter Pitman - *Selling Out Our Culture* / Clarence Bolt - *Does Canada Matter* 2) Michael Bradfield - *Monetary Policy That Makes Sense* / Jeremy Wright - *Millennium Crossroads: Corporations First or People First* 3) David Orchard - *The Fight For Canada: Questions and Comments* 4) Rocco Galati - *Is Parliament Disappearing?* **Day Two:** 5) Shirley Carr - *Women, Labour and Democracy* / Richard Wolfson - *Arguments Against Genetic Engineering* 6) David Cadman - *The WTO Meeting In Seattle and Its Implications for the Environment* / Michel Chossudovsky - *The Globalization of Poverty* 7) Paul Hellyer - *O Canada, Will Anyone Stand Up For Thee?* 8) *Resolution #1, #2, Action Plan* 9) Ovid Mecedri - *Will Canadians be the Next Dispossessed?* / Jim Jordan - *Summary*  
**Workshops:** 1) *Canada and World Politics* - Pittman/Fernandez/McCrindle/Azevedo A) *The Americanization of Canadian Money* Foss/Bradfield/Jordan/Parquez B) *Electoral Reform* Cooke/Vezina/Gray/Conacher/Freeman C) *Free Trade or Fair Trade?* - Loewen/Katz/Galati/Thor D) *Genetic Engineering* - Wolfson/Larrass/Sharratt E) *Monetary Reform as a Solution to Saving Canadian Sovereignty* - Krehm/Bidell/Emmett/Parisien/Foss F) *Democracy Reform* - Downe/Bertram/Dancey G) *Health and Justice* Wright/Neville/Morris/Parry H) *Global Environment* Cadman/Halsall. Reproduced from an Order Form: TEL: (613) 824-2583; FAX: (613) 824-2584.

Note: There was very little input between those who sought to facilitate economic change by political means from the “Conference” with those who sought to correct the economic injustices around water by way of social activism at the “Summit”. Both forms of activism, in tandem, are necessary to facilitate meaningful, sustainable social change.

The website of the Canada Action Party is [www.canadianactionparty.ca](http://www.canadianactionparty.ca)

CANADIAN CRITIQUE: (74) In Chapter 17, “Paying for Foreign Investment”, in 1990 Hurtig documents that Canadians pay “rapidly increasing costs of servicing (paying for) foreign investment in Canada ... [at a rate of] more than \$62,600 per minute which left Canada... the Canadian Chamber of Commerce’s ‘national debt clock’ which... showed the national debt was increasing at the rate of \$58,000 every minute” (85). In Chapter 18, “Canada’s High Interest Rate Policies”, Hurtig quotes Don McGillivray as saying: “The Bank of Canada has been trying since late in 1975 to wipe out inflation by pushing up interest rates. This is the prescription of economic faith called ‘monetarism.’ There’s no proof it works on inflation. ... After 15 years of this monetarist policy the national debt is about \$400 billion ... Interest on the debt ... and the central bank’s policy is driving the country deeper and deeper into debt” (93). In Chapter 21, “Debts, Deficits, and Deception”, Hurtig writes: “Canada’s national debt exceeded \$400 billion in 1990. The debt has more than doubled since Brian Mulroney became prime minister and is now five times higher than it was in 1980. In 1991 we shall spend more paying the interest charges on the debt than we spend nationally for education - and almost as much as the total of all federal government transfer payments to persons.” Hurtig, M., (1991), *The Betrayal of Canada*, Toronto: Stoddard.

CANADIAN TRADE POLICY: (72) The Canadian position on international trade and investment is well articulated by Pierre Pettigrew, Canadian Minister of International Trade, who said:

“There are those, of course, who believe that the suspension of the World Trade Organization [WTO] talks in Seattle meant a very serious reduction - if not the end - of our attempts to complete the unfinished business of the General Agreement on Tariffs and Trade [GATT], and to continue to harness the rules-based trading system to achieve world prosperity and security. That is not the case at all. Just as we survived the Y2K scare, we survived Seattle!...

As governments, we have to remind our citizens of the historic benefits that more open markets have given the world over the past half century. They have contributed enormously to the prosperity and growth of both developed and developing countries. In Canada, the benefits of trade have flowed to every part of society. At this juncture, we must present a plan for the future that explains how we can build stronger economies and create jobs through trade while still leaving room for national communities to be what they want to be.”

*International Trade Statement*: “Notes For An Address By The Honorable Pierre S. Pettigrew, Minister For International Trade, To The Ottawa Diplomatic Association And The Diplomatic Press Attaches Network At The National Press Club Ottawa Ontario February 16, 2000” on page 2.

CAPITALIST SYSTEM: (14/147) “As for non-human life’s place in money’s death-sequence of value, the systemic destruction of the environment’s life-host and of members of other species at the rate of billions of individual beings a year is another vaster and many-levelled operation of the global market. Its ever more efficient transformation of the organic into the inorganic is a process that requires, for example, the levelling of forest ecosystems to raise domestic animals for the killing of meat, a practice that depletes topsoil, water supplies, and natural ecosystems. This operation alone slaughters six million animals a year in the United States, has resulted in the destruction of 260 million acres of forests, appropriates half of all U.S. water supplies, and extinguishes 1, 000 species a year across the world.(\*). There are many such planes of mechanized conversion of the organic to the inorganic in the global market system. They also include industrial extraction of natural resources - metals, timber, fish, aquifers - that leave behind them obliterated ecosystems above and below the earth and the water and typically pollute the life-systems remaining with the effluents of their processes. But normally this reduction of life to death is not built into the end-state commodity as its purpose. Rather, it is the way by which other creatures and ecosystems are made into packaged commodities, which then serves as priced goods for people to consume.”

[(\*) footnote not referenced emphasis added].

[McMurty, J., (1998), *Unequal Freedoms The Global Market As An Ethical System*, Toronto: Garamond Press, p. 328].

CIVIL CONTEMPT: (118) On October 27, 2000 the Honorable Mr. Justice Mc Ewan said at paragraphs 18, 19 and 20 respectfully:

(18) “I have considered every sentence alternative open to me, including conditional sentences. None of these young men have records, and they are all first offenders.”

(19) “I have concluded, however, that in the contexts of mass protests, where a fresh supply of first offenders may be endless, the sentence must be designed to deter others as well as the offender. For that reason, I am of the view that a period of incarceration is in order. This court cannot deal with outright and planned defiance in any other way.”

(20) ... “I impose on you a term of imprisonment of fourteen days. I do not impose it intermittently and I make a recommendation against electronic monitoring. In addition, I impose a term of probation for two years, to keep the peace and be of good behaviour, and to report to this court when required to do so by the court or by a probation officer. I also impose the condition that you otherwise report any change of name or address, in advance, or change of employment or occupation to the court or a probation officer. Do you understand that?”

CIVIL VICTORY: (107) *One extensive set of consultations undertaken by a national government led directly to France’s decision to withdraw from the MAI negotiations. In the summer of 1998 the French government directed Catherine Lalumiere, European Member of Parliament, and Jean-Pierre Landau, a senior financial*

official, to investigate the MAI. Between July and October 1998, Lalumiere and Landau consulted a broad range of French government, business, labour and non-governmental organizations. The resulting analysis was a damning critique of the MAI which was followed shortly by Prime Minister' Lionel Jospin's announcement of France's withdrawal in the French Parliament on October 15, 1998.

The Lalumiere report is full of acute observation and incisive analysis. It noted that the opposition to the MAI concerned the fundamental structure of the agreement and that this opposition had taken on new forms - that it was global, Internet savvy and well-informed. The report acknowledged that 'on a subject that is very technical, representatives of civil society appear to be fully informed, with critiques that are legally well argued.'[\*] Tellingly, Lalumiere observed that this emergence of a global civil society was likely an 'irreversible change' with important implications for any new international trade and investment negotiations.

[\*] "Report on the Multilateral Agreement on Investment (MAI) Interim Report - September 1998," Catherine Lalumiere, Member of the European Parliament, and Jean Pierre Landau, Inspector-General, Finance, p. 4.

Quoted from: The Legislative Assembly of British Columbia *Special Committee On The Multilateral Agreement On Investment Second Report* Third Session, Thirty-sixth Parliament June 1999, pp. 15 -16.

Also see: Clarke, T., Barlow, M., (1997) *MAI The Multilateral Agreement on Investment and the Threat to Canadian Sovereignty* and Clarke, T., Barlow, M., (1998) *MAI Round 2 New Global and Internal Threats to Canadian Sovereignty*.

COALITION-BUILDING: (7/155) In an effort to united the traditionally fragmented objectives of the labor peace and environmental movements - a process of constructing "coalitions across the class divide" - Rose provides useful insights for academics who pragmatically want to engage with the work of social activists (Rose, 2000). These strategic insights (referenced by page #) include: "Learning in Coalitions" (146 - 165), Bridge Builders: Agents of Reconciliation (166 -185) as well as "Finding a Common Language" (186 -205). Rose recognizes the dominant role of "Free Trade" in the contemporary processes of coalition building, by saying:

The major crisis that each movement [labor, peace and environment] faces are inherent in the emerging free trade regime. Global corporate mobility has shifted the balance of power away from workers and unions. National sovereignty over environmental regulations is being ceded to international trade tribunals. Decades of industrial policy to build up the weapons sector has made armaments one of the exports in which the United States has a clear competitive advantage in an open global marketplace.

In the face of these challenges, each movement is undergoing an internal transition that favors coalition organizing (Rose, 2000: 111 -112).

When considering the pragmatic merits of Rose's analysis it is noteworthy to recognize that Rose "entered graduate school in part out of [his] frustrations with activism" (Rose, 2000: x).

[Rose, F., (2000), *Coalition Across The Class Divide: Lesson from labor, peace and the environmental movements*, Ithaca: Cornell University Press].

CORPORATE PROPERTY RIGHTS: (93) Al Meyerhoff, American Natural Resources Council, 1981-1997: "We gratuitously refer to it as the Toxic Substances Conversation Act [reference to meeting of industry representatives on TSCA Toxic Substances Control Act (to the exclusion of all else) with the Environmental Protection Agency, EPA] because they built in obstacle after obstacle and process after process where it is virtually impossible to get a known high risk chemical taken off the market. There have been very few chemicals that have been actually banned because of their health risk. That's because chemicals get far more due process than people do."

Bill Moyers: "Chemicals have more rights than people?"

Meyerhoff: "Far more rights!"

Moyers: "After twenty-five years with the Toxic Substance Control Act five types of chemical have been banned under the law."

Moyers, B., & Jones, S., (2001), *Trade Secrets*, Public Affairs Television Inc. see: pbs.org

Central to the ability which enables corporations to direct public policy is the control of information and economic resources advanced within a politic climate which defers to the dictates set by economic decision-making criterion. The corporations referred to in "Trade Secrets" - including the Ethyl Corporation and many other multinational chemical companies headquartered in the United States and elsewhere - knew for decades that many of their products posed significant risks to their work-force and consumers and according to documents, now disclosed in the course of litigation, purposefully withheld this information from the government and the public. On top of this, these companies funded candidates in the political process (through Political Action Committees, PACs) to cultivate government policies sympathetic to industry. Clearly, property rights are well protected by politics and the law.

CORPORATE REGULATION: (64) "Consistent with Clinard's (1979) findings, the majority of environmental violations are found in only a few industries: petrochemicals, petroleum, automobiles, and electrical products. These corporations are members of oligopolistic industries that are heavily concentrated, wherein four or fewer firms control 50% or more of the market. The corporations in these industries have some important common characteristics. 1) Their boards of directors contain upper-class executives from the largest banks and insurance companies. Many of the directors sit on more than one corporate board. They are thus interlocked (Simon, 1999, pp. 16-24). 2) They are among the 500 largest industrial firms that sponsor 90% of the nation's network television programs. 3) They are among those corporations that spend the most money (hundreds of millions per election cycle) to lobby Congress and back political candidates. 4) Some are annually among the 100 largest defense contracting firms. A number of them have been involved in waste-disposal scandals at federally owned facilities, sometimes aided and abetted by the federal government. 5) They are among the largest 500 industrial corporations that make 80% of all after-tax profits in manufacturing. Many of the firms involved in environmentally polluting industries also own other firms in other industries. Phillip Morris, for example, which owns Marlboro cigarettes, also owns Kraft Foods, Tang, Oscar Meyer, Jell-O, Miller Beer, Post cereals, and Maxwell House coffee. Monsanto, which makes herbicides, insecticides, and fertilizers, also makes pharmaceuticals, NutraSweet, and soap (Ridgeway & St. Claire, 1998, pp. 82, 130). 6) They are among the largest 500 corporations that make 90% of all profits involved in U.S. foreign trade (Simon, 1999, p. 20 and following). 7) A number of large chemical firms have been guilty of hiring organized criminal syndicates to dispose of toxic waste. 8) The victims of illegal hazardous waste disposal tend to be the most poor and powerless populations in both the United States and around the world." [Simon, D. (2000), "Corporate Environmental Crimes and Social Inequality", *American Behavioral Scientists*, Vol. 43 No. 4, January 2000 633-645 at pp. 636-637.]

*Clearly, in the Metalclad case before the Supreme Court of British Columbia (which incidentally pertains to toxic waste) the ability of nation states to effectively legislate in the social and environmental interests of local citizens is very expensive. The same holds true for WTO and presumably will also be the case for FTAA. The point being, of course, that irrespective of deficiencies in domestic law, provisions for the social environment (such as they are or may be) are far better than the prospects of paying severe economic sanctions under international trade agreements.*

COSTS OF FTAA: (203) (A) "For Southam Newspapers Toronto - Six thousand police officers will be involved in the security operation, while a nearly four-kilometre-long perimeter fence has been erected around the heart of old Quebec to keep demonstrators away from the sight where 34 leaders and government officials will hold talks...

'This has now become the largest police operation in Canadian history without a single act of violence in provocation,' stated an open letter to the prime minister.

The letter-petition has been endorsed by 5,000 people across the country... [including] more than a thousand university professors."

Kari, S., "Arts elite denounces security at summit," *Victoria Times Colonist*, April 14, 2001, p. A3.

(B) "Montreal (CP) - The RCMP said Thursday it used 3,009 canisters of tear gas and 502 plastic bullets

while dealing with protesters at last month's Summit of the Americas.

That figure is in addition to a previously released statement that Quebec provincial police used 1,700 tear-gas canisters and 320 rubber bullets."

"Police tally tear gas, bullets used in protests," *Victoria Times Colonist*, May 4, 2001, p. A7.

(C) "Singh is the only protester still in jail among the 463 people arrested at the summit... charged with participating in a riot, possession of a dangerous weapon - the wooden teddy-bear catapult - and violation of bail conditions." Panetta, A., "Anti-trade activist told to stay in jail," *Victoria Times Colonist*, May 4, 2001, p. A6.

(D) QUEBEC (CP) "Quebec minister pegs costs at \$100 million," *Victoria Times Colonist*, April 23, 2001, p. A3.

CREDIT: (143) The position of the Committee on Monetary and Economic Reform (COMER) is very clear on this point. Government must reclaim the right from Chartered Banks to create the money supply. In "MacKenzie King To The Canadian People 1935" (a reprint of radio broadcast found in much of the COMER Literature) is the following quote:

"Let me repeat what I said in parliament, in protesting against the surrender, to a private institution, of the state's control over the nation's currency and credit: Once a nation parts with the control of its currency and credit it matters not who makes the nation's laws. Usury, once in control, will wreck any nation. Until the control of the issue of currency is restored to government and recognized as its most conspicuous and sacred responsibility, all talk of the sovereignty and of democracy is idle and futile."

Note: "Section 91 [of the Constitution of Canada] (British North America Act 1867) ] clearly states that the right to create legal tender lies exclusively with the Federal Government, and the Federal Government has no power of delegation of that authority... Section 91 Powers of the Parliament: Articles 14, 15, 18, 20 all pertain to the Federal Governments' exclusive prerogative to create the legal tender money supply needed by the people of Canada for business and commerce... The Chartered banks creating one dollar of credit and loaning it out at interest (USURY) can be deemed in violation of the Constitution Act 1981." As found in: "What Does The Canadian Constitution Say About Money Creation?" (COMER Literature ). The position of Canadian Community Reinvestment Coalition (CCRC) has the support of over 100 social justice organizations for proposed changes in the existing banking system (CCRC literature). For a printed reference on COMER and Democracy Watch as the primary sponsor of CCRC see: Stewart, W., (1997) *Bank Heist* on pages 119 and 174 -178 respectively. [Note the quote from MacKenzie King is also found in Stewart on page 71]. A diagram and explanatory text on the creation of the money supply, set in terms of the Sun Belt case, is found in the text on page 26.

CREDIT CONTROL: (85) "The notion that speculation leading to manias and crashes rests on an inherent instability of credit is an old one. Alvin Hansen, writing on business cycles, treats it at length in a general survey of 'early concepts' and in a chapter on mid-nineteenth century economists - John Stuart Mill, John Mills, and Alfred Marshall - entitled 'Confidence and Credit.' In his judgement, these views are obsolete because they neglect the investment and savings decisions of large firms. Perhaps. But theories that attach importance to the instability of credit persist well into the twentieth century. Hawtrey is a classical economist in this vein, and so is A.C. Pigou, whose book *Industrial Fluctuations* (1927) has a chapter beginning with panics. Neglect of the instability of credit began by and large with the depression of the 1930s, with the Currency and Banking schools converted into monetarists and Keynesians.

The monetarist view of the Great Depression is set out in a monumental work by Milton Friedman and Anna Schwartz, who maintain that the depression was the result of mistakes in monetary policy made by the Federal Reserve System. For the most part, they focus on the decline in the money supply..."

Quoted from: Kindleberger, C., (1996), *Manias, Panics, and Crashes A History of Financial Crises* Toronto: John Wiley & Sons Inc., p. 59. [Footnotes in the original are not referenced.]

Control over the money supply correlates into control within the economy. This form of economic control is pervasive but not necessarily absolute. Governments and citizens have some measure of autonomy which is consistently under siege to the economic demands found in codified law within our contemporary capitalist system.

CRIMINAL CONTEMPT: (119) In the case of *Texada Land Corporation v. David Shebib et. al.* the Honorable Mr. Justice Lowry found the defendants guilty of criminal contempt charges. The learned trial judge issued two sets of *Reasons For Judgement* on February 28, 2001 and March 2, 2001, respectively. The cause of action is described by the Court in this way:

(1) “The long standing conflict between economic and environmental concerns associated with the forestry industry in this Province became manifest in the fall of 1999 as a consequence of the logging operations of Texada Land Corporation and its sub-contractor, Dorman Timber Limited. Those who oppose what they consider to be the rapid dismantling of the forest on the island embarked on various initiatives aimed at the preservation of their island’s environment. Their efforts became the subject of considerable ongoing media attention.” [February 28, 2001].

(13) “The cases argued for the defendants have been put on a very broad basis indeed, so broad that one counsel insists that I must consider the urgency of the environmental cause and exercise some kind of equitable discretion that I simply do not have. Another submits that I should be governed by the dictates of international agreements as superior to the domestic law of this country and the order of this court.” [February 28, 2001].

(14) I must of course apply the law of this province. I accordingly confine myself to considering only what, in my view, the law recognizes as germane to the offences with which the accused are charged.” [February 28, 2001].

(26) The court is at present concerned with the conduct of the accused in the breach of its order. There is no refuge to be taken in raising the conduct of the companies. If the Crown proves the elements of the offence beyond a reasonable doubt, as it has, the accused are guilty of criminal contempt.” [February 28, 2001].

(29) The Crown has proven its case. Mr. Ledrew has pleaded guilty, and I find each of the accused, McGuckin, A.P., Flis, N.G., M.D., Nevill and Catchpole guilty of criminal contempt as well. I find Mr. Wittenben not guilty.” [February 28, 2001].

The sentences were pronounced as follows:

(12) “I sentence Mr. McGuckin to be imprisoned for 60 days.” [March 2, 2001].

(14) “... I sentence A.P. to a term of probation of six months...” [March 2, 2001].

(17) “I sentence Mr. Flis to be imprisoned for thirty days.” [March 2, 2001].

(18) “... I sentence N.G. to be imprisoned for 15 days and thereafter to a term of probation of six months...” [March 2, 2001].

(21) “... I sentence M.D. to be imprisoned for 10 days and thereafter to a term of probation of six months...” [March 2, 2001].

(23) “I suspend the imposition of any sentence on [Ms. Nevell]. [March 2, 2001].

(25) “I sentence [Mr. Ledrew] to be imprisoned for 15 days.” [March 2, 2001].

(29) “... I sentence Ms. Catchpole to be imprisoned for one day and thereafter to a term of probation of six months...” [March 2, 2001].

The court makes no reference to the defendants’ concern for water in either set of *Reasons For Judgement* (and instead speaks in terms of general concerns for the environment).

#### CUPE AT THE WATER WATCH SUMMIT: SUMMIT STRENGTHENS DEFENCE OF WATER (149/151)

At last month’s national Water Summit, more than 220 activist and experts put their heads and hearts together to defend Canada’s water. CUPE, the Canadian Environmental Law Association and the Council of Canadians organized this historic summit. CUPE had a strong presence at the conference, with activists from municipal and other locals across the country playing an active role.

Water Watch committees were the talk of the meeting, and the seeds of several new committees were sown. Participants stressed the importance of these committees as the first line of defence in keeping our water public.

The level of energy, passion and commitment about keeping public control of our water was at an all-time high. And the participants left the weekend meeting with a concrete action plan that takes on the issue in our communities as well as nationally and internationally. Summit participants endorsed a call to the federal and provincial governments to:

1. Adopt a strategy to conserve and protect water ecosystems and human life.
2. Pass legislation banning the bulk removal and export of water.
3. Work with municipalities to prevent the privatization of water and wastewater services and fund

much-needed upgrades and expansion of water infrastructure.

The summit's clear message: the time to act is now. Together we have the power to keep control of Canada's water.

[Statement from the CUPE National Convention, Montreal, October 18-22, 1999 on page 3].

CUPE IN COURT: (154) In the affidavit of Vanessa Payne dated January 3, 2001 which was filed in the *United States of Mexico v. Metalclad* case in support of the application for intervenor status made by CUPE, in paragraphs 2 through 6 the following information on the Chapter 11 challenge brought by the United Parcel Service (UPS) against the Government of Canada is revealed, including:(2) Our firm has been retained by the Canadian Union of Postal Workers and the Council of Canadians with respect to a claim brought by United Parcel Service of America Inc. (UPS) under section B of the Chapter Eleven of the North American Free Trade Agreement (NAFTA).

(3) On or about January 19, 2000, UPS delivered to the Government of Canada a Notice of Intent to submit a claim to arbitration in accordance with Article 1119 of the NAFTA. A copy of that Notice is attached to my affidavit as Exhibit "A".

(4) The Notice seeks damages in excess of US \$100 million arising from purported violations by Canada of several NAFTA provisions, including Articles 1102 and 1105.

(5) The essence of the UPS claim concerns Canadian measures relating to the delivery of letter, package and other courier services by Canada Post corporation, which is a wholly owned Federal Crown Corporation.

(6) I make this affidavit in support of a Motion for an Order granting the Canadian Union of Public Employees standing as a party in this matter [affidavit filed in the *Metalclad* case]. Barry Appleton is the lawyer for UPS.

CUPE JUDGEMENT: (157)

Oral Reasons For Judgement Mr. Justice Tysoe As Pronounced in Chambers January 31, 2001:

(28) THE COURT: The Canadian Union of Public Employees applies for intervenor status in this proceeding which involves an arbitration award under the North America Free Trade Agreement. There is no dispute that the criteria to be taken into account by the Court in considering an intervenor application are the following:

- 1) the importance and nature of the case;
- 2) whether the applicant has a substantial interest in the proceeding; and
- 3) whether the applicant will make a useful contribution and present a different perspective than would be offered by the existing parties.

(29) There is no question that this proceeding is one of first impression and raises important issues. However, I am not satisfied that CUPE has a sufficient interest to warrant intervention in this proceeding. I am concerned that its participation will be more distracting than of assistance. Accordingly, I am not prepared to grant it intervenor status and I dismiss its application.

DEMOCRACY: (77) I am aware that respect for democracy and the state within many sectors of civil society registers at a historically low approval rating. In a most recent book on social activism in the global economy two leading Canadian social activists, Maude Barlow and Tony Clarke, address the role of governments and civil society (acknowledging Antonio Gramsci on page 3) and speak of governments on page 4 in the following fashion:

*For a growing number of people, particularly young people, governments around the world, including our own in Canada, were no longer carrying out the mandate they had been elected to fulfill. They were becoming captive to global corporate forces that increasingly dictate all policy - economic, social, and environmental. Citizens watched with dismay as transnational corporations took control of the world's food supply, genetically engineering it with their governments' consent. They watched as politicians and bureaucrats gave giant pharmaceutical companies carte blanche to set drug policies while millions went without health care. They saw their politicians turn a blind eye to sweatshop conditions around the world and around the corner, all in the name of competition and profits.*

*They watched as governments smoothed the way for the commodification of the commons - areas like seeds and genes, culture and heritage, health and education, even air and water - access to which was once considered to be a fundamental right. Citizens questioned the very existence of democracy in such a system.*

[Barlow, M., and Clarke, T., (2001), *Global Showdown: How The New Activist Are Fighting Global Corporate Rule*, Toronto: Stoddard Publishing, p. 4].

DEMOCRACY CLAUSE: (205) Maude Barlow: “I just want to talk about the process this week and the democracy clause. Because I think that this democracy clause is an impoverished excuse to cover what happened this week. Many people are very concerned about what happened. Many of us feel that, first of all, we do not trust trade agreements to look after democracy. They are already dictating our environment policy; trade agreements are already dictating our social policy, our health and food policy and we don’t trust them to dictate our democracy policy. But most importantly, if you really cared about democracy we would have had that text months ago; we would have had a real dialogue; we would never have had that wall; corporations could not have bought their way in while the rest of us had to stand; and, you would be giving us a full referendum in this hemisphere to see if we want what it is that you have been negotiating behind closed doors.” April 22, 2001, *Counterspin* on CBC television.

DISSIDENT ACADEMICS: (200) References to Bowman’s text *The Modern Corporation and Political Thought: law power and ideology* are offered to show a history of academic thought which deviates from the unquestioned belief in liberalism and its present day incarnations:

Croly (80 -90): Croly’s evaluation (81) - social problem of how to prevent the social dislocation, stem the tide of class warfare, and restore social stability as well as a sense of national purpose and unity.

Croly’s solution (83) - a) ideological revisionism, b) reform of economic and political institutions.

Weyl (91 -103): Weyl’s evaluation - (94 -95) an already corrupt political system was appropriated by its biggest client. The Constitution was designed to protect the propertied class.

Weyl’s solution - (97) Three programs of social reform: a) the socialization of industry, b) the democratization of the government, c) and the civilization of the citizen.

Veblen (104 -125): Veblen’s evaluation - (115) business principles and ideology used to justify class rule.

Veblen’s solution - (122) ideological revisionism: critiques of the economic system, revise the concepts of social balance and limited government, redefine the relationship between the individual and society and reformulate the ideals of democracy and of history as material progress.

Drucker (185 -202): Drucker’s evaluation - (191 -192) the beliefs of classical liberalism should be made to serve the corporation in the interests of economic performance.

Drucker’s solution - (194 -195) corporation’s social function is to mediate individual freedom and the responsibility owed to society which is resolved through the concept of harmony.

Berle (203 -217): Berle’s evaluation - (206 -207) 5 Natural Laws of Power: 1) fills any vacuum in a human organization, 2) is personal, 3) based on a system of beliefs or ideology, 4) exercised through and depends on institutions, 5) confronts and acts within a field of responsibility.

Berle’s conclusion - (208) Federal Reserve was “rapidly reaching unwritten constitutional status as a coordinate power, like the Supreme Court.”

Galbraith (218 -229): Galbraith’s evaluation - (223) “The danger to liberty lies in the subordination of belief to the needs of the industrial system.”

Galbraith’s conclusion - (224) “A doctrine that celebrates individuality provides the cloak for organization.”

Bowman, S., (1996), *The Modern Corporation and Political Thought: law power and ideology*, Pennsylvania State University Press.

DISSIDENT CAPITALIST: (30) The following brief summary shows that Soros’s text is not a philosophical text. In fact he says he “does not want to abolish capitalism” (xviii). However, Soros does make reference to the ability of money to usurp the role of intrinsic values and to do so he emphasizes the “philosophy of Kant” (90). He provides the following definitions and consequences of Market Fundamentalism (xxvi): “the ascendancy of the profit motive and the decline in the effectiveness of the collective decision-making process have reinforced themselves in a reflexive fashion.” “The promotion of self-interest as a moral principle has corrupted politics and the failure of politics has become the strongest argument for giving markets an ever freer reign. Market fundamentalism is a form of ideological imperialism” (ibid.).

With reference to focus (academic and otherwise) Soros says: “The scope of current public debate is far to narrow. It is focused on the need to improve banking supervision and to ensure adequate data on each

country. Transparency and information are the key words. Imposing market discipline remains the goal. Financial markets are inherently unstable. The most urgent need is to arrest the reverse flow of capital” (175, 176). From the “About The Author” section: “... Mr. Soros has also founded other major institutions, such as the Central European University and the International Science Foundation. In 1994, the foundations in the network spent at total of approximately \$300 million; in 1995, \$350 million; in 1996 \$362 million; and in 1997, \$428 million. Giving for 1998 is expected to be maintained at that level.” Soros credits the following advisors for helping him with his manuscript: Anatole Kaletsky, Roman Frydman, Leon Botstein, Anthony Giddens, William Newton-Smith, John Gray and others (Acknowledgements). Soros, G., (1998), *The crisis of global capitalism: open society endangered*, New York: Public Affairs.

DOCTRINE OF LEGITIMATE EXPECTATIONS: (217) There is in law something called the Doctrine of Legitimate Expectations - I’m not making this up - which is on occasion used in land claims and civil disputes. The Doctrine of Legitimate Expectations basically says that, when two parties enter into an agreement, there is a legitimate expectation that each party move toward what the agreement is about - not away from it. While on many occasions the question of legitimate expectation has ended up in our typically Canadian constitutional spaghetti, it is nevertheless a very important part of a normative political landscape.

We have the right to some legitimate expectations. And while the legal mileage of this doctrine may be limited, I think both the moral and pedagogical mileage are significant, because as citizens the least we can expect is reciprocity between those who govern and those who are being governed. If we are expected to abide by the law and to conform to the expectations put upon us, including paying our taxes and putting out the garbage, then at least we have a similar legitimate expectation of what Canadians were assured under the rubric of “peace, order and good government.”

Now, I would hold that, along with our gradual change in standpoint, we have in fact lost the institution of government. I would hold that, at this point in history, Canadians are not governed but administered. We are administered on behalf of powers that do not have our standpoint, that are not in fact concerned about the well-being of Canadians. Instead of laws we find frameworks, instead of citizens we find ourselves designated as stakeholders. Instead of the legitimate expectations of governance we have to deal with a somewhat colonial administration.

... the greatest difficulty Canadians face is that we do not have a government. And so for the work ahead, whether it is concentrated on the environment or education, on health care or the extent to which the public sphere remains an essential part of Canadian life, the central need is for good government.

[Franklin, U., (2001), “Legitimate Expectations” in *Canadian Perspectives, Annual Campaign Report 2000*, Winter 2001, Council of Canadians, pp. 5 -6].<sup>242</sup>

ECONOMICS: (16) Henwood defines economics thus: “In economics, reality is often treated not as the starting point of analysis, but as a set of unfortunate constraints on or exceptions to the theoretical utopia of perfect markets (138)..

A n o n a c a d e m i c

confronting the academic economics literature is confronted with largely a terrible thing. Much of it consists of building elaborate models, and the empirical work consists in fitting in the data to the model. Financial theory is one of the most mathematized branches of economics. Economics was once known as political economy; class, power, institutions, and even a vision of how the world should be mattered at least as much as numbers. Politics began to disappear in the 19th century, and mathematics came to dominate in the mid -20th. Economics, at least in the English-speaking world, has become more and more a matter of econometrics. As Peter Kennedy (1987,p. 1 [not referenced here]) noted in his excellent primer on the subject, ‘strange as it may seem,’ there is no generally accepted definition of econometrics. Kennedy said his guide to econometrics was devoted to ‘the development of statistical techniques appropriate to the empirical problems characterizing the science of economics.’ Kennedy used the word “science” without any quotation marks (139)..

The point of this little review is not just to embarrass official wisdom, though certainly that is always fun, but to undermine confidence in the entire enterprise of conventional mathematized economics. And few subfields are as math-dense as finance. A lot of really neat theories grew up in the 1950s, 1960s, and 1970s,

<sup>242</sup> The speech in its entirety can be heard at: [www.makingthelinksradio.com](http://www.makingthelinksradio.com)

only to be challenged by some neater theories in the 1980s and 1990s, but the entire project of clever, influential, and largely empty theorizing about capital markets and the invisible hand has yet to be severely questioned. Even the extensive empirical work by a number of financial economists, often based on thousands, even millions, of data points, fails to provide any significant enlightenment, because it asks such self-contained, even puerile, questions (142)...

Mainstream economics is built entirely on a notion of self-interested individuals rational self-maximizers who can order their wants and spend accordingly. There's little room for sentiment, uncertainty, selflessness, and social institutions. Whether this is an accurate picture of the average human is open to question, but there's no question that capitalism as a system and economics as a discipline both reward people who conform to the model. [footnote] *One doesn't want to get too carried away naturalizing temperament and values, but the model seems particularly to drive away women and nonwhites, at least in America, because of its chilly irreality. It may be that sex and race are convenient markers for hierarchy - that economics is an ideology of privilege, and the already privileged, or those who wish to become apologists for the privileged, are chosen to its study" (143, ft 7).* [Henwood, D., (1998), *Wall Street: How It Works And For Whom*, New York: Verso].

“ENVIRONMENTAL CUTBACKS“ (162) ...The Liberals, the embodiment of the ‘one-Canada’ ideal, instead of proclaiming aloud their intentions and actions, are *decentralizing the country by stealth*, behind closed doors. This is a key element of the market economy; governments can be held accountable to the people as long as they maintain responsibility for the social, transportation, cultural, and environmental infrastructure of the nation. However, when they down-load or privatize these jurisdictions, the public and advocacy groups lose their power to assert any control over them. In many cases, no institution exists to replace the regulating function of government, and the private sector can do as it pleases (*emphasis added*).

‘Scrap Environment Canada,’ say frustrated environmentalists, fed up with the sham of what one calls the federal department’s ‘revolting’ record on national enforcement. (A Washington-based think tank recently declared that Canada has had the second-worst pollution record in the industrialized world during the last twenty-five years.) In the last fiscal year, the first to show these numbers under the Liberal government, *Environment Canada caught 169 companies or government agencies breaking the Canada Environmental Protection Act (which is much weaker than its U.S. counterpart), but charged only 15.* During the same period, Ontario, with a similar size enforcement staff, charged 400 offenders and obtained convictions in 345 cases, resulting in fines of over \$2.5 million (*emphasis added*).

Under the budget reduction plan, the department is losing 1,400 employees and \$235 million; but there has been little outcry, since the department is already so inadequate in dealing with the patchwork of standards and enforcement measures across the country. Environmentalists did, however, mourn the *loss of the annual report, The State of Canada's Environment*, a comprehensive document that covered every aspect of the environment. *It stood as a grim testament to our inactivity in protecting our wildlife, waterways, forests, soil, and air.* Activist and scientists ruefully ask how we can claim to be a nation if we cannot even document what we are failing to protect (*emphasis added*).

As *The Ottawa Citizen* put it, ‘The federal [environment] department has little influence on anything you eat, drink or breathe. And it doesn’t enforce its own laws. Now it proposes reducing its role further, shifting more responsibilities to the provinces, private businesses and universities...on closer inspection, it looks like the building facade from a movie set.’

Natural Resources will lose 9,000 employees, gutting essential resource protection services across the country. Its minister, Anne McLellan, has allowed resource companies to set up a ‘voluntary’ system to meet environmental standards, in place of promised legislation. She has backed the oil and gas industries in fighting her own government’s consideration of a carbon tax. She convinced cabinet as well to exempt oil and gas exports from legislated environmental assessments. Southam News calls her ‘*a preacher for free trade and commerce, so totally is she an apologist for big business...*’ (*emphasis added*).

“The federal government’s wholesale retreat from its historic role in these and many other areas, from mining and farm subsidies to tourism, coupled with its retreat from the delivery of social programs, signals a

fundamental shift in the federal-provincial relations and the redefinition of the nation-state.”

[Barlow, M., & Campbell, B., (1995), *Straight Through The Heart (How The Liberals Abandoned The Just Society)*, Toronto: Harper Collins, pp. 215 -216, p. 219.]

ETHYL CASE: (51) This case is now relatively well known (in large part through the action of Barry Appleton). The following synopsis written by Paul Hellyer, former cabinet minister in the liberal government under Trudeau, says: “In 1998 Canada suffered a much more humiliating experience under this same [investor-state] provision of NAFTA. The Parliament of Canada had passed a law banning the importation into Canada and the distribution within Canada of the gasoline additive methylcyclopentadienyl manganese tricarbonyl (MMT). The Ethyl Corporation of the U.S. sued the Canadian government on the grounds of lost profits and damaged reputation. The case would be heard by a three-person panel whose decision would be final.

When its lawyers advised that it would likely lose the case, the Canadian government settled. It paid \$13 million (U.S.) in compensation and lost profits. far worse, as part of the settlement agreement, two ministers of the crown made statements that said MMT was neither harmful to the health nor the environment, and this despite increasing evidence that low-level exposure to airborne manganese is linked to nervous system problems and attention-deficit disorder among children.” [Hellyer, P., (1999) *Stop Think* Toronto: Chimo Media, p. 58].

EXCESS OF DEMOCRACY: (88) Under the heading “The Washington Consensus” Barlow and Clarke write:

“Over the past few decades, the discrediting and eventual collapse of communism provided fertile ground for an emerging global capital regime based on an ideology that places the needs of capital and corporations above the needs and rights of nation-states and their citizens. This ideology is fundamentally opposed to the notion of citizen and nation-state democracy contained in the UN Declaration - a notion the Trilateral commission called ‘*an excess of democracy*’ in a 1970s paper. (The Trilateral Commission is a global forum of CEOs and leaders of the major industrialized countries formed in the early 1970s to dismantle the Keynesian model of the nation-state and to reform and restructure the global economy. Originally created by David Rockefeller, chairman of Chase Manhattan Bank, and Zbigniew Brzezinski, who would become national security advisor to U.S. president Jimmy Carter, the commission grew to include 325 top leaders, CEOs, government bureaucrats, academics, and members of the media.) The philosophy of the Trilateralists has come to be known as the ‘Washington Consensus,’ a model of development based on a belief that liberal market economics is the one and only economic hope for all countries, including poor countries.” [*emphasis added* Barlow, M., & Clarke, T., (1997), *MAI The Multilateral Agreement on Investment And The Threat To Canadian Sovereignty*, Toronto: Stoddard, p. 14].

FEATURES OF FINANCE: (66) It is a difficult process to demonstrate the simplistic system inequality which flows from private financial institutions by virtue of their ability to create and extend credit. When that particular privilege is enforced through the auspices of the state by way of taxation collected to service interest (nevermind payments towards the principle of the incurred national debt) private institutions have a secure mechanism for the creation of wealth with little or no risk. This is the case in the American system and the Canadian Government is increasingly emulating this practice. For a thorough overview of the Federal Reserve system in the United States complete with a monetary act designed to return control over the money supply to public institutions within government see the video which is produced by the Committee on Monetary and Economic Reform (COMER) as follows: Still, B., Carmack, P., (1996), *Capital Reserves: How The Federal Reserve Robs Us Blind*. The Bank of Canada may be used to fund a percentage of the expenditures of governments through public creation of the money supply but is increasingly underutilized in the current system of government. From a social justice perspective, this is very difficult to understand.

FEMINIST METHOD: (186) “But Who Speaks for Us? Experience and Agency in Conventional Feminist Paradigms” by Himmani Bannerji. Bannerji’s “project is to consider the basic epistemological standpoints of some of the major feminist approaches” (77). In order to do so she believes “there is no better point of entry into a critique or a reflection than one’s own experience” (67). Using her own experience as a guide, the purpose of Bannerji’s project is to determine “how can we gain an insight into the social relations and culture of advanced capitalism which allows for direct representation and a revolutionary political agency?” (74). Like all good Marxists, Bannerji knows the purpose of academic scholarship is not to understand the world but to change it. Therefore, Bannerji is not content with a simple summary of the evolution of feminist scholarship but instead, after presenting both the advantages and disadvantages of feminist paradigms of the past and present, Bannerji goes on to postulate what a progressive feminism of the future might look like. Bannerji critiques three models of feminism including: “Feminist Essentialism” (78 -81), “Politics of Difference” (81-86), and “Marxist/Socialist Feminism” (86 -92) before she moves on to a new form of theorization. Bannerji does not definitively label her new form of feminism but instead offers a couple of possible names by which her new theory might be known. The “Transformative Cognitive Approach (77) or “Relational/Reflexive Social Analysis” (96) rejects the traditional dualistic thinking pattern which has dominated academic scholarship since the time of Aristotle. Bannerji asserts that: “This new theorization must challenge binary or oppositional relations of concepts such as general and particular, subject and object, and display a mediational, integrative, formative or constitutive relation between them which negates such polarization” (93). Bannerji advocates a new way of being in the world.

FEMINIST PEDAGOGY: (186) Quote from *Feminist Pedagogy* by Anne Louise Brooks on page 48:

“... I start from the assumption that the focus of a feminist perspective is a critique of power and how people are organized by relations of power, I therefore insist that feminism is a political perspective(s)... which must be taken up by women and men of all races and classes. Feminism is not a perspective for women only.”

FREE TRADE: (52) “The ideas of the Free Trade movement are based on a theoretical error whose practical origin is not hard to identify; they are based on a distinction between political and civil society, which is made into and presented as an organic one, whereas in fact it is merely methodological. Thus it is asserted that economic activity belongs to civil society, and that the State must not intervene to regulate it. But since in actual reality civil society and the State are one and the same, it must be clear that *laissez-faire* too is a form of State “regulation”, introduced and maintained by coercive means. It is a deliberate policy, conscious of its own ends, and not the spontaneous, automatic expression of economic facts. Consequently, *laissez-faire* liberalism is a political programme, designed to change - in so far it is victorious - a State’s leading personnel, and to change the economic programme of the State itself - in other words the distribution of national income. ... Undoubtedly the fact of hegemony presupposes that account be taken of the interests and the tendencies of the groups over which hegemony is to be exercised, and that a certain compromise equilibrium should be formed - in other words, that the leading group should make sacrifices and such a compromise cannot touch the essential; for though hegemony is ethical-political, it must also be economic, must necessarily be based on the decisive function exercised by the leading group in the decisive nucleus of economic activity.” [Gramsci, A., (translated 1971) “The Modern Prince” in *The Prison Notebook* on pp. 159 -161].

FREE TRADE IDEOLOGY: (94) Bowman’s conclusion on state sovereignty in the world of globalization sees the advocates of Free Trade “invoke the magic of the market to disguise the reality of control, [and] the corporate reconstruction of the world political economy forges ahead. Transnational enterprise continues to produce economic, social, and political transformations that shape the dimensions of power in modern societies. To be sure, signs of a new era of Free Trade have become manifest as the expansionist tendencies of corporate capitalism accelerate the integration of global markets... And this transnational order will not be ushered in on the heels of vanquishing armies. Its farsighted rulers conquer new domains through the power of the purse, not the might of the sword” [Bowman, S, (1996), *The Modern Corporation and Political Thought: law power and ideology*, Pennsylvania State University Press, p. 304].

FTAA AND CANADA: (113) If the terms and recommendations of the FTAA Negotiating Groups are the substantive basis for a hemispheric trade pact, the whole process is totally unacceptable and the citizens of the Americas must work to defeat it entirely. In spite of the government protestations that they have negotiated these new trade and investment rules in full collaboration with their citizens, the proposed FTAA reflects none of the concerns voiced by civil society and contains all of the provisions considered most egregious by environmentalists, human rights and social justice groups, farmers, indigenous peoples, artists, workers and many others. Every single social program, environmental regulation and natural resource is at risk under the proposed FTAA. As it appears to stand now, there is no possible collaboration to make this trade pact acceptable...

This process must begin by revisiting current international trade agreements like the WTO and NAFTA; it is time for a new international trading system based on the foundations of democracy, sustainability, diversity and development, and much good work is being done on these alternatives. As a beginning, Chapter 11 must be removed from the NAFTA; water must be exempted; the energy provisions rewritten with emphasis on conservation; and culture must be truly exempted.

Most important, the world of international trade can no longer be the exclusive domain of sheltered elites, trade bureaucrats and corporate power brokers. When they understand what is at stake in this hemispheric negotiation, the peoples of the Americas will mobilize to defeat it. That is the fate it deserves. Barlow, M., (January 18, 2001), *The Free Trade Area of the Americas And The Threat To Social Programs, Environmental Sustainability And Social Justice In Canada And The Americas* at [www.canadians.org](http://www.canadians.org) (page 33).

KANTIAN PHILOSOPHY: (8/238) The central tenets, which Kant calls propositions, for a philosophy of perpetual peace come from Kant’s essay entitled: “Idea for a Universal History with a Cosmopolitan Purpose” (Kant (1784), pp. 41 -53). The nine propositions are as follows:

1. All the natural capacities of a creature are destined sooner or later to be developed completely and in conformity with their end...

2. In man (as the only rational creature on earth), those natural capacities which are directed towards the use of his reason are such that they could be fully developed only in the species, but not in the individual...
3. Nature has willed that man should produce entirely by his own initiative everything which goes beyond the mechanical ordering of his animal existence, and that he should not partake of any other happiness or perfection than that which he has procured for himself without instinct and by his own reason...
4. The means which nature employs to bring about the development of innate capacities is that of antagonism within society, in so far as this antagonism becomes in the long run the cause of a law-governed social order...
5. The greatest problem for the human species, the solution of which nature compels him to seek, is that of attaining a civil society which can administer justice universally...
6. This problem is both the most difficult and the last to be solved by the human race. The difficulty (which the very idea of this problem clearly presents) is this: if he lives among others of his species, man is an animal who needs a master...
7. The problem of establishing a perfect civil constitution is subordinate to the problem of a law-governed relationship with other states, and cannot be solved unless the latter is also solved...
8. The history of the human race as a whole can only be regarded as the realisation of a hidden plan of nature to bring about an internally - and for this purpose also externally - perfect constitution as the only possible state within all natural capacities of mankind can be developed completely...
9. A philosophical attempt to work out a universal history of the world in accordance with a plan of nature aimed at a perfect civil union of mankind, must be regarded as possible and even as capable of furthering the purpose of nature itself (ibid. pp. 41 -53).

The Six Preliminary Articles of a Perpetual Peace (Kant (1795), pp. 93 -97) are as follows:

- Article 1. 'No conclusion of peace shall be considered valid as such as if it was made with a secret reservation of the material for a future war'...
- Article 2. 'No independently existing state, whether it be large or small, may be acquired by another state by inheritance, exchange, purchase or gift'...
- Article 3. 'Standing armies will gradually be abolished altogether'...
- Article 4. 'No national debt shall be contracted in connection with the external affairs of the state'...
- Article 5. 'No state shall forcibly interfere with the constitution and government of another state'...
- Article 6. 'No state at war with another shall permit such acts of hostility as would make mutual confidence impossible during a future time of peace.'

The state, can determine its own destiny without interfering and with minimal interference with all others. Kant uses the idea of sovereignty to re-establish an existence of inter-relatedness.

A sovereignty of inter-related independent existence which takes the form of a cosmopolitan federation of states, or a mosaic of people constituting a natural / national culture (to appropriate the Canadian multicultural model) is the ideal. Kant believes that the idea of "debt" (ibid., p. 100) inhibits the prospects for peace in the cosmopolitan model because it is a form of disrespect and control. In a similar line of reasoning, Kant says it will be necessary to extend "hospitality [which] means the right of a stranger not to be treated with hostility when he arrives on someone else's territory" (ibid., p. 105). This right is founded in "a *right of resort*, for all men are entitled to present themselves in the society of others by virtue of their right to communal possession of the earth's surface" (ibid., p. 106).

Kant explains:

The peoples of the earth have thus entered in varying degrees into a universal community, and it has developed to the point where a violation of rights in *one* part of the world is felt *everywhere*. The idea of a cosmopolitan right is therefore not fantastic and overstrained; it is a necessary complement to the unwritten code of political and international right, transforming it into a universal right of

humanity. Only under this condition can we flatter ourselves that we are continually advancing towards a perpetual peace (ibid., pp. 107 -108) [*emphasis* in the original].

[Immanuel Kant, *Political Writings*, ed. Hans Reiss, trans. H.B. Nisbet (Cambridge: Cambridge University Press, 1991).

LEGAL OPINION: (98) Although the overview and abridged legal opinion written by Steven Shrybman, Executive Director of the West Coast Environmental Law Association, predate the Federal Provincial Water Accord of November 1999 the analysis of the legal issues including the impacts of international trade agreements and international trade organizations (specifically the NAFTA and the WTO) is presented in ways that are far beyond my expertise. Therefore, the overview, *Why Is The Federal Government So Reluctant To Protect Canadian Water Resources*, is quoted: “The following fact sheet attempts to shed critical light on what the federal government is doing, or more appropriately not doing, to safeguard Canadian water from unregulated export demands. It also identifies the actions that are needed if this goal is to be achieved.” With the 5 page overview Shrybman also authored: *A Legal Opinion Concerning Water Export Controls and Canadian Obligations Under NAFTA and the WTO* which begins: “The following is an abridged version of a legal opinion prepared for the Council of Canadians. It addresses 5 questions concerning the potential for conflict between Canadians to restrict the export of water, and the commitments Canada has made under NAFTA and the WTO. It also considers the most appropriate course of action for Canada to ensure that our water resources are adequately protected from unconstrained export demand.” Mr. Shrybman’s opinion suggests that the Accord does not protect water from the dictates of international trade agreements.

MAI MOTION: (54) A copy of the motion against the MAI is found in the reports of The Legislative Assembly of British Columbia *Special Committee On The Multilateral Agreement On Investment* in both the *First Report* of the Third Session, Thirty-sixth Parliament December 1998 on pages 10 and 11 and the *Second Report* of the Third Session, Thirty-sixth Parliament June 1999 on page 2. The motion reads:

*“Be it resolved: that the Special Committee on the Multilateral Agreement on Investment of the Legislative Assembly of British Columbia, Canada, call on the Government of British Columbia to urge the Canadian Government to: 1) Reject the fundamental basis of the MAI negotiations scheduled to reconvene in Paris on October 20 and 21, 1998. 2) Propose a new set of guiding principles for a more balanced approach to international trade and investment agreements wherever they may be negotiated. 3) Use this unique opportunity to provide world leadership to foster greater international economic and social stability by strengthening democratic institutions at all levels of government and at all stages of development. 4) Propose that all parties undertake a comprehensive and transparent consultation and decision making process to ensure that the ongoing process of globalization is redirected to address the interests of all sectors of society.”*

MAI RECOMMENDATIONS: (46) The preliminary analysis of the Sun Belt case under the NAFTA, generated the following recommendations from the committee on page 38 as follows:

*RECOMMENDATION 26:* “Your committee recommends that the federal government act immediately and decisively to reinforce B.C. legislation banning bulk water removals by enacting federal legislation to prohibit bulk water removals from Canada.”

*RECOMMENDATION 27:* “Your committee recommends that if the Sun Belt NAFTA challenge proceeds, the province initiate a legal action challenging the federal government’s authority to submit British Columbia’s environmental prohibition on bulk water removals to binding international arbitration and potential monetary damages under NAFTA’s investment chapter.” [The Legislative Assembly of British Columbia *Special Committee On The Multilateral Agreement On Investment Second Report* Third Session, Thirty-sixth Parliament June 1999 pp. 33 -38].

MAI WATER EVALUATION: (47) The Legislative Assembly of British Columbia *Special Committee On The Multilateral Agreement On Investment Second Report* Third Session, Thirty-sixth Parliament June 1999 at pp. 33 -38 under “Water Protection and the NAFTA Sun Belt Case” on page 37 outlines the Sun Belt claim under chapter 11 of NAFTA as follows: “The complexity and uncertainty created by NAFTA must not be an excuse for inaction. The federal government is now proposing a voluntary -federal-provincial accord to prevent bulk water removals from defined watersheds. Under the proposed accord, however, if the federal government, as now seems probable, agrees to leave the door to water exports from within watersheds or from some

provinces, the NAFTA problems immediately arise. Stronger legislation in provinces like British Columbia could come under attack as investors demand the best-in-Canada “national treatment.” Instead, the federal government should act decisively now to prohibit bulk water exports from Canada. The longer it delays and the longer the queue of potential exports and investors grows, the greater its exposure to future NAFTA disputes and potential damages.

Nor can the provincial government afford to stand by while its water protection is attacked under NAFTA. While the federal government has the authority and responsibility to prohibit cross-boundary removals of water, it is the province that is the sole owner of water and has the basic responsibility for its management within its borders. The Sun Belt NAFTA case highlights the risks to provincial legislative authority of the federal governments’ continuing support for broadly worded investor protections backed up by an investor-state dispute process.”

MARX: (18) The following representations are from Karl Marx for: “**The State**”, “**Free Trade**”, “**Money**”, as well as the “**Social and Ecological Revolution**” listed, respectively:

**On The State:** ... the bourgeoisie has at last, since the establishment of Modern Industry and of the world market, conquered for itself, in the modern representative State, exclusive political sway. The executive of the modern State is but a committee for managing the common affairs of the whole bourgeoisie... [the bourgeoisie] has resolved personal worth into exchange value, and in place of the numerous indefeasible chartered freedoms, has set up that single, unconscionable freedom - “Free Trade.” (“Communist Manifesto”, McLellan, D., (1977), *Karl Marx Selected Writings* p. 223).

**On Free Trade:** “But, in general, the protective system of our day is conservative, while the free trade system is destructive. It breaks old nationalities and pushes the antagonism of the proletariat and bourgeoisie to the extreme point. In a word, the free trade system hastens the social revolution. It is in this revolutionary sense alone, [ladies and] gentlemen [and the rest of us], that I vote in favour of free trade.” (“Speech on Free Trade”, McLellan, D., (1977), *Karl Marx Selected Writings* p. 270).

**On Money:** “Money is the universal means and power, exterior to man, not issuing from man as man or from human society as society, to turn imagination into reality and reality into mere imagination... Since money is the existing and self-affirming concept of value and confounds and exchanges all things, the inverted world, the confusion and exchange of all natural and human qualities.” (“On Money”, McLellan, D., (1977), *Karl Marx Selected Writings* on pp. 110 -111).

**On The Social and Ecological Revolution:** “All fixed, fast frozen relations, with their train of ancient and venerable prejudices and opinions, are swept away, all newly formed ones become antiquated before they can ossify. All that is solid melts into air, all that is holy is profaned, and man is at last compelled to face with sober senses, his real conditions and his relations with his kind... Nevertheless, in most advanced countries, the following will be generally applicable:

1. Abolition of property in land and application of all rents of land to public purposes.
2. A heavy progressive or graduated income tax.
3. Abolition of all right of inheritance.
4. Confiscation of the property of all emigrants and rebels.
5. Centralization of credit in the hands of the state, by means of a national bank with State capital and an exclusive monopoly.
6. Centralization of the means of communication and transport in the hands of the State.
7. Extension of factories and instruments of production owned by the State; the bringing into cultivation of wastelands, and the improvement of the soil [air and water] generally in accordance with a common plan.
8. Equal liability of all to labour. Establishment of industrial armies, especially for agriculture.
9. Combination of agriculture with manufacturing industries; gradual abolition of the distinction between town and country, by a more equable distribution of the population over the country.
10. Free education for all children in public schools. Abolition of children’s factory labour in its present form.

Combination of education with industrial production, etc., etc.”

“Communist Manifesto” McLellan, D., (1977), *Karl Marx Selected Writings* on p. 224 and p. 237

MODERN STATE: (104) Ralph Nader on page x and in his concluding statement on xii of the introduction provided for *Whose Trade Organization Corporate Globalization and the Erosion of Democracy* written by Lori Wallach and Michelle Sforza says this: “what is being characterized as ‘trade’ these days covers a huge portion of each nation’s economic *and* political structures. The WTO and other trade agreements have moved beyond their traditional roles of setting quotas and tariffs to institute new and unprecedented controls over democratic governance. Erasing national laws and economic boundaries to foster capital mobility and ‘free trade,’ a term that ought to be properly called *corporate-managed* trade (since it produces constraints not freedoms for the rest of us)... What follows in this ground-breaking volume is the experience under WTO since 1995, which demonstrates the ever-mounting verification in one area after another that caveats by the critics of GATT and NAFTA were indeed prophetic (*emphasis in the original*).” [Wallach, L., and Sforza, M., (1999)*Whose Trade Organization Corporate Globalization and the Erosion of Democracy* Washington: Public Citizen p. x and p. xii.].

Noam Chomsky says expresses similar sentiments with reference to the state, saying: “The history of business and political economy yield many examples of the subordination of narrow gain to the broader interest of the opulent minority, which is unusually class conscious in a business-ruin society like the United States. Illustrations include central features of the modern world: the creation and sustenance of the Pentagon system of corporate welfare despite its well known inefficiencies; the openly proclaimed strategy of diversion of soaring profits to creation of excess capacity abroad as a weapon against the domestic working class; the design of automation within the state system to enhance managerial control and de-skill workers even at the cost of efficiency and profitability; and many other examples, including a large part of foreign policy.” [Chomsky, N., (1997), *Perspective on Power: Reflections on Human Nature and the Social Order*, New York: Black Rose Books, p. 130.].

Those interested in commercial copies of political speeches by Nader and Chomsky as well as speeches from many of the NGO functions in Seattle and various other NGO functions featuring Noam Chomsky, Ralph Nader and other notable activists, contact: Ralph Cole at democracy@aol.com

NAFTA IN CANADA: (111) Question: “After all these negotiations are done I wonder if you can tell us what the status is now in terms of including NAFTA chapter 11 provisions in the FTAA?”

Chretien: “It will be negotiated. We have four years to decide if the formula will be the same or be changed. We don’t know. I think that this clause has worked reasonably well in FTAA in NAFTA since we have it between Canada, Mexico and the United States. Some don’t like it. But I think that this is a clause that has worked reasonably well.”

Question: “But Mr. Pettigrew has stated that Canada would not sign a FTAA that included a chapter 11 clause.”

Chretien: “I don’t know. Four years from now you could ask me the question in four years.”

Question: “Chapter 11 is a big issue of discussion in the FTAA (I know there was a previous question) but I want to ask, is Canada ready to put human rights, to put our human rights before investors rights? You said that Chapter 11 has worked well in NAFTA but there are many cases where the Canadian government has been sued for millions of dollars (for investors loss of profits). Is Canada ready to put human rights on the table?”

Chretien: “We have had this for seven years. There are two or three cases that I know of that involves some money. We have been sued the results are not finalized yet. Human resources, human rights you know we talk a lot about this. I am very proud of the declaration, the political declaration of this meeting. It views human rights, education environment and health and so on. Its all on the table.”

*Prime Minister’s Press Conference on CBC Newsworld April 22, 2001.*

Don Newman: “Let me ask you now about the NAFTA meeting... Chapter 11 has been contentious particularly here in Canada. The Prime Minister in his news conference didn’t sound like he thought that it was all that contentious but is there any movement to change the chapter 11 in the NAFTA agreement? Or to exclude it from a Free Trade Areas of the Americas?”

Pettigrew: “The Prime Minister had this idea... it was the first three heads of countries meeting since NAFTA.

And frankly Mr. Chretien had a very good idea there to do this in this way. On the chapter 11, Canada is not ever been seeking to change it or renegotiate it or open it. You know if you do that you unravel the process and that is not really Canada's intention. What Canada has been trying to achieve on chapter 11 is to clarify some aspects of that chapter that we believe some panels or tribunals have not interpreted right. I think that they have made some interpretations that do not respect or reflect the true intentions of the countries when they signed it. So it is more a matter of clarifying it is more administrative in terms of clarification than reopening the chapter. Of course, what ever we do of investment within the FTAA we will take into account the experience we have gone through. We believe in protecting of investment but at the same time we don't want to open doors the sort of interpretations that we have done lately in NAFTA." *Interview on CBC Newsworld April 22, 2001.*

POLITICAL / ECONOMIC THEORY: (4) "Prediction is the hallmark of modern natural science, and practically every social science would like to be able to make reliable predictions, although practically none have. Prediction appears to have been made possible in natural science by reducing phenomena in such a way as to be amenable to expression in mathematical formulas, and most social scientists want the same thing to happen in their discipline. The issue is whether various efforts in that direction cause distortion of social phenomena, or lead to the neglect of some that are not easily mathematized and the preference for others that are; or whether they encourage the construction of mathematical models that are figments of the imagination and have nothing to do with the real world. A kind of continuous guerrilla war goes on between those who are primarily enthusiasts of science and those who are primarily attached to their particular subject matter.

Economics, held to be the most successful of the social sciences, is the most mathematized-both in the sense that its objects can be counted and that it can construct mathematical models for at least hypothetically predictive purposes. But some political scientists, for example, say that the Economic Man may be very nice for playing games with but that he is an abstraction who does not exist, while Hitler and Stalin are real and not to be played with. Economic analysis, they say, not only does not help us to understand such political actors but makes it more difficult to bring them within the purview of social science by systematically excluding or deforming their specific motives. Economists, seeking mathematical convenience, turn us away from the consideration of the most important social phenomena, assert the objectors (including the small, vociferous band of Marxist economists who are rigorously excluded from the core of the discipline, the only social science in which this has happened). So it goes between the various disciplines and within several of them where the adherents of the different approaches have no common universe of discourse."

[Bloom, A., (1988), *The Closing Of The American Mind*, Toronto: Simon & Schuster Inc., pp. 360 -361.]

PUBLIC / PRIVATE PARTNERSHIPS: (127) On June 5th, 2001 at a public meeting convened the Victoria Labour Council, Karim Kassan of EPCOR Water Services Inc., described the company as follows: EPCOR is a private corporation owned by the City of Edmonton and thus a hybrid of public and private interests. It has 16 directors, an asset base of \$3 billion and \$1.5 billion in revenue with \$120 million in terms of water. EPCOR employs 2500 people with 275 directly working on water services. It has water contracts with Port Hardy and in Richmond, B.C.

PUBLIC SERVICE INTERNATIONAL: (138) "In a specially-commissioned survey for the United Nations Environmental Programme, UNEP's Global Environment Outlook 2000 (GEO-2000), 200 scientists from 500 countries, identified water as the next pressing environmental issue for the next century. Already 20% of the world's population lacks access to safe drinking water, while 50% lack access to safe sanitation. The situation is set to worsen [[www.grida.no/geo2000/pressrel/water.htm](http://www.grida.no/geo2000/pressrel/water.htm)]." ["Scientists Identify Water As Top Environmental Concern For The 21st Century," *Public Services International Research Network Newsletter* No. 24 1999-10-18, p. 9.]

"A US \$8 million ongoing study by the World Commission on Water for the 21st Century [[www.worldwatercouncil.org/site/vision/wcw.cfm](http://www.worldwatercouncil.org/site/vision/wcw.cfm)] as part of the World Water Vision process [[www.watervision.org](http://www.watervision.org)]. The preliminary report, presented in Stockholm in August, shows that the poor in the

developing world pay twelve times more for water than people connected to municipal systems.”

[“Expensive Study By The World Commission on Water,” *Public Services International Research Network Newsletter* No. 24 1999-10-18, p. 9.]

“According to Financial Times, 29 June 1999, Suez-Lyonnaise des Eaux [www.suez-lyonnaise-eaux.fr/english/] and Vivendi [www.vivendi.com/] have been falling all over each other to build the world’s largest water business in recent months. In June 1999, Suez-Lyonnaise acquired Calgon Corp. [www.calgon.com] for US \$425 million and the US water treatment company Nalco [www.nalco.com] for US \$4.5 billion. Suez-Lyonnaise, which provides drinking water to 77 million people and wastewater services to 52 million people, intends to base its worldwide water treatment operating center in Chicago... Meanwhile, Vivendi lapped up US Filter [www.usfilter.com] in April. That transaction was valued at approx. US \$7 billion. The takeovers were reportedly prompted by a shift towards private sector delivery of water and wastewater services.” [“French Water Giants Expanding” *Public Services International Research Network Newsletter* No. 23 1999-27-08, p. 6.]

The large water companies are assisted by the rules of the World Trade Organization (WTO) General Agreement on Trade in Services (GATS). A brief summary of the GATS, which serves the interests of privatization, is as follows:

The General Agreement on Trade in Services (GATS) is the first ever set of multilateral, legally enforceable rules covering international trade in services. GATS operates on three levels: the main text containing general principles and obligations; annexes dealing with rules for specific sectors; individual countries specific commitments to provide access to their markets. GATS has a fourth element: lists showing where countries are temporarily not applying the “most-favored-nation” principle of non-discrimination. These commitments - like the tariff schedules under GATT - are an integral part of the agreement. So are the temporary withdrawals of most-favored-nation treatment. Negotiations on commitments in four sectors have taken place after the Uruguay round. [“The WTO General Agreement on Trade in Services: What is at stake for public health?” (1999) France: Public Services International and Education International, p. 7.]. Public Service International at: <http://psi@world-psi.org>

Also see: Hall, D., (2001), *Water In Public Hands*, London: (PSIRU) University of Greenwich.

RAINBOW ABSTRACT: (69) The present distinction between “political”, “legal” and “economic” rights to water is somewhat of an artificial demarcation, however, the terms “civil”, “environmental”, “intrinsic”, “revolutionary” and “theoretical” form constituent features to be seen by way of a “rainbow” model designed in discourse to provide clarity around the issue of water and social activism in Canada. The “rainbow” metaphor, is loosely developed as a theory which employs the concept of a “rainbow” - although, contrary to the traditional study of essences in academic theory as it is normally practiced in the social sciences - rainbows are readily understood by way of personal experience. My “rainbow” concept is designed as a multipurpose model to convey the following understandings: 1) with reference to the scope, it encompasses a very wide range at some sacrifice to detail (partially compensated for by extensive footnotes); 2) with reference to form, the data, in many cases, is distilled and stratified for inspection as an array of particular interests (a “rainbow”) within the footnotes; 3) with reference to content, the “rainbow” metaphor highlights the separation of appearance from reality which is particularly relevant when it comes to the “rights” of persons and property under domestic law and international trade agreements; 4) with reference to subject, water (and air as a means by which to extrapolate on the subject of water from a trade perspective), with the respective disputes brought under the NAFTA by Sun Belt Water Inc., and the Ethyl Corporation - both of the United States against the Federal Government to enforce corporate rights pertaining to water and air, respectively; as these basic necessities of life are constituent features of “rainbows” they naturally correlate well within a “Rainbow Theory” for state sovereignty in Canada (which lacks substance). Canadian citizens do not have substantive rights to air and water as any rights, they may have, are subordinate to corporate rights of property under forms of domestic and international trade law. We see the appearance of rights to water (a “rainbow”) that evaporates when reflected against the traditional rights of property and this model (air and

water) will be naturally demonstrated.

**RAINBOW METAPHOR:** (69) The use of metaphors which depict models of visual imagery into Canadian academic literature is not without meaningful historical precedent. John Porter constructed his analysis of inequality, primarily from government documentation in 1965, with his study of economic elites demonstrating that the structure of economic elites in Canada was constructed and stratified along racial boundaries in a process which he labelled a “Vertical Mosaic”. The significance of Porter’s work is conceptualized by the editors of *The Vertical Mosaic Revisited* as “epoch-making” which set the agenda for research into the nature of inequality in Canada “for the next 15 years.” [Helm-Hayes, R., Curtis, J., (1998), *The Vertical Mosaic Revisited*, Toronto: University of Toronto Press]. Porter analyzed the racial dimensions of inequality in Canada. My visual metaphor does not follow the parameters set by John Porter - with an analysis into the racial nature of Canadian society - but it does benefit from the recognition that Canada is not a classless society exempt from stratified inequality. My “rainbow” model is designed to explore and understand the systemic nature of the exploitation of natural resources (particularly water and to lesser extent air) by way of the various pressures (economic, political, legal) within institutional structures and their accompanying policies and practices (and to recognize the distinction between the appearance of sovereignty over water on the part of the state from the unseen (to date) reality - specifically, the financial ramifications which flow from the Sun Belt challenge to sovereignty over water as has been brought by way of chapter 11 of the NAFTA). Furthermore, the rainbow metaphor anticipates the responses of civil society in the protection and preservation of Canadian water (in response to the actions of the state). Through the rainbow metaphor, civil society will be encouraged to look for the essence of water sovereignty at it appears in Canada.

**RAINBOW THEORY:** (40) “When ‘property’ referred primarily to fixed resources such as land, and even when it came to mean fixed industrial assets, territorial boundaries for political boundaries coincided with and were advanced by private property owners. Thus, in a territorially located population there were classes - the propertied and the propertyless - but they shared space and mutual interests. Over the post-war era, and especially since about the mid-sixties, property rights have been claimed and extended to non-material things. The right to a return on an investment, the right to profits, and the right to move capital out of regions where it accumulated were among these. Such rights exceed their territorial location. *Governments that are fixed in space and property rights that exceed that space no longer form a coherent political and economic unity.*” [*emphasis added*]. Marchak, M., (1991), *The Integrated Circus*, Montreal/Toronto: McGill- Queens ‘s University Press, p. 262.

**SALE AT FTAA:** (108) “While organizers of the coming Summit of the Americas in Quebec City are building a wall to keep protesters out, Canada’s corporate giants are buying access to world leaders...” Partial representations from two tables that are found on page 7 of the article include:

**The cost of doing business**

***Summit of the Americas Sponsorship Properties***

|   | Proposed Fee |
|---|--------------|
| The Prime Minister’s cultural performance & evening reception | \$1,500,000  |
| The Americas Media Centre                                     | 700,000      |
| Connecting the Americas exhibit                               | 500,000      |
| The World Leaders’ Reception                                  | 500,000      |
| The Americas Accreditation Centre                             | 250,000      |
| The Americas Volunteer Uniform Program; delegate bags         | 200,000      |

**Potential In-kind Sponsorship**

|   |           |
|---|-----------|
| ... Alcoholic beverages; food and beverages | \$100,000 |
| Bottled water                               | 50,000    |

[MacKinnon, M., “Access for sale: Firms offer cash at summit” *Globe and Mail* March 20, 2001, p. 1 & A7.] Clearly with very little information available to civil society the prospect of privatized water is undoubtedly part of the agenda within the negotiations of the summit.

**STATE SOVEREIGNTY:** (28, 196) Finally, antiglobalization activists share a profound disappointment with their governments, which one after another, have bought into the system and become part of the problem.

They watch with anger as their political leaders lose touch with the poor in their own countries and hand over decision making to global institutions averse to the interests of the majority of the world's citizens...

For a growing number of activists, democracy within government will never be realized as long as it does not exist in society. For them, the urgent task is to address the latter first.

[Barlow, M., and Clarke, T., (2001), *Global Showdown: How The New Activist Are Fighting Global Corporate Rule*, Toronto: Stoddard Publishing, pp. 26 -27].

Government is a very useful ally and a very powerful enemy and for these reasons alone must be guided towards considerations of social justice and environmental sustainability against the forces of corporate capitalism. In this I reiterate the wisdom of Vandana Shiva who said on the morning of the famed "Battle of Seattle" in a nongovernmental organization (NGO) forum on November 30, 1999:

*The whole issue of the millennium round was, Okay we achieved 90% freedom for corporations in the Uruguay round 10% got left behind let's snatch the 10% in the millennium round. And the citizens woke up and said you'll not get that 10% and even the 90% that you stole from us we will reclaim. We will reclaim by recognizing and affirming our fundamental rights, our fundamental rights to food, our fundamental rights to work, our fundamental rights to live in security, our fundamental rights to community, our fundamental rights to live as social beings in existence. And the challenge that I believe is the most difficult in the world today is the challenge of re-inventing the governments who love us.*

While in Seattle during the so called battle which surrounded the WTO ministerial meetings November 29 through December 3, 1999 (with some 135 official countries represented and others with observer status) I attended and videotaped many of the NGO functions. This is where the quote from Vandana Shiva originates.

STATE SYSTEM: (28, 103) "The impact of information technologies on the states system is at the centre of much recent writing on globalization. The compression of space and time which globalization has heralded is often presumed to presage the decline of the state. ... states remain, and politics still involves the mobilisation of resources of one sort or another to change or encourage new state behaviour and policies. The state as regulatory actor with a defined jurisdiction is still without a strong competitor and as such rather than being in decline may only be in transition. There are certainly powerful actors and institutions with whom the state interacts, but these other authorities draw their regulatory ability (their legal efficacy) from their relation with the state in the last analysis." Introductory and concluding quotes: May, C., (2000) *Territory, Authority and the State in the information age*, on p. 1 and p. 18. [Paper delivered in a lecture at the University of Victoria on March 20, 2000].

STRUCTURAL ADJUSTMENTS: (68) "The fourth way in which MDB [multilateral development bank] policies serve corporate interests is through so-called policy lending, or structural adjustment... By 1996 about one-quarter of all World Bank lending was in the form of structural adjustment programs.

These lending policies effectively deconstructed much of the Third World nation-state. They did so by conditioning loans designed to resolve balance of payments crises on the privatization of national industries, the removal or barriers to foreign investment in key sectors, the 'reform' of financial systems, the gutting and privatizing of social and environmental services and the redirection of economies toward an increasingly export orientation. Together, all of these components of adjustment pried open previously protected markets to escalating foreign investment". Karliner, J., (1997), in "Toxic Empire: The World Bank, Free Trade and the Migration of Hazardous Industry" in his book, entitled: *The Corporate Planet*, pp. 133 -167 San Francisco: Sierra Club Books on pp. 140 -141.

STRUCTURAL ADJUSTMENT CHANGES: (71) In the subsection entitled, "Toxic Trade" it reads: "The changes set in motion by structural adjustment in the 1980s- changes that were both macro-economic and profoundly political in nature- have been institutionalized and deepened by the trade and investment agreements that were established or strengthened in the first half of the 1990s. The Uruguay Round of GATT and the creation of the new World Trade Organization (WTO), the North American American Free Trade

Agreement (NAFTA), the plans to extend NAFTA throughout much of Latin America, the South American Common Market (MERCOSUR) and the European Union all serve as international frameworks that aim to guarantee the sweeping shifts initiated by structural adjustment will last. Under these 'free' trade agreements, the governments of the world abdicate their sovereign control over numerous facets of international trade and investment as they become more deeply integrated into the corporate-led global economy." Toxic Empire: The World Bank, Free Trade and the Migration of Hazardous Industry" in his book, entitled: *The Corporate Planet*, pp. 133 -167 San Francisco: Sierra Club Books on p. 143.

STRUCTURAL ADJUSTMENT PROGRAMS: (70) In the subheading entitled "Structurally Adjusted Lives" on pages 60 and 61 Barlow and Clarke say this about the practice of "structural adjustment programs" and international lending policies, as follows:

*In the guise of a solution to their problems, the IMF and the World Bank made an offer these countries could not refuse: agree to implement a set of "Structural Adjustment Programs" (SAPs) and we will renegotiate the terms of your debt and lend you even more money in the form of "balance-of-payment" loans as a reward for compliance. About eighty countries were forced to weaken their tools of national sovereignty and adopt the "Washington Consensus" package: deep cuts to government spending, particularly on education, health, and welfare, deregulated transportation, energy, and telecommunication regimes; reduced real wages and lower labour standards; liberalized financial markets; export oriented agriculture; increased interest rates to attract foreign capital; and the dismantling of protections for domestic industries.*

*The effects were devastating. As transnational corporations moved to reap the benefits of the newly deregulated environment, they displaced millions of domestic jobs; millions more found themselves with no access to basic health care, education, or clean drinking water; natural resources were plundered for massive exports; the cost of local food and fuel skyrocketed.*

Barlow and Clarke proceed to speak on page 62 of a "Kinder Gentler SAP" with the introduction that "the Bretton Woods Institutions have entered the public relations field" [Barlow, M., and Clarke, T., (2001), *Global Showdown: How The New Activist Are Fighting Global Corporate Rule*, Toronto: Stoddard Publishing, pp. 60 -64].

"Structural Adjustments by stealth" have all the same features as traditional forms of "structural adjustments" (and more). With the secretive practices inherent in international trade agreements by using "structural adjustments by stealth" governments do not need to account to their citizenry for the hidden costs (environmental, social as well as economic) which are clearly associated with private banking practices as they are coupled together with free trade policies. This version of "structural adjustments by stealth" is indicative of the Canadian model of the program.

SUZUKI FOUNDATION: (15) David Suzuki in describing the "four step" mandate of the David Suzuki Foundation says as follows:

The Foundation does more than fight specific environmental causes. That role is being carried out by a number of tireless and excellent environmental groups. We now feel there's a need to study the broader view. We are looking for the causes that create these crises. We want to work on the root causes of environmental destruction, not just the symptoms... *Step one* involves defining the biological necessities to sustain life on our planet - including clean air, clean water, clean soil and biodiversity. *Step two* develops the vision of sustainable societies and what they will look like. In *step three* we will develop a range of choices to get there from here. We will do research to find solutions, and will collect other success stories from around the world. The response "It can't be done" will change to "it's being done and it works!" *Step four* is crucial It involves communicating this information in ways that are useful to you. Our goal is to empower people at the community level by providing them with a blueprint that will answer the question: "What can I do?"... I'm not just talking about recycling, becoming more energy efficient, and planting trees. Those things are important, of course. But we need profound changes in our economic systems, in government structures and priorities, in the organization of our communities and in the way we live. We need a fundamental acceptance of our own biological nature. We must, before all else, protect the basic capital that sustains all life. I believe the changes are vital for our survival will increase - not decrease!- the quality of our lives. The emerging outlines of the future basically indicate smaller, more stable communities (even within cities) which are more self-sufficient and autonomous. A number of

social and economic benefits would result. A lot of creative thinking has been done around these issues. The time has come to put it all together to define concrete, reachable, and positive goals, with a timetable of specific steps required to reach them. That's the mandate of the Suzuki Foundation.  
[Quoted from cover letter addressed to Friends of the David Suzuki Foundation, see: [www.davidsuzuki.org](http://www.davidsuzuki.org)

SYSTEMIC NATURE: (213) “Besides denouncing corruption we should understand the politico-economic system that makes it ubiquitous. The temptation for corporate interests to use large sums of money to win decisions that bring in vastly larger sums is strong, especially since those who would be the guardians of the law themselves have their palms out or are in other ways beholden to the corrupting powers. If the powers of the social order itself are used for the maximization of private greed and gain, and if the operational ethic is ‘looking out for number one,’ then corruption will be chronic rather than occasional, a systemic product rather than merely an outgrowth of the politician’s flawed character.”  
Parenti, M., (1988), *Democracy For The Few*, (Fifth Edition), New York: St. Martin’s Press, p. 212.

“TOBIN TAX”: (232) “March 23, 2001 is the second anniversary of the passage of the Tobin tax motion in the House of Commons...

To date, 23 Canadian Parliamentarians have signed on. Given that 164 voted in favour of the Tobin tax motion in March 1999, Canadian MPs need more than a little encouragement...

Global political support for the Tobin tax is continuing to grow and we need to keep up the momentum here in Canada. As of March 5, 2001, 537 Parliamentarians from 26 countries have signed on to a statement that concludes: ‘*We, parliamentarians and legislators, ask our respective legislative bodies and governments to seize the question of the Tobin tax so that each government will strive for its implementation at national and international levels and explore other options for reforming global finance.*’ This group of Parliamentarians had their first meeting at the World social Summit in Porto Alegre, Brazil in January 2001 - over 200 attended. Belgium recently passed a Parliamentary resolution on the Tobin tax and will place it on the agenda of the European Union in July 2001 when Belgium assumes the Presidency. This is a significant victory for our partnership organizations and the Parliamentary groups in Belgium and throughout Europe who have been working hard to put the tax on the EU agenda.” Email from Robin Round of the Halifax Initiative at email address: [rjround@halifaxinitiative.org](mailto:rjround@halifaxinitiative.org)

TRUTH: (241) The idea of “speaking truth to power” is attributed to Foucault who says: “The important thing here, I believe, is that truth isn’t outside power, or lacking in power: contrary to a myth whose history and functions would repay further study, truth isn’t the reward of free spirit, the child of protracted solitude, nor the privilege of those who have succeeded in liberating themselves. Truth is a thing of this world: it is produced only by virtue of multiple forms of constraint. And it induces regular effects of power. Each society has its regime of truth, its general politics of truth: that is, the types of discourse which it accepts and makes function as true...” [Foucault, M., (1980), “Truth and Power” in *Power/Knowledge* (ed) Gordon, C., Brighton: The Harvester Press, p. 131].

Noam Chomsky modifies Foucault’s conception by saying: “To speak truth to power is not a particularly honorable vocation. One should seek out an audience that matters - and furthermore (another important qualification), it should be seen as a community of common concern in which one hopes to participate constructively. We should not be speaking *to*, but *with*” (*emphasis in the original*). [Chomsky, N., (1997) *Perspectives on Power Reflections on Human Nature and the Social Order*, New York: Black Rose Books, p. 61].

UN-REGULATED FINANCIAL CAPITAL: (86) “The ... critical factor is the huge explosion of unregulated financial capital since Richard Nixon dismantled the Bretton Woods [banking] system in the early 1970s. The consequences of the deregulation of financial markets were quickly understood. In 1978, Nobel Prize laureate in economics proposed that foreign exchange transactions be taxed to slow the haemorrhage of capital from the real economy (investment and trade) to financial manipulations that now constitute 95 per cent of foreign exchange transactions (as compared with 10 per cent of the far smaller total in 1970). As Tobin observed at this early stage, these processes would drive the world towards a low-growth, low-wage economy. A study directed by Paul Volcker formerly head of the Federal Reserve, attributes about half of the substantial slow-

down in growth since the early 1970s to this factor” [Chomsky, N., (1997) *Perspectives on Power Reflections on Human Nature and the Social Order*, Montreal: Black Rose Books, p. 130].

**WATER AS HUMAN RIGHT:** (148) In addition to the fact water is not considered a human right according to the UN, a review of international human rights law including: Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights as well as over a hundred agreements with the International Labor Organization (ILO) shows a lack of effective enforcement mechanisms (thus little protection for water whatsoever). See: *Human Rights and the World Trade Organization* and *A Human Rights Resource Packet* both published in London by People’s Decade for Human Rights Education (PDHRE). See also: Mehra, M., (ed.) (1999) *Human Rights and Economic Globalisation: Directions for the WTO* Sweden: Global Publications Foundation. To make matters worse the US has failed to ratify over half of the international agreements and conventions on human rights, including International Covenant on Economic, Social and Cultural Rights on the the two principal HR treaties. “Human Rights” Kourous, T., Barry, T. *Global Focus A New Foreign Policy Agenda 1997 - 1998* New Mexico: Interhemispheric Resource Center and Institute For Policy Studies. **Water is not protected from trade regimes by human rights law.**

**WATER IN TRADE:** (45) Provisions in the NAFTA, including: “National Treatment” which requires that trading partners treat goods, services and investments which are similar in nature as favorably as those produced within their own country; and, “Most Favored Nation Treatment” which requires that member countries treat products (i.e. goods, services, and investments) equally regardless of how they are created or produced. These two provisions, taken in tandem provide foreign investors with greater rights than those available to domestic companies. As we have seen: “water is not exempt from the NAFTA” it is covered by the harmonized tariff schedule. These provisions make the Chapter 11 challenge by Sun Belt a reality which can not be ignored by the Canadian Government based on their commitments under the NAFTA. By extension these provisions should not be ignored by the Canadian public with reference to the Sun Belt challenge for water in Canada under the NAFTA. The story of the “Sun Belt” case remains under represented within the mainstream media, academic analysis and activist action.

**WATER LICENSES:** (99) “March 1985, the British Columbia government established a fee schedule to license the ‘commercial bulk export of water by marine transport vessels.’ In the 1987 report on B.C. Hydro units to be considered for privatization, the consulting firm of Thorne, Ernest and Whinney suggested B.C. Hydro (along with private industry) pursue water export opportunities. The report recommended that ‘an examination of the privatization possibilities within B.C. Hydro should give consideration to future opportunities in British Columbia... for the sale/export of water...The ownership of water and the rights or licenses to export it are issues that are not that far on the horizon.’” “The Pressure to Sell Our Water” by Crane, D., as found in Holm, W., (1988) *Water And Free Trade* on p. 23. “The current policy of British Columbia is to prohibit the bulk export of water from interior streams. However, licenses have been granted for the bottling of water from those streams. On March 20,1991 the Ministry of the Environment announced that no water licenses for bulk water would be issued until the water export policy of British Columbia was reviewed.”

[Fritz, G., McKinney, M., (1992) “Exporting Water: Toward A Policy Framework” *Water Export: Should Canada’s Water Be For Sale?* Vancouver: Canadian Water Resources Association, p. 73].

**WATER STATUS:** (65) “Currently, trade in bulk fresh water is under the disciplines of GATT (General Agreement on Tariffs and Trade)... Some nations, led by the U.S., are now proposing that another WTO agreement, the GATS (General Agreement on Trade in Services), should offer corporations further rights and access to domestic water and water systems, including the commercial operations on municipal drinking water systems. Other countries want to ensure their right to determine environmental policy, including protecting their water.” [Barker, D., & Mander, J., (1999), *Invisible Government The World Trade Organization: Global Governance For The New Millennium*, San Francisco: International Forum on Globalization, p. 19]. Clearly, our

governments have not made clear what the obligations are under international trade agreements such as the NAFTA and the GATS under the WTO with reference to fresh water.

WATER WARS: (84) Geddes, J., (2000), "Water Wars" *MacLeans* March 6, 2000 pp. 20 -24. Note this article is one of the few in the mainstream of publication which addresses the concerns voiced by civil society. However, it does so in a way which marginalizes the analysis forthcoming. For example on page 22, Geddes writes:

*"The legal opinion Barlow relies on to make her case was written by Steven Shrybman, a lawyer who is the executive director of the West Coast Environmental Law Association. Shrybman's starting point is that water in its natural state is defined as a good under the NAFTA and World Trade Organization rules, both of which are based on the global General Agreement on Tariffs and Trade, which mentions water. He goes on to argue that the principle of 'national treatment' - the backbone tenet of international trade law that prevents countries from favoring their own domestic companies over foreign - then kicks in...*

*None of the trade experts who appeared before the IJC hearings last fall on the issue agreed with Shrybman. One of the most eminent, Donald McRae, a professor of international law at the University, says'... Water is no different than fish or forests. If we decide that we don't want to extract or sell them, then we can decide that. The decision is for us to make. The WTO and NAFTA don't decide resource policy for us.'"*

**The WTO and NAFTA do dictate economic policy which brings enormous pressure on governments to sell and extract resources to meet the fiscal demands of economic institutions. The connection between economic policy in government as it is prescribed by trade law coupled with the need to service public debt (which is ideologically advanced as a means of saving social programs) oftentimes results in the sale and extraction of resources and is far closer to what may actual have happened in the Sun Belt case than what is presented in this article for the Canadian public. NAFTA and WTO indirectly, by way of economic means, dictate policy with reference to the sale and extraction of resources. If governments choose to protect resources from the dictates of international agreements, they pay to do so.**

WTO AND CANADA: (112) *Case #1.* The aerospace industry: *Background:* Canada supported its aerospace industry with a subsidy program that helped us become a world-leader in aerospace. *The complaint:* Subsidies give Canadian companies an unfair advantage over foreign companies. *WTO decision:* Canada must revise its aerospace subsidy program, and cancel several industry grants.

*Case #2.* Magazine Publishing: *Background:* Canada protected its magazine publishing industry from domination by US magazines with a rule restricting US split-run magazines. *The complaint:* The rule gives Canadian magazines an unfair advantage over US magazines wanting to enter the Canadian market.

*WTO decision:* Canada must abolish its ban on US split-run magazines.

*Case #3.* Dairy industry: *Background:* As in many agricultural industries, Canada had marketing boards which managed production and prices for milk and dairy products. *The complaint:* These marketing boards restricted imports to Canada, and promoted Canadian exports. *WTO decision:* Canada must cut back the power of the dairy marketing boards.

*Case #4.* The Auto Pact: *Background:* The Auto Pact was crucial to making Canada's auto industry the most successful in the world, with hundreds of thousands of jobs. It encouraged automakers to set up shop in Canada, in return for free access to the Canadian market. *The complaint:* There should be no obligations for car companies wanting free access to the Canadian market. *WTO decision:* Canada must get rid of the Auto Pact.

*Case #5.* Drug patents: *Background:* Canada's patent rules allowed generic drug makers to produce cheaper versions of brand-name prescription drugs. This kept drug costs lower. *The complaint:* Shorter patent protection limits the profits of multinational brand-name drug makers. *WTO decision:* Canada must lengthen patent protections for brand-name drug makers, resulting in higher drug prices.

Quoted from: "What's all the fuss about?" (2000) *Canadian Auto Workers*, p. 5. Also see: [www.caw.ca](http://www.caw.ca)

WTO THREAT: (141) The Existing Threat To Public Services: Key Provisions of the WTO's The General Agreement on Trade in Services.

**1) National Treatment** (Article XVII) - governments cannot "discriminate" between foreign and domestic suppliers of services. A government has to provide foreign service suppliers "*treatment no less favorable than that it accords to its own like services and service suppliers.*" For example, governments cannot "discriminate" against foreign service suppliers by requiring that they hire locally or establish local presence or do anything else that "*modifies the conditions of competition*" between domestic and foreign service suppliers.

**2) Government grants and subsidies** The GATS covers subsidies, and commits members to negotiate to eliminate any "*trade distortive effects*". Governments could not require service suppliers to be local in order to qualify for a grant eg. governments could be obliged to give loans to students attending foreign-owned institutions. **3) Application to all levels of government** (Article I, 3a) The measures covered are those taken by "*... central, regional or local governments and authorities; and (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities...*"

**4) Domestic regulation** (Article VI, 4) Governments have to ensure that their licensing requirements both for facilities and for service workers, "*are not more burdensome than necessary to ensure the quality of the service.*"

**5) Ways governments have to allow services to be delivered** (Article I, 2) a) "**Cross-border**", eg. delivering university courses through the Internet; b) "**Consumption abroad**", eg. patients are sent abroad to get medical care; c) "**Commercial presence**", corporations have the right to establish subsidiaries in any WTO member country. Private, for profit hospitals and universities would have a guaranteed right to set up in Canada; d) "**Presence of natural persons**" means service workers from abroad can be recruited to deliver services. **6) Weak exemption for public services** (Article I, 3b, 3c) The agreement does have an exemption for "*services supplied in the exercise of government authority*". But to qualify, a public service has to be a) the sole supplier of the service and b) not operate on a commercial basis. Once there is a private competitor - **and the GATS guarantees the right of private providers to set up one** - public providers may lose the protection of this exemption. **As well, the WTO itself says there is no definition of "commercial basis"**, so charging fee for service for example might disqualify a service from being protected by the exemption. The full text of the General Agreement on Trade in Services is on the Internet at: <http://www.wto.org/wto/services/gatsintr.htm>

[Note this information was taken from a handout provided on November 29, 1999 in a Seattle NGO forum by Ellen Gould of *Trading Strategies* in Vancouver, Canada at: [ellengould@telus.net](mailto:ellengould@telus.net)].

## APPENDIX B

### The Treaty Initiative

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#### *To Share and Protect the Global Water Commons*

We proclaim these truths to be universal and indivisible:

That the intrinsic value of the Earth's fresh water precedes its utility and commercial value, and therefore must be respected and safeguarded by all political, commercial and social institutions,

That the Earth's fresh water belongs to the earth and all species and therefore, must not be treated as a private commodity to be bought, sold and traded for profit,

That the global fresh water supply is a shared legacy, a public trust and a fundamental human right and therefore, a collective responsibility,

And,

Whereas, the world's finite supply of available fresh water is being polluted, diverted and depleted so fast that millions of people and species are now deprived of water for life and,

Whereas governments around the world have failed to protect their precious fresh water legacies,

Therefore, the nations of the world declare the Earth's fresh water to be a global commons, to be protected and nurtured by all peoples, communities and governments of all levels and further declare that fresh water will not be allowed to be privatized, commodified, traded or exported for commercial purpose and must immediately be exempted from all existing and future international and bilateral trade and investment agreements.

The parties to this treaty - to include signatory nation states and Indigenous Peoples - further agree to administer the Earth's fresh water supply as a trust. The signatories acknowledge the sovereign right and responsibility of every nation and homeland to oversee the fresh water resources within their borders and determine how they are managed and shared. Governments all over the world must take immediate action to declare that the waters in their territories are a public good and enact strong regulatory structures to protect them. However, because the world's fresh water supply is a global commons, it cannot be sold by any institution, government, individual or corporation for profit.

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This document was provided as part of the delegate's kit to each of the delegates who attended the international forum on conservation and human rights held at the University of British Columbia on July 5th through to the 8th, 2001. The forum was sponsored, in part, by the Council of Canadians, CUPE and other organizations. It was entitled, "Water For People and Nature". The proceedings of the forum may be reviewed at: <http://vancouver.indymedia.org/>

## Appendix C

1. The B.C. Fish Protection Act:

**[http:// www.qp.gov.bcca/bcstats/97021\\_01.htm](http://www.qp.gov.bcca/bcstats/97021_01.htm)**

This enabling legislation allows municipalities to enact by-laws and take other steps to control activities in proximity to streams and rivers within their municipal boundaries. By using the powers vested in them in the Act, municipal governments can dramatically restrict logging on private lands or on Crown lands within the district or municipality.

2. The Federal Fisheries Act:

**[http:// www.founder.library.ualberta.ca/FTP/EN/Regs/Chap/F/F14/](http://www.founder.library.ualberta.ca/FTP/EN/Regs/Chap/F/F14/)**

Several sections of the federal Fisheries Act apply to water-quality and fish habitat issues.

*Section 36* - Prohibits the deposition into water of substances that are deleterious to fish. This includes material from logging-related landslides, wood waste, chemicals, sewage, and other substances with a deleterious effect. Crown or private prosecutions can be brought if this section of the Act is violated.

*Section 35* - Prohibits the alteration of fish habitat, for example the damaging of stream banks or stream beds. Again, private or Crown prosecutions can be brought if this section is violated.

*Section 37* - Allows the government to require plans or specifications from a company or individual that proposes an activity that may impact fish habitat. It also allows the government to restrict activities, require modifications of the proposed activity, or order a halt to work already underway.

*Section 41 (4)* - Allows the government to seek a court-ordered injunction to stop work that violates the Act. This application might be prompted by the request of a member of the public.

*Section 42 (1) and 42 (3)* - Allow the crown and/or fishermen, in some circumstances, the right to launch civil actions against parties who violate the Act.

3. The Federal Navigable Waters Protection Act:

**[http:// www.founder.library.ualberta.ca/FTP/EN/Regs/Chap/N/N-22/](http://www.founder.library.ualberta.ca/FTP/EN/Regs/Chap/N/N-22/)**

The Act requires a federal permit for activities in, over, upon or beneath navigable waters. For example, the building of a bridge over a navigable river would require such a permit. Under the Act, the Department of Fisheries and Oceans can set out terms and conditions that must be adhered to, and it can revoke a permit when those terms and conditions are not met. In addition, the Navigable Waters Protection Act is also on the Canadian Environmental Assessment Act's law list (see below), meaning that such a bridge would also require an environmental assessment.

4. The Canadian Environmental Assessment Act:

**[http:// www.founder.library.ualberta.ca/FTP/EN/Regs/Chap/C/C15.2/](http://www.founder.library.ualberta.ca/FTP/EN/Regs/Chap/C/C15.2/)**

The Act applies to a wide range of projects and activities; those that may require an assessment are set out in federal regulations. This Act will only be invoked when some federal authority has to issue a permit, provide funding, holds land, or is the actual body proposing a project or activity. Citizens may contact the Environmental Assessment Agency to find out whether

an assessment is planned for a particular project or to request that one be done [ft. not referenced]. assessments can range in complexity from a cursory screening to a full-scale panel review.

Public participation is an integral component of a full environmental assessment, and the Act provides opportunities for public input and participation at various stages of the process. In some cases, funding is made available to assist public participants. It may be, but it is often not the case, that linked activities become subject to review. For example, if a bridge is being assessed, it may follow that the road connecting to that bridge becomes part of the assessment.

5. The B.C. Water Act:

**[http:// www.qp.gov.bcca/bcstats/96483 01.htm](http://www.qp.gov.bcca/bcstats/96483_01.htm)**

Under this Act, government has the power to require companies to clean up water bodies that they have polluted. Government can also restrict changes in and about streams using the power vested in the Act. The Act's relevant sections are:

*Section 9* - Restricts changes in and about streams. However, changes may be made without approval if they are allowed under various statutes including the Forest Practices Code. Under these circumstances, the party must comply with the Code's provisions. If those provisions are violated, the party requires an approval under the Water Act.

*Section 39.1 (j)* - Allows a government representative such as a water engineer to order a company or individual to cease putting or not to put certain substances into water, remove what it has already placed in the water and to restore or rehabilitate the water course to its original condition.

*Section 41.1 (l)* - Under this section, government can require that debris be kept out of a stream.

6. The B. C. Waste Management Act:

**[http:// www.qp.gov.bcca/bcstats/96482 01.htm](http://www.qp.gov.bcca/bcstats/96482_01.htm)**

This is the main provincial anti-pollution Act and applies to air, land and water. However, it has limited application to forestry, affecting only ancillary matters such as fuel leaks or dumps associated with forest industry activity. The Act has much more significant application to the forestry industry when it comes to the issuance of permits for discharge of wastes into receiving waters, for example pulp mill effluent.

7. The B. C. Environmental Assessment Act:

**[http:// www.qp.gov.bcca/bcstats/96119 01.htm](http://www.qp.gov.bcca/bcstats/96119_01.htm)**

This Act sets up a planning regime similar in many respects to that under the Canadian Environmental Assessment Act. Its aim is to have projects assessed at an early stage with a view to reducing or eliminating their adverse affects. Unfortunately, the Act does not apply to forestry. Consequently, one of the most serious threats to watershed and streams in B.C. does not get the comprehensive style of environmental review that other lesser threats do.

8. The B. C. Health Act:

**[http:// www.qp.gov.bcca/bcstats/96179 01.htm](http://www.qp.gov.bcca/bcstats/96179_01.htm)**

Sections 61 and 63 of this Act allows local health officials to conduct inspections and issue orders. These orders can require, among other things, the vacating and closure of a place, the carrying out of specified work, and the removal of things that cause a health hazard. In addition, sections 59 and 60 empower local boards of health to issue orders to remedy health hazards.

These provisions enable local officials to restrict how, where and whether logging takes place in a watershed. Citizens can press these officials to exercise their statutory powers to protect them from health hazards.

9. The B. C. Forest Practices Code Act:

**[http:// www.qp.gov.bcca/bcstats/96159 00.htm](http://www.qp.gov.bcca/bcstats/96159_00.htm)**

There are a number of provisions in the Code that offer some protection to water supplies. Furthermore, the Code is a baseline that can be modified by ‘higher level’ plans, which supersede the Code and may offer further safeguards to forests and watercourses. For example, landscape unit planning processes may identify ‘old-growth management areas’ within certain watersheds. This may further protect streams and hydrological functioning by placing some forested areas off-limits to commercial logging.

Similarly, planning processes may identify ‘wildlife habitat areas’ which are to be conserved to protect wildlife. These may include riparian areas. Under the Code, wildlife habitat areas are not able to reduce the provincial Allowable Annual Cut by more than one percent. The Code also offers some protection to, streamside forests depending on whether or not they are fish-bearing and how wide they are.

Under the regulatory provisions of the Code, watershed assessments are supposed to be conducted. Such assessments may yet prove to be a significant factor in reducing logging rates in many watersheds. However, the government has repeatedly extended the deadline for completing these assessments, allowing logging to continue unabated. Watershed assessments are to be done for all designated Community Watersheds under the Code, as well as all watersheds with significant downstream fisheries or domestic water uses, or in any area where a Ministry of Forests district manager says an assessment should be done.

Watershed assessments look at the hydrology of the watershed, and based on what’s already happened in it (either naturally or through historic development), establish logging rates which will not diminish water supply; in other words which will sustain or improve the watershed’s hydrology.

The Code also has provisions in it that allow the Ministry of Environment to designate certain water courses as ‘temperature sensitive.’ Such a ruling could have dramatic consequences for land-use activities in proximity to streams. However, few if any designations have taken place.

[Quoted From: Parfit, B., & Brewster, L., (2000), *Muddied Waters The Case for Protecting Water Sources in B.C.*, Sierra Legal Defence Fund, pp. 47 -49]

## APPENDIX D

**Sun Belt Affidavit Summary:** A review of the affidavit filed for intervenor status on the 13th of February, 2001 in the Supreme Court of British Columbia by John Carten, an authorized filing agent for Sun Belt Water Inc., in the case of commercial arbitration (No. I 002904) styled *The United Mexican States v. Metaclad Corporation*.

1. “It is respectfully submitted that Canada through and by the actions and conduct of the British Columbia Government (BCG) and, in particular, by the actions and conduct of the Office of the Attorney General of the Province of British Columbia from July, 1996, to November, 1998, have violated the Articles 1102, 1103, 1104 and 1105 of the North American Free Trade Agreement (NAFTA)” (A A) [page 12 of “the affidavit”].
2. “Sun Belt respectfully notifies the Queen that under Article 1105 of the NAFTA, Sun Belt invokes the benefit of remedies available under international law and accordingly, Sun Belt is seeking redress in the form of condemnation and satisfaction against several of the Ministers, employees and Judges of the Queen who have individually and collectively denied Sun Belt due process under law, delayed, obstructed and denied Sun Belt its right to pursue justice in the domestic courts of Canada, refused to comply with the domestic laws of Canada, by perverse judgements have prevented full and proper disclosure of the facts surrounding the corrupt practices in British Columbia and Canada and further violated the Queen’s obligations of “*transparency*” and “*good faith*” under the provisions of Article 102 of the NAFTA and Article 26 of the VIENNA CONVENTION ON THE LAW OF TREATIES” *emphasis in the original* (B 8) [page 38 of “the affidavit”].
3. “In the early 1980’s, the BCG developed and published a policy supporting the export of surplus fresh water in bulk by marine transport. Under the Water Act all water in the province was owned by the provincial crown, the BCG. interested parties were entitled to apply to the Controller of Water Rights for licences to take water from coastal streams and rivers for the purposes of export by marine transport” (A 1) [page 13 of “the affidavit”].
4. “In 1986, the BCG made a secret agreement with W.C.W. Western Canada Water Enterprises LTD. (WCW) giving that company special terms of access to provincial water for export purposes” (A 2) [page 13 of “the affidavit”].
5. “On September, 25, 1989, the BCG made a new, but still secret contract with WCW which gave WCW access to water owned by the BCG at prices well below those authorized by the Water Act and secretly set up WCW as the favoured entity to satisfy the emerging bulk water market” (A 4) [page 14 of “the affidavit”].
6. “The September 25, 1989, agreement was a circumvention of the domestic law of B.C. which governed the granting of licences to take water from streams or rivers for export purposes. The agreement was also a violation of the CUSFTA (Canada United States Free Trade Agreement) and the GATT (General Agreement on Tariffs and Trade). This opinion has been confirmed by Canada’s largest law firm, McCarthy Tetrault, in a legal opinion obtained in 1997. The September 25, 1989, agreement

was drawn secretly in the Offices of the Attorney General in conspiracy with other Ministries of the BCG and remained hidden until identified by a private investigator in May, 1997” (A 5) [page 14 of “the affidavit”].

7. “On September 29, 1989, four days after the execution of the secret agreement, there was a private placement of 4.3 million shares and warrants in WCW which witnesses report went to offshore accounts in the Cayman Islands. This was probably insider trading a pay off, or a bribe and most likely all three. There has never been an investigation of these dealings by any Canadian authority or the BCG” (A 6) [page 14 of “the affidavit”].

8. “The trading pattern of the stock of WCW then followed the classic pattern of “*pump and dump*” on the notorious Vancouver Stock exchange (VSE) strongly suggesting that windfall profits were made by those who benefited from the secret agreement. Finally, when WCW filed for bankruptcy in 1993 it was no longer a Canadian owned company and 91% of its shareholders were US citizens who lost all of their investment” (A 7) *emphasis in the original* [page 15 of “the affidavit”].

9. “On March 14, 1991, Goleta announced that SUN BELT had won its international competition to supply fresh water by tanker. Within days, officials from B.C. told the officials at Goleta that they would not get any water unless they bought it from WCW” (A 15) [page 17 of “the affidavit”].

10. “On March 18, 1991 the BCG imposed a temporary moratorium on the issuance of new or expanded water export licences, including the Snowcap application, but grand-fathered the WCW position leaving WCW as the sole entity able to satisfy Goleta. SUN BELT was told that if it wanted water it must buy from WCW. The moratorium was extended and then made permanent. McCarthy Tétrault also advise that the moratorium was a further violation of the NAFTA and GATT” (A 16) [page 17 of “the affidavit”].

11. “In retrospect it is now evident that forces within the BC government perverted their own domestic law and broke international trade agreements in a covert attempt to confer a monopoly position on WCW” (A 17) [page 17 of “the affidavit”].

12. “Due to the fact that it appears that US Citizens may have engaged in corrupt practices with the BCG, in violation of the **Foreign Corrupt Practices Act**, Sun Belt recently reported the matter to the **United States Secret Service** of the **Office of the United States Treasurer** and the **Federal Bureau of Investigation** an arm of the **Attorney General** of the United states. SUN BELT has been informed that an investigation is in a preliminary stage” **emphasis in the original** (A 45) [page 28 of “the affidavit”].

13. “Sun Belt respectfully notifies the Queen that the value of its temporary lost business opportunity costs were originally estimated to be **\$468 MILLION DOLLARS (USD)** based on its five year financial models developed in 1990 and 1991 with the approval of its lender, the Bank of America. However, Sun Belt notifies the Queen that its temporary lost business opportunity would now cover a period of eight (8) to twelve (12) years in a time of increased share price/earning ratios and, accordingly, the Sun Belt temporary lost business opportunity costs may be as high as **\$1.5 BILLION**

**DOLLARS.** This figure is now under review by business valuers and may be revised” (B 6) **emphasis in the original** [page 37 of “the affidavit”].

14. “Sun Belt notifies the Queen that the value of its permanent lost business opportunity costs are estimated to be in the range of **\$10.5 BILLION DOLLARS (USD)**. This figure is also under review by business valuers and may be revised” (B 7) **emphasis in the original** [page 37 of “the affidavit”].

15. “Sun Belt respectfully notifies the Queen that her Ministers and Employees in British Columbia, on September 25, 1989, contrary to their **Oaths Of Allegiance to the Queen** and, in the case of the Attorney General and professional staff, contrary to their **Oaths as Barristers and Solicitors**, taken upon entry to the Legal Profession, cause Her Majesty to enter into a contract with a company that was linked to organized crime, i.e. a “*mob company*” and the “*mafia*”, and to confer on that “*mob company*” a lucrative and exclusive water export franchise contrary to the laws passed by the **Legislature of the Province of British Columbia** and contrary to the laws passed by the **Parliament of Canada**, and thereby caused Her Majesty to violate **Her Coronation Oath**, in breach of the first principle of law underlying the British Parliamentary form of government which is explicitly a part of the **Constitution of Canada**” (B 14) all forms of emphasis are found in the original [pages 45 and 46 of “the affidavit”].

16. “Sun Belt respectfully notifies the Queen that through Canadian legal counsel it has referred the issues of improper judicial conduct in respect to the above noted Judges to the Canadian Judicial Council, the sole body in Canada, aside from Parliament, with the power to curb judicial misconduct but the said Canadian Judicial Council has refused to conduct an investigation and has incorrectly advised Sun Belt that it was improper for Sun Belt legal counsel to investigate alleged improper conduct by a certain member of the judiciary in British Columbia” (B 15) [page 46 of “the affidavit”].

17. “Sun Belt respectfully notifies the Queen that four days after the making of the corrupt and illegal contract, referred to in paragraph 14 herein, there was a private placement of shares and warrants to an entity known as the **Royal Bank of Switzerland S.A.** which witnesses report operated an account in **Her Majesty’s Crown Colony of the Cayman Islands**, another international bank haven colony, which has a notorious reputation as a secret obtained by illegal and corrupt practices carried out by criminals, corrupt politicians and corrupt government employees in Canada and elsewhere” (B 17) **emphasis in the original** [page 47 of “the affidavit”].

18. “Sun Belt respectfully notifies the Queen that it has received advice from reliable sources in the United States that if the full facts were ever made known six, seven or more sitting Members of Parliament will be forced to resign due to their involvement in criminal activity” (B 19) [page 47 of “the affidavit”].

19. “Sun Belt respectfully notifies the Queen that it has acquired knowledge of the alleged breaches of NAFTA in May, 1997, when it first acquired a copy of the secret agreement between Her Majesty’s government in British Columbia and W.C.W. Western Canada Water Enterprises Ltd. The agreement showed a secret violation of the British Columbia Water Act and the Canada US Free Trade Agreement and proved that the representations and promises of Her Majesty’s Ministers and Employees were made dishonestly and fraudulently for the purposes of deceiving Sun Belt and its legal counsel” (B

24) [pages 47 and 48 of “the affidavit”].

20. “That in late November 1999, shortly after the filing of Exhibit “B” with Canada, I was advised by Jack B. Lindsey, the President of Sun Belt Water Inc., of Santa Barbara, California, that he had received advice from at least two reliable sources in the United States that Prime Minister Chretien, former Governor Romeo LeBlanc, and several other political insiders with links to Mr. Chretien had been secret indirect investors in the Canadian company, W.C.W. Western Canada Water Enterprises Ltd., herein WCW, that had been a competitor to Sun Belt Water Inc. from 1989 to 1991. This news explained why the government of Canada and British Columbia had favoured WCW during those years and thereafter engaged in stonewalling, suppression of evidence, deception and deceit in order to delay and deny justice for Sun Belt Water Inc and the consequent exposure of the facts that would have probably resulted in the destruction of the Liberal Party of Canada or at a minimum the termination of the career of Jean Chretien” [number 8 on page 4 of “the affidavit”].

21. “That from July 1999, to early November 1999, I had filed several written complaints with the Canadian Judicial Council concerning the conduct of the Chief Justice of the Supreme Court of British Columbia, Mr. Bryan Williams, who, in my opinion, had acted improperly in several respects in relation to the Sun Belt legal proceedings in the B.C. court system. However, I was unaware of the allegations about Mr. Jean Chretien, Mr. Romeo LeBlanc and others” [number 9 on page 4 of “the affidavit”].

22. “That the new information from Mr. Lindsey suggested a very sinister explanation for the shenanigans of Mr. Williams and in late December 1999, I filed this new information with the Canadian Judicial Council. Within a few weeks, Mr. Williams resigned and effectively avoided further investigation by the Canadian Judicial Council [number 10 on page 4 of “the affidavit”].

23. “Immediately after the resignation of Mr. Williams, certain members of the Canadian judicial establishment with links to the Liberal Party of Canada and Mr. Chretien engaged in a disgraceful pattern of cover-up, denials and stonewalling reminiscent of Watergate or Mai Lai scandals in the United States. This judicial conduct was highly improper and, by written correspondence, I strongly urged the parties involved to act ethically and in accordance with the conduct normally expected of someone in their high office...

[letters addressed: Chief Justice Allan McEachern (Exhibits F, H), Chief Justice McLachlin (Exhibits G, J), Associate Chief Justice Dohm (Exhibit I)]. Despite this and other correspondence with these individuals, they continue to refuse to retract their previous misrepresentations which have deceived both the Canadian public and the international media” [number 11 on pages 4 and 5 of “the affidavit”].

24. “That Mr. Chretien’s office, the Office of the Attorney General for Canada under Ms. McLellan, and the Department of Foreign Affairs and International Trade, despite repeated requests, refuse to admit or deny the allegations concerning Mr. Chretien, Mr. LeBlanc and their cronies. I believe the allegations to be true because of the overwhelming circumstantial evidence and I am further supported by the wisdom of the Greek philosopher Euripides who, 2500 years ago, observed

**“His silence answers yes”.**

This is also the test applied in a civil case in these Honorable Courts when an allegation that is not denied is deemed to be admitted” (*emphasis and format in the original*) [number 15 on page 6 of

“the affidavit”].

25. “That, based on the evidence it is my learned and educated opinion that the actions by Mr. Ujjal Dosanjh and his staff were a deliberate attempt to suppress the revelation of the truth as it relates to Prime Minister Jean Chretien, Mr Romeo LeBlanc and other cronies in the Liberal Party of Canada with which Mr. Dosanjh is now allied” [number 24 on page 8 of “the affidavit”].

26. “That, based on the record of deception and manipulation and due to the political nature of certain members of Canada’s judiciary, especially the Chief Justices, the associate Chief Justices and the members of the Supreme Court of Canada, it is expected that Canada will attempt to manipulate the judicial decision making process in these legal proceedings and order or direct the courts will impose restrictive interpretation on the principles of “*transparency*” and “*good faith*” in order to protect friends and cronies who are linked to the highest levels of government in Canada and British Columbia” *emphasis in the original* [number 25 on pages 8 and 9 of “the affidavit”].

27. “SUN BELT acknowledges that its loss or damages should reflect the percentage of the value of the business that would have been its net equity interest in the business having regard to the need to obtain outside capital to finance the business.

e. **The Bank of America** model estimated the capital required for the business approximately US \$115.5 Million would have been financed with a debt to total capital ratio of 0.85 with the resultant required equity and subordinate debt approximately US \$16.4 Million [**emphasis in the original**].

f. Sun Belt estimate that its interest in the business would have been diluted by approximately sixty seven percent (67%) leaving a net equity position of thirty three (33%)” (A 3e,f) [page 31 of “the affidavit”].

28. “In co-operation with **The Bank of America**, Sun Belt developed a business and financial plan. **The Bank of America** had committed itself to financing the venture and expressed a serious interest in an equity position” (**emphasis in the original**) (A 38) [page 26 of “the affidavit”].

## APPENDIX E

CIVIL DISOBEDIENCE: The Honorable Mr. Justice Mc Ewan wrote on July 21, 2000 with reference to civil disobedience and said at paragraphs 19, 24, 25, 34, 35, 42, 43, 44, 45 and 54 respectfully:

(19) “There is no doubt that civil injunctions may be an appropriate remedy in the circumstances where the Attorney General refuses to enforce the Criminal Law. It is also clear that the practice of issuing injunctions against non-

parties has, in appropriate circumstances, also received the sanction of our highest court.”

(24) “Counsel also referred to the Crown Counsel Policy Manuel section on civil disobedience. The relevant part of this text is as follows:

On occasion those involved in public demonstrations come into conflict with the law and obstruct or interfere with the rights of others. The use of criminal sanctions in these situations is generally not appropriate. Charges may be considered where the circumstances described in #7 below exist.

When Crown Counsel are consulted, they should encourage the police to exercise discretion in selecting an appropriate response for each factual situation while ensuring that the general public is not unduly inconvenienced.

The following guidelines apply to civil disobedience situations: **1)** Where the civil disobedience affects only a selected group of individuals, those individuals should generally be encourage to apply for a civil injunction to stop

the disobedience; **2)** In the event the civil disobedience continues after an injunction is granted the party obtaining the injunction should be encouraged to proceed with civil contempt proceedings in the court in which the injunction was obtained. **3)** The Attorney General may intervene in the contempt proceedings where the contempt becomes criminal in nature. This usually will occur where the conduct of disobeying the court tends to bring the administration of justice into public ridicule or scorn or the disobedience otherwise interferes with the proper administration of justice. **4)** In appropriate cases, where a large sector of the public is affected by the demonstrators, and the demonstration affects public property such as highways or waterways, the Attorney General, acting for the Ministry affected, may bring an application for an injunction to cease the disobedience. Any subsequent contempt proceedings would be pursued by the Attorney General. **5)** Civil contempt proceedings are more expedient and more effective than lengthy criminal proceedings under section 127 of the Criminal Code. As a result prosecutions under section 127 for disobeying an injunction are discouraged. **6)** In cases where there are reasonable grounds to believe that the injunctive relief would either not be granted or that it would be ineffective, consideration should be given to charges under provincial or federal statutes rather than the *Criminal Code*. Where a provincial or federal statute or regulation applies to the facts in the case, it is preferred that action be taken under such legislation or regulation (e.g., section 6 and 14 of the *Highways Act*). **7)** Charges under the *Criminal Code* against demonstrators may be appropriate in the following situations: (a) conduct involving violence resulting in physical harm, which is not insignificant, or consisting of assaults with reasonable apprehension of violence or physical injury. (b) conduct causing property damage, which is not insignificant, or where there is serious apprehension of further serious property damage. (c) conduct involving an assault on a peace officer, which is not insignificant. (d) conduct where

the public interest clearly requires a prosecution. [When the conduct described in (a), (b), (c) or (d) exists and criminal charges result, other Criminal Code charges such as mischief (s. 430 (1) (c) or (d)) or obstruction of a highway (s. 432 (1) (g) may also be appropriate.] **8)** Crown Counsel should be made aware that police have the power of arrest under provincial statutes to prevent the continuation of the offence (*Moore v. The Queen* (1978) 43 CCC (2d) 83). There also exists under the *Criminal Code* and under the common law the power to arrest for breach of the peace without the necessity of criminal charges as a consequence. **9)** All proposed prosecutions in this category, or civil injunctions that come to the attention of Crown Counsel who, in turn, will consult with the Director of Legal Services ... about the appropriate action to be taken pursuant to these guidelines.”

(25) The oral submissions of counsel for the Attorney General of British Columbia outlining the factors that mitigate in favour of the policy it has adopted may, I think, be generally summarized as follows: (1) It avoids criminal sanctions; (2) It avoids violence; (3) Injunctions are more ‘efficient’.”

(34) “‘Civil disobedience’ is defined in **Black’s Law Dictionary** (7th edition) as: ‘A deliberate but non-violent act of lawbreaking to call attention to a particular law or set of laws of questionable legitimacy or morality.’ The Attorney General’s appreciation of civil disobedience is not markedly different: ‘Civil disobedience presents a unique challenge for the justice system, as it involves the actions of normally law-abiding citizens seeking to change public policy by illegal means or interfere with the lawful interests of other citizens. Widespread reporting of acts of civil disobedience makes these actions increasingly attractive for a small minority who choose not to respect the normal democratic process. It is the role of the Attorney general to ensure the rule of law is preserved and the will of the majority prevails against the illegal acts of a few.’”

(35) This is to say that by definition acts of civil disobedience are not in essence civil disputes between individuals. nevertheless the policy is that those who are, in effect, victimized by such activity should approach the court on as the pretext that what is happening is a civil dispute between that bystander and the demonstrators. By this means, form takes its leave of substance, *ab initio* in these matters.”

(42) “The point of the injunction sought here is not to define the situation of the parties pending an ultimate resolution of a legal issue between them. It is to get the court to articulate a proscriptive rule, binding generally on the public, governing present and future behaviour so that Slokan can get on with its activities.”

(43) “Such orders are nothing more or less than legislation: ad hoc lawmaking by the court to impose a substitute for laws the Attorney General and/or the police will not enforce.”

(44) “The salutary effect of this state of affairs according to the authorities appears to be that it relieves them of the time and trouble to investigate the matter - offloading this burden to affected bystanders - and that, at least anecdotally, the outcomes are much more satisfying: more ‘effective’, ‘expeditious’ and ‘more significant’ in terms of penalties, to adopt the Attorney General’s terms.”

(45) “This accomplished, of course, by recharacterizing behaviour that Parliament has already deemed to be socially harmful and punishable by law as the conduct that defies the authority of the court.”

(54) “Perhaps in the meantime the evolution alluded to by Mr. Gableman, informed by ‘a commitment to the rule of law’ will prompt a re-evaluation of these policies. Among other things, I think they manifestly fail to appreciate the proper function and limitations of this court’s civil processes.”

**APPENDIX F**  
**“Working Water Watch Declaration”**  
(September 19th, 1999 Ottawa, Ontario)

*Water is essential to all life. Water has become a critical issue in Canada and around the world. As the availability of abundant quantities of clean water becomes rarer, the health of aquatic and terrestrial ecosystems and the species that inhabit them - including humans - is threatened. The appearance of water scarcity has caused some to conclude that water is best treated as a commodity, to be bought, sold and traded in accordance with market principles. The idea of water as part of the global commons and as an essential part of our natural heritage is under threat. Also threatened are the collective means by which generations of Canadians have sought to provide water and sanitation services to people living in towns and cities.*

*Canadians are at an historic crossroad in the way we think about and manage water. This declaration is an expression of our resolve that all Canadians should be involved in making these decisions and that the environment and the public interest should not be sacrificed to market principles and private gain.*

1. People must respect and protect the integrity of the water cycle. Water belongs not to people but the earth and all of its species. The cardinal rules for human use of water should be: remove as little as possible; prevent pollution; to the greatest extent possible, leave water to run its natural course.
2. Because water is continually cycling in the environment, it can not be ‘owned’ in the traditional sense. For purposes of allocating it and protecting it, water should be considered a public trust rather than an economic commodity.
3. People are made mostly of water and are part of the natural water cycle. people therefore have an inalienable right to water for basic needs. In order to ensure this right for all, water services should remain in the public sector.

We call on the federal and provincial governments to:

1. Immediately adopt a comprehensive sustainable water strategy to conserve and protect water ecosystems and human life.
2. Pass binding legislation to ban the bulk export and removal of water.
3. Work with municipalities to prevent the privatization of water and wastewater services and provide funding to upgrade and expand municipal water and wastewater infrastructure.

## Point Form List of “Summit” Recommendations

### *Personal*

- 1 *Citizens’ Agenda*: set public debate by being first as in the case of the MAI and use the internet
- 2 find case studies of water and focus on how vital water is [as it is essential to life]
- 3 talk of future generations and spiritual and cultural considerations from the First Nations
- 4 importance of using humor [i. e., “water costume” to attract attention]
- 5 direct action [i. e., the New Zealand website “hook-up”]
- 6 Pledge to set up “Water Watch Communities” with materials available on all aspects

### *Educational*

- 7 municipal services are invisible make the “underground visible”  
[private water facilities?]
- 8 need to educate and mobilize the public about issues such as infrastructure  
(Re-investment)
- 9 Water literacy: teach in for politicians, phone ministers, radio shows, municipal resolutions
- 10 lead teams to establish “Water Watch Committees” [find visible “float”]
- 11 target large companies, intellectuals, students, unions with letters and information
- 12 need to work smarter and target resources  
[i.e., mail out to blocks around politicians’ residence]
- 13 counter the corporate propaganda through smaller “summits” with plant workers, municipal politicians, environmentalists, and thus make a concentrated effort to educate the media
- 14 regional symposiums to counteract efforts of corporate involvement and construct a data base

### *Political*

- 15 Canadian Council of Ministers in October - kick the door open
- 16 only the Federal Government has the constitutional authority to ban water [“Accord is a joke”]
- 17 need for work at the Provincial level (as the Provinces have jurisdiction)
- 18 cultivate political contacts clarify that the position of downloading leads to pressure to privatize
- 19 use municipal and First Nation elections emphasizing issues of local control and monitoring
- 20 recognize lobbying of companies done at municipal level who sign contracts for privatization
- 21 recognize there is a difference between the cost and price of water (filtering, quality etc.)
- 22 recognize the need for new money and investment as water funds other services
- 23 consider a tax on monetary goods

### *Legal*

- 24 legal challenges at all international levels
- 25 extend the *Charter of Rights and Freedoms* to include water
- 26 need a recognition that we are not paralyzed by trade agreements
- 27 keep water out of trade deals requires a Philosophical Shift which bans bulk water exports
- 28 support the International Joint Commission with the USA [report due in February, 2000]
- 29 people from the west need to demand an I.J.C.[ International Joint Commission] open forum
- 30 Think about water at the WTO [teach in Vancouver in November and in Seattle at WTO]
- 31 Think about The Hague World Water Forum in March 2000.

**“The Water Watch Summit” Council of Canadians Print Media Information**

## Victoria Chapter of the Council of Canadians, September 29, 1999.

### *Material Provided By Saul Arbess*

1. "The Water Watch Summit" pamphlet
2. Put a Cork in NAFTA Media Kit
3. Richard Bocking Speech
4. *Blue Gold* by Maude Barlow

### *Material Provided in the delegates "Water Watch Summit" package*

5. AGENDA Water Watch Summit
6. Welcome Letter
7. Water Summit Survival Guide
8. The Water Covenant
9. Principles and Policies for Water in Canada
10. H2O Fact Sheet #1 Trade: *The Threat from Trade Agreements to Canadian Water Why the Federal Government's Water Accord Won't Work*
11. H2O Fact Sheet #2 Conservation: *Elements of a Sustainable Water Strategy for Canada*
12. H2O Fact Sheet #3 Privatization: *The Transnational Water Corporations*
13. Privatizing Water Treatment: *The Hamilton Experience*
14. Water For Profit: *Coming to a Community near You?*
15. "They can't buy the air we breath... so they want to buy the water we drink. color brochure

### *Material Acquired At The "Water Summit"*

16. "Blue Gold" text of the speech given on September 17, 1999 by Maude Barlow
17. A Legal Opinion Concerning Water Export Controls and Canadian Obligations Under NAFTA and the WTO by Steven Shrybman executive director of West Coast Environmental Law
18. "Great Lakes United" vol. 13, no. 4 / vol. 14, no. 1 fall 1999
19. notes of the proceedings of September 17 -19, 1999 by Kelly Busch
20. **The Water Watch Summit Declaration**

## APPENDIX G

### **Submissions made by CUPE in the Metalclad v. Mexico case (No. I 002904) heard in Vancouver, January 31, 2001 by the Honorable Mr. Justice Tysoe.**

1. In addition to collective bargaining and servicing its membership, the protection of public services is also at the core of CUPE's mandate. For this reason we have established an ongoing campaign to defend jobs and public services against privatization and contracting out. Under the banner "Public Works!" CUPE is working to foster informed public discussion and debate about the pros and cons of public sector services in such diverse spheres as waste management and water treatment to health care [affidavit of Judy Darcy filed in the Metalclad case in number 7].

2. I have been further advised and do believe that if sustained, this arbitral award may:

i) expose provincial and municipal approvals and permitting processes for waste management and other controversial facilities to review by international arbitral tribunals convened pursuant to the provisions of Chapter Eleven of the NAFTA;

ii) import to Canada a definition of expropriation which is broader than that recognized by Canadian courts and which has implications for diversity of permitting and regulatory decision making by Canadian governments at all levels;

iii) may impose on provincial and municipal decision-making in Canada a de facto standard of review which is uncertain, has no precedent in Canadian law, and which is not owed to Canadian companies, trade unions or citizens; and,

iv) may render judicial decision-making concerning contentious licensing and approval decisions to "appeal" by foreign investors who choose to invoke international dispute resolution procedures pursuant to Chapter Eleven of the NAFTA [affidavit of Judy Darcy filed in the Metalclad case in number 15].

3. I have also been advised by counsel that when investor-state procedures are invoked, those affected by the decision, including the sub-national governments involved, the local community, and municipal workers have no right to notice, nor to participate in the decision making process [affidavit of Judy Darcy filed in the Metalclad case in number 16].

4. Among the many and diverse services provided by CUPE members are those in the areas of waste management, recycling, water supply, sewage treatment and other environmental services. CUPE members are also often engaged in administering the approvals, monitoring and enforcement procedures that have been established to protect the environment and public health [affidavit of Judy Darcy filed in the Metalclad case in number 17].

5. It is now becoming commonplace for private sector companies to seek approvals and contracts to provide environmental and other services that have historically been provided by CUPE members. Such

proposals may often result in competing public and private sector proposals to establish similar facilities or provide the same services. For example:

i) Halifax, Nova Scotia issued a call for private sector proposals to design, build and operate wastewater treatment facilities that would prevent untreated sewage from flowing into the Halifax Harbour. In response to concerted pressure from CUPE, the municipality has agreed to consider public sector operations of the proposed facilities as a viable alternative;

ii) In Sydney, Nova Scotia, and Toronto, Ontario, CUPE has put forward proposals for publicly operated recycling programs that compete directly with similar waste management schemes being proposed by private companies; and,

iii) In Lethbridge, Alberta a private company proposed to take over operation of the wastewater facilities. CUPE was part of a community based campaign that persuaded the municipal council to reject that proposal [affidavit of Judy Darcy filed in the Metalclad case in number 18].

6. Because waste management, water, sewer and other environmental services and facilities have considerable potential to harm the environment and adversely impact human health, such proposals often generate considerable public debate, controversy and even public protest. Recent examples include:

i) Controversy, and public protests have surrounded a proposal by a private consortium to establish waste disposal facilities for the Greater Toronto Area - now provided by CUPE members - at an abandoned Adams Mine site near Kirkland Lake Ontario. After years of debate, and approvals procedures that engaged all three levels of government, the proposal was abandoned by the proponent because of the environmental guarantees the municipality insisted upon as a condition of the approval. The Adams Mine facility is owned and was to be operated by a wholly owned Canadian subsidiary of Waste Management Inc. (WMI) of Houston Texas;

ii) Similar controversy has arisen concerning private sector proposals to take-over of wastewater treatment operations in the region of Hamilton-Wentworth, Ontario. Working with other community groups, CUPE has made several attempts to have the wastewater services returned to public operation. The last of these occurred in early 2000 when the private contractor, Phillips Utilities Inc. sold their contract which was narrowly ratified by the municipal council [affidavit of Judy Darcy filed in the Metalclad case in number 22].

7. Furthermore, it is also becoming common for governments to reconsider, and even reverse decisions concerning the licensing, funding or approval of controversial facilities or services. Recent examples include:

i) the City of Montreal recently shelved plans to privatize the drinking water supply because of strong public protests;

ii) in the Halton Region of Ontario, a \$550 million plan to privatize the operation of an expanded system was cancelled. Similar initiatives have been shelved by other Ontario municipalities including Sarnia, York Region and Thunder Bay; and,

iii) both Thunder Bay, and York Region of Ontario, abandoned plans to have private sector water delivery when opposition was mounted in the community [affidavit of Judy Darcy filed in the Metalclad case in number 23].



8. In several of these cases the private proponents involved are corporations based in the United States including, Browning Ferris Industries, USA Waste Services, U.S. Filter (now a subsidiary of Vivendi which is based in France) and WMX Technologies. As such, I am advised by counsel, that each would have recourse to the extraordinary arbitral procedures which have been invoked in the current case [affidavit of Judy Darcy filed in the Metalclad case in number 24].

9. To foster informed public discussion and debate about public sector services, CUPE has commissioned public opinion polls, sponsored public forums and published research about the environmental, health, public policy and fiscal implications concerning the delivery of services and the establishment of costly infrastructure [CUPE petition in the Metalclad case in number 4].

10. CUPE has also been at the forefront of the public policy debate about the present and future course of Canadian international trade policy. It has appeared before Parliamentary and Legislative Committees, participated in government sponsored consultative processes, published research reports, convened public forums, and is represented on the federal government's Sectoral Advisory Group on International Trade for Medical and Health Products [CUPE petition in the Metalclad case in number 5].

11. CUPE makes this application because of concern about the potential of the Tribunal's Award in this matter, if it is upheld, to:

- i) influence Canadian public policy and law in favour of privatizing public sector services;
- ii) to undermine the capacity of governments to integrate environmental considerations to all decision-making processes; and
- iii) to remove debate about the future of environmental and other services from democratic and public fora, to the non-transparent processes of NAFTA investor-state procedures [CUPE petition in the Metalclad case in number 8].

12. For these reasons, it is submitted that the findings and judgement of this Court will not only establish an important judicial precedent for Canadian courts and provide judicial guidance to other arbitral tribunal and the courts of other NAFTA jurisdictions, but will also very likely influence the policy, legislative, and programmatic initiatives of the Canadian governments at all levels when parliamentarians and legislators seek to lessen the risks of offending Canada's NAFTA obligations in order to avoid foreign investor claims [CUPE petition in the Metalclad case in number 20].

13. Moreover, the controversy that may attend, such initiatives is not limited to waste management projects but may affect a diversity of services from health care to water supply. The relevance of NAFTA investment rules to Canadian public services has been recently illustrated by an investor claim against Canada concerning public postal services [CUPE petition in the Metalclad case in number 24].

14. For these reasons, we submit that the affect of the Tribunal's Award is likely to tilt the playing field and government decision making processes in favour of the private sector proposals particularly when these are sponsored by foreign investors. This in turn will affect the employment, and job security of thousands of CUPE members who currently provide public sector services which may be the subject of privatization proposals advanced by such investors [CUPE petition in the Metalclad case in number 31].

15. It is submitted that Canada's NAFTA obligations are akin to constitutional constraints because these may not be altered or amended by domestic legislation, but only by agreement with the Parties to this international agreement, or by abrogation of the treaty itself. Each path to reform may prove as arduous as would amendment to Canadian constitutional arrangements [CUPE petition in the Metalclad case in number 38].

16. It is further submitted that unlike disputes arising from commercial legal relations which may be essentially private in character, foreign investor claims founded solely on NAFTA investment provisions may, as in the current case, raise issues of broad public policy importance [CUPE petition in the Metalclad case in number 39].

17. It is submitted that CUPE qualifies for intervenor status both on the grounds of the particular interest it has in the potential for these proceedings to affect its members and the delivery of public services in Canada, but also on the grounds that it has genuine and special knowledge that is distinct from the perspective that would be offered by the current parties [CUPE petition in the Metalclad case in number 40].

## APPENDIX H

### *The top ten agents of the corporate agenda in Canada*

#### 1. **The Alliance of Manufactures and Exporters of Canada (AMEC)**

The Canadian Manufacturer's Association merged last year with the Canadian Exporter's to form this Alliance. AMEC now represents some 3,000 manufactures, service companies and exporters. President Stephen Van Houton acts as their main spokesperson, with the aid of a \$6.5 million operating budget. Like its predecessor, the CMA, AMEC strongly promotes free trade and favours lower wages and reduced social benefits for Canadian workers in order to make their products "more competitive" in world markets.

#### 2. **The Business Council on National Issues (BCNI)**

The BCNI was formed in 1976 by corporate leaders seeking to exert more influence over a state they had felt had become too large and interventionist. The CEOs of 150 transnational corporations joined to set up the BCNI as a vehicle for them "to contribute personally to the development of public policy and the shaping of national priorities."

The fact that these huge corporations have assets of over \$1.2 trillion, earn annual revenues of \$400 billion, and (despite mass layoffs) still employ about 1,300,000 Canadians helps explain why the BCNI has become the most powerful and influential interest group in the country. Represented by its president, Tom d'Aquino, and guided by its goal of reducing the size of the state, the BCNI has led the fight to cut government spending, keep inflation down, and boost corporate profits.

#### 3. **The Canadian Bankers Association (CBA)**

The CBA was established more than a century ago to promote the interests of Canada's chartered banks. Typical of most such industries, it provides information, advocacy and operational support to its members. One of its chief functions is to try to justify ever-rising bank profits. Its current president is Raymond Protti.

#### 4. **The Canadian Chamber of Commerce (CCC)**

Established in 1925, the Canadian Chamber of Commerce is the country's largest business organization with 170,000 members, including 500 local chambers of commerce and boards of trade, over 95 trade and professional associations, and several thousand corporations. While the size and diversity of its membership enhances its claim to speak for the Canadian business community, it also sometimes makes it difficult for the CCC to reach a consensus. Nevertheless, when its position coincides with those of the BCNI and AMEC (which it does most of the time), the policy demands of the "Big Three" effectively dictate the corporate Agenda in Canada.

#### 5. **The C.D. Howe Institute (CDHI)**

This institute is named after the prominent Canadian industrialist who became the “Minister of Everything” in post-war Ottawa, and was noted for using American investment to develop Canadian industry. Although it claims to be an independent think-tank, the C.D. Howe Institute consistently represents the view of the elite. It is funded almost exclusively from Bay Street, and its board of directors is drawn from Canada’s largest corporations, including Noranda, Alcan and Sun Life Assurances.

The institutes main focus is on economic issues, but it has also recently led the attack on Canada’s social programs. It also played a major role in fuelling the hysteria over the deficit by claiming the problem was caused by government “overspending” rather than high unemployment and high interest rates. The institute’s president and CEO is Tom Kierans, who commands an annual budget of nearly \$2 million - and a lot of respect at the *Globe and Mail* and the *Financial Post*.

#### 6. **The Canadian Taxpayers Federation (CTF)**

The CTF claims to promote the responsible and efficient use of our tax dollars by acting as a watchdog over government and providing taxpayers with information about “wasteful spending and high taxation”. The federation identifies “special interests” as being responsible for “runaway spending” which led to “continuous annual deficits” and “job-killing public debt” that hurt the silent majority (taxpayers).

The CTF proposed solution is to control government spending through legislation that would force governments to balance their budgets. It counts among its achievements several “Tax Alert Rallies” it has organized across Canada, its exposure of “lucrative pension plans” for provincial politicians, and the balanced budget and taxpayer protection laws passed in Alberta and Manitoba.

#### 7. **The Fraser Institute**

For many years after the Fraser Institute was established in Vancouver in 1974, it was considered to be a radically right-wing think-tank on the fringes of the political community. However, since the political terrain has shifted so far to the right, the Fraser Institute, led by its founder and prominent spokesperson, Michael Walker, has gained more acceptance and credibility, and has become more prominent in public policy debates.

The Fraser Institute publishes books and newsletters, and is particularly effective in disseminating its views among high school and university students and involving them in its market economics programs. Besides its own staff of 22, the institute hires academics to develop right-wing positions on free trade, taxation, government spending, health care, and other major economic and social issues. Supported by tax deductible donations from more than 2,500 individuals, corporations and charitable foundations, the institute has an annual operating budget of \$ 2,350,000.

8. **The Investment Dealers Association of Canada (IDA)**

As the Canadian investment industry's national trade association, the IDA represents about 120 member firms for employing more than 24,000 people. It is responsible for regulating the industry and policing the activities of its member firms. The IDA's stated mission is to foster "efficient capital markets" by encouraging participation in the savings and investment process, and by ensuring the integrity of financial markets.

9. **The National Citizens' Coalition (NCC)**

The NCC claims to have more than 40,000 supporters, but has no fixed membership. It advocates individual freedom and responsibility under limited government and strong national defence, but has no democratic internal structures. Independent of all political parties, the NCC neither seeks nor accepts government handouts, preferring to obtain its funding from wealthy business people.

The NCC promotes privatization and contracting-out, citizen-initiated referenda, the reform of pensions for MPs and federal public employees, free trade, government spending cuts. Senate reform, and the use of market forces in health, education and welfare. It also opposes "forced unionism" and pay equity, calling them violations of civil liberties.

10. **The Public Policy Forum (PPF)**

This Ottawa-based organization was formed in 1987 to promote private sector participation in public policy development, an "efficient" public service, and mutual understanding among leaders from government, business, labour and the academic community. When the Forum talks about increasing cooperation and greater consensus in public service reform, it means infusing government with the values, needs and priorities of the big corporations. About 70 percent of the Forum's funding comes from business, which it uses to organize conferences, seminars, and an annual awards dinner where it honours journalists, bureaucrats, academics, and others who have most effectively, in the Forum's view, advocated and supported the corporate agenda.

**"THEY DO IT ALL FOR BUSINESS" by David Langille & Asad Ismi from pages 21 and 22 of *Briarpatch* (June 1997).\***

**\* Reference provided to the author by members from COMER (Committee on Monetary and Economic Reform) and therefore, as such, is not included in the bibliography.**

## APPENDIX I

### THE FTAA AND THE WTO: THE META-PROGRAM FOR GLOBAL CORPORATE RULE

by John McMurtry, Phd.

Professor of Philosophy at the University of Guelph, Ontario, Canada.

The “Free Trade Area of the Americas” (FTAA) is the latest major campaign for the occupation of the planet by the global corporate system. Like its predecessors, it will not respond to resistance, or move beyond dictation of more of the same. **This is because its program is structured to be life-blind. Only the rights of non-living corporations are recognized (emphasis original).**

Only further extension of these corporate rights is in fact implemented - whatever the latest propaganda about “consulting civil society”, or the crocodile tears about “losing efforts” in Paris and Seattle. All the new public relations packaging means is that the propaganda about “inevitable change” and “global prosperity” has failed, and so its time to calm the people by agreeing with their concerns, and carrying on instituting and enforcing the program just as before.

The world, however, has woken up to the global coup d’etat, and people are taking to the streets, now in Quebec City in April 2001. Yet the corporate media will continue to block out the life-and-death issues at stake, focus on the saleable spectacle of a large public confrontation, blame and trivialize the thousands of opponents who are assaulted for putting themselves on the line, and return to selling other images and distractions once the violence entertainment is over.

Meanwhile the deepest and most systematic threat to planetary life the world has ever faced will persist and increase. Behind the unfolding disasters of regional economies and planetary ecosystems melting down, the threat is driven by an underlying meta-program, in terms of which every decision, every policy, every regulation and implementation is demanded and instituted by servant governments. The meta-principles constituting this mind-set are robotic, much like the mind-set of a fanatic cult. But because they are presupposed by the corporate party and its media and political servants as the given order of the new world, they are never exposed as a deranged program of mind. Only fragments and partial themes are discerned, not the underlying structure as a dictatorial whole. The invisible prison of this agenda for world rule always conforms to the following meta-principles:

(1) The ultimate subject and sovereign ruler of the world is the transnational corporation, operating by collective prescription and enforcement through the World Trade Organization in concert with its prototype the NAFTA, its European collaborator, the EU, and such derivative instruments as the APEC, the MAI, the FTAA, and so on. Together these constitute the hierarchical formation of the planet’s new rule by extra-parliamentary and transnational fiat.

(2) Individual transnational corporations are the moving parts of this global corporate system. They are non-living aggregates of dominant private stock-holders who, as individual persons, are made legally immune by “acts of incorporation” from any liability for corporate harms done to societies, to other individuals, and to the environment, as well as from accumulated corporate debts or offences against national and international law. This is the legal armour around agents of the global corporate system which affords them with unaccountable impunity for whatever damage or crime they impose on individuals, societies or environments around the world.

(3) Transnational corporations acting in concert through the WTO and its related supranational constructs prescribe to and are represented by financed national government parties which act in these matters solely on behalf of transnational corporate access to foreign markets and resources with no barriers. This private corporate rule over governments everywhere is evident from the general facts that no binding regulation yet protects any right but that of transnational corporate investors, and not one article of any already signed international covenant or treaty protecting human rights, labour or the environment is binding on any part of any one of these unprecedentedly enforced “agreements”. Indeed, the Kyoto Treaty on climate-altering gases, the Montreal Protocol on ozone-depleting chemicals and emissions, the Basel Convention on transboundary pollutants as well as the entire body of established international solemn agreements and covenants on human and labour rights have been consistently overridden by transnational corporate practices or the explicit judgements of WTO trade panels.

(4) All such treaties and agreements obliging compliance with transnational corporate rights are proposed, negotiated and finalized behind closed doors and wide perimeters of armed force, with police pepper spray, shackles, harassment or surveillance for those who publicly protest. All these agreements, moreover, rule out any other public participation in or appeal against their decrees by anyone except corporate or state representative, and adjudicate all disputes in secret before unelected authorities and tribunals, with no public record or elected observers of these proceedings permitted, and with no record of their proceedings published for public view. Yet publics across the world are obliged to pay all of the costs of negotiating, instituting and enforcing these absolutist prescriptions to the world’s nations, and we are forced to pay also all the fines and trade penalties imposed on their own elected governments for legislating democratic or environmentally protective policies which are deemed to conflict with this unaccountable transnational regulatory regime. This Orwellian arrangement is known as “investor-state dispute resolution”.

(5) All executive authorities within individual corporate bodies are all the while bound by the “fiduciary duty” to maximize monetized returns to their corporate stockholders (including in particular themselves) as the overriding obligation of decisions and actions, thereby compelling them by private corporate charter prescription to minimize all expenditures on protecting human and non-human life by worker pay, social benefits or environmental regulation. In this way, it becomes a violation of legally

binding corporate morality for its operations to take account of the life interests of employees, surrounding communities or environments, or even the future life of the world ahead of shareholders' continuous maximization of money profit.

(6) The system's universal principle of "rationality" is, in consequence, to externalize all costs onto other individuals, societies and environments so that no form of human existence or responsibility such as "citizen" or "person" or "respector of other life" is recognized by the corporate calculus or its state servants. Only self-maximizing "profitable enterprises" and their "consumers" exist to the mindset. This form of life is then everywhere prescribed as "inevitable" for all peoples, and is proclaimed by its agents to offer societies across the world "no alternative".

(7) "Consumers", in turn, are not co-extensive with human beings or even the majority of human beings. This is because only humans with sufficient money-demand to purchase corporate products are recognized by this global system as possessing any right to access any good from food and water to housing, health-care and whatever else can be privatized for profit. What can be "privatized", or in reality, corporatized for profit, is accordingly assumed to include ever more of the conditions of planetary existence without any limit. Genetic structures, the body's most basic means of life, the elements of nature, and publicly funded knowledge are all now being rapidly disassembled, restructured and appropriated by transnational corporations for their maximum private control and profit.

(8) Any alternative mode for production or distribution of any priceable good - socially owned or controlled, publicly subsidized or assisted domestically, self-sufficient or co-operative, or declared without genetic modification or corporate additive is made illegal under transnational trade regulations. If any society or government is resistant, its economy is denounced through state finance and trade offices and global mass media as "non-competitive", "protectionist", "monopolist" or "communist", and attacked on the ground by every means available to the global corporate system, including transnational trade embargo and armed invasion in abrogation of criminal law. This is the true and grave meaning of "global market freedom" in the corporate system.

(9) Consumers and investors with sufficient money-demand to exchange within the global market are, in fact, the only bearers of freedoms recognized by this system, and are axiomatically assumed to have no upper limit to their commodity consumption or their demand acquisition, even if an increasing majority of their fellow citizens or humanity have few or no means of existence. This is the "non-satiety" principle of neo-classical economics. It is also the unstated meaning of "equality of opportunity" in global market doctrine and practice - the equality of money demand for those who have, and no-one else.

(10) There is within the global corporate system no requirement of any kind, theoretical or practical, to recognize any life need of any individual (e.g. nourishing food) or society (e.g. non-toxic air) as rightful, or as a priority, or as an issue of choice within this system, however massive and extreme the gap between life-deprivation and over-consumption grows. As a few hundred "investors" exponentially increase their money demand to more than the total income of the majority of the world's population with their "investments" irreversibly stripping the world's ecosystems at the same time, no policy is even mooted by the U.N. to regulate this planetary disaster. The U.N. Secretary-General, on the contrary, has instituted in 2001 a U.N. "Global Compact" to require all U.N. agencies to enter into "corporate partnership" with the world's richest transnational corporations.

(11) Whatever pollution, degradation, overloading, exhaustion or destruction of local or planetary ecosystems occurs, and however irreversibly devastating in consequences to human and biodiverse life these damages from corporate extractions, effluents, and commodities are, there is not one binding article in any transnational trade treaty or agreement (excepting intra-European) which protects or seeks to protect any human or environmental life condition or good. All "scarcities" thus arising are assumed, with no scientific evidence to substantiate the assumption, to be correctable by market price mechanisms alone. This is why the U.S. Congress refuses to comply with the Kyoto Treaty until it makes all pollution abatement measures conform to a system of saleable pollution credits - which never have reduced pollution, but which accord instituted corporate rights to pollute which can be sold as new and free equity, and which can be profited from at another, new level of the global market.

(12) However many millions or billions of society's or the world's population are misemployed, underemployed or starvation-waged with not enough to live on, and however life-destructive and chronically debilitating their hours and conditions of work are - a majority of the world altogether - there is no principle, norm or standard in neo-classical market theory or global market practice which recognizes or can recognize any of these depredations of human life as an issue or a problem. On the contrary, this life-blind paradigm can only compute these strippings of most of the world's people as a new "flexibility of labour supply" and multiple "opportunity to reduce the cost of labour" by exercise of new transnational corporate rights to produce in the lowest-cost zones of the world and sell in the highest-scale markets with no "barriers to trade".

(13) Any public or government intervention in the presupposition and implementation of any and all of principles (1) to (12) in any way is attacked as "an interference in the free market". Any prior cultural, historical, or democratic achievement or institution limiting the systematically life-destructive effects of their unrestricted operation is deplored as "a distortion" or "impediment to market competition", and targeted for elimination by transnational trade and investment instrument. This is a cumulative and always advancing line of demand by endless transnational regulatory "agreements", and it moves across national borders and domains of life like a sustained military campaign in its

relentless uniformity of prescriptions to target populations, and its blanket denials of the destructive effects which follow, wherever its occupying forces usurp evolved ways of life.

(14) No autonomy of domestic market in any good or service, strategic use of any natural resource or necessity, protected public utility or social sector, product-safety, quality or licensing standard, local procurement practice or grant is consistent with the defined principles of this transnational market regime. All have been and are continuously are, therefore, slated for challenge and irreversible elimination by trade prescription or scheduled regulatory assimilation. This a pattern everywhere documentable, but concealed by corporately financed politicians, the corporate media, and former corporate employees who negotiate the agreements. What remains constant through the cumulative momentum and volume of trade and investment decrees is that every article of tens of thousands is constructed to guarantee that dominantly transnational corporations can exploit and increasingly control domestic economies and public sectors across the world with no curtailing limit permissible in law.

(15) Local, national and global management of the money-demand drivewheels of this system is over 95% controlled by for-profit corporate financial and banking institutions which have covertly appropriated control over almost all government bond issues and investor and consumer lines of credit from government currency creations, national bank loans and state statutory reserves. With no gold or other non-paper standard remaining to control it, corporate bank financial leveraging has become effectively limitless, with central bank interest-rate raises in the new regime applied only to decrease workers' rising wages and social-sector spending. This is the always hidden underside of the system's propelling domestic and transnational force, why covert financial deregulation of money-demand supply is the secret to its every advance, and why no deep limit can be drawn against world occupation by corporate financial chicanery until the creation of money demand is constitutionally re-appropriated by public authority at its essential basis of sovereignty and investment in the commons...

(16) Together these underlying principles of the global market system constitute its fixed and largely unseen meta-structure of perception, understanding and judgement in accordance with which all its policy formation and enforced regulation of societies and economies across the world proceed. There is no principle of "the free market", "investment", "competition", "comparative advantage", "efficiency", "fiscal responsibility", "labour flexibility", "inflation control", "growth", "sustainability", "social welfare", "national prosperity", "justice", "civil society participation", "poverty reduction", or other old or new slogan promulgated by global market institutions and advocates that does not conform to all of (1) through (15) in doctrine and effect. Whenever it is claimed otherwise, ask for the evidence from any "free trade agreement" on the planet. The response will always be silence, diversion to another topic, and, if the question is pursued publicly, surveillance by the police.

However well placed its hirelings, this mind-locked creed is corporately self-driven and self-referential, and threatens to usurp every level of social and ecological life condition still existing.

Given its invasionary past and history, we should not be surprised. Like every Pharaoh of the past, it will topple - the more totalitarian, the more complete the collapse. But remember who advocates for this regime now, for they are agents of the corporate occupation of all of the world's societies and ecosystems by decreed financial and market mechanisms never electorally agreed to by any people on earth.

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*The Cancer Stage of Capitalism* (London and Tokyo: Pluto and Springer -Verlag, 1999 and 2001). He is completing his forthcoming book, *Value Wars*, which will be published by Pluto Press.

## APPENDIX J

### SUMMARY OF THE “GLOBAL SUSTAINABLE DEVELOPMENT RESOLUTION”

*Introductory Material:* “Because the global economy has serious and often harmful effects on the majority of Americans and of people around the world, yet is not subject to their control, the people and governments of the United States and the rest of the world should take action to establish democratic control over the global economy.”

*Section 3 Findings:* “Unregulated economic globalization tends to create a race to the bottom; a downward economic spiral with stagnation and recession; economic instability; growing inequality; and the degradation of democracy. It is the common interest of the people of the United States and of the people of the rest of the world to correct these failings.”

*Section 4 Policy:* “Policy goals of the United States should include: reducing the threat of financial volatility and meltdown; democracy at every level from the local to the global; human rights for all people; environmental sustainability worldwide; and economic advancement of the most oppressed and exploited groups.”

*Section 5 Developing Dialogue on the Future of the Global Economy:* “The U.S. should establish a Commission on Globalization to develop the broadest possible dialogue among the people of the United States on the future of the global economy. The U.S. should initiate the establishment of a United Nations Commission on the Global Economy to initiate a process of global dialogue on the future of the global economy. It will also create a Global Economy Truth Commission to investigate abuses in the use of international funds and abuses of power by international financial institutions. A series of Breton Woods-type conferences, with representation of civil society, should make recommendations for and initiate negotiation of a ‘Global Sustainable Development Agreement.’”

*Section 6 Global Sustainable Development Financial Strategy:* “Through such negotiations, the United States should develop and implement a strategy to counter those aspects of the global financial system that make it more difficult for communities, regions, and countries to pursue sustainable development. The purpose of this strategy is to restructure the international financial system to avoid global recessions, protect the environment, ensure full employment, reverse the polarization of wealth and poverty, and support the efforts of polities at all levels to mobilize and coordinate their economic resources. The strategy will include an internationally coordinated tax on foreign currency transactions; international public investments funds for sustainable development; and international institutions to perform functions of monetary regulation currently performed inadequately by national central banks. The United States should work with others to write off the debts of the most impoverished countries by the end of the year 2000. The U.S. should work with other nations to establish a permanent insolvency mechanism for adjusting the debts of highly indebted nations.”

*Section 7 Reform of International Financial Institutions:* “U.S. funding for the IMF, the World Bank, and other International Financial Institutions should be conditional on their reorienting their programs from the imposition of austerity and destructive forms of development to support for labor rights, environmental protections, rising living standards, and encouragement for small and medium-sized local enterprises. The IMF should terminate all activities except those fulfilling its original mandate of addressing short-term external trade imbalances.”

*Section 8 Corporate Accountability:* “To help establish public control and citizen sovereignty over global corporations and reduce their ability to evade local, state, and national law, the United States should enter into negotiations to establish a binding Code of Conduct for Transnational Corporations which includes regulation of labor, environmental, investment, and social behavior. In addition, corporations incorporated and/or operating in the U.S. should be held liable in U.S. courts for harms caused abroad.”

*Section 9 Reform of International Trade Agreements:* “WTO, NAFTA and all other agreements regulating international trade should be renegotiated to reorient trade and investment to be means to just and sustainable development.”

Global Sustainable Development Resolution: [http://bernie.house.gov/legislation/imf/global\\_resolution.asp](http://bernie.house.gov/legislation/imf/global_resolution.asp)

## APPENDIX K

### Cited Websites and Email addresses

Alliance for Responsible Trade: [www.art-us.org](http://www.art-us.org)  
 Alternatives for the Americas: [www.net/comfront/alts4americas/eng/](http://www.net/comfront/alts4americas/eng/)  
 B.C. Chief Justice Annual Report: <http://www.courts.gov.bc.ca/Sc/Annual>).  
 B.C. Supreme Court: <http://www.courts.gov.bc.ca>  
 BC website of CUPE: [www.cupe.bc.ca](http://www.cupe.bc.ca)  
 Calgon Corp: [www.calgon.com](http://www.calgon.com)  
 Canada Action Party: [www.canadianactionparty.ca](http://www.canadianactionparty.ca)  
 Canadian Auto Workers: [www.caw.ca](http://www.caw.ca)  
 Canadian Center For Policy Alternatives: <http://www.policyalternatives.ca>  
 Canadian Community Reinvestment Coalition: <http://www.cancrc.org>  
*Canadian Ecumenical Initiative*: [www.web.net/~jubilee](http://www.web.net/~jubilee) [wb50years@igc.org](mailto:wb50years@igc.org)  
 Canadian Environmental Law Association: [www.web.net/cela/](http://www.web.net/cela/)  
 Center for Economic policy Research: [www.cepr.net/globalization/FTAA/index/html](http://www.cepr.net/globalization/FTAA/index/html)  
 Citizens Concerned About Free Trade: <http://web.indirect.com/~ccaft/> or [www.davidorchard.com](http://www.davidorchard.com)  
 CLAC: Anticapitalist convergence of Quebec: [www.quebec.2001.net](http://www.quebec.2001.net)  
 Coalition to Shut Down the OAS/FTAA: [www.tao.ca/~stopftaa/](http://www.tao.ca/~stopftaa/)  
 Comer Association: [www.monetary-reform.on.ca](http://www.monetary-reform.on.ca) or [wkrehm@ibm.net](mailto:wkrehm@ibm.net)  
 Common Frontiers website is: [www.web.net/comfront](http://www.web.net/comfront)  
 Connie Fogal: [cfogal@netcom.ca](mailto:cfogal@netcom.ca)  
 Defence of Canadian Liberties Website at: [www.canadianliberty.bc.ca](http://www.canadianliberty.bc.ca)  
 Council of Canadians: <http://www.canadians.org>  
 Federal Government Trade Website: [www.dfait-maeci.gc.ca/tna-nac](http://www.dfait-maeci.gc.ca/tna-nac)  
 Friends of the David Suzuki Foundation: [www.davidsuzuki.org](http://www.davidsuzuki.org)  
 FTAA Official Site: [http://alca-ftaa.org/alca\\_e.asp](http://alca-ftaa.org/alca_e.asp)  
 Global Exchange: [www.globalexchange.org/ftaa/linkshtml](http://www.globalexchange.org/ftaa/linkshtml)  
 Global Resource Bank [www.GRB.NET](http://www.GRB.NET)  
Global Sustainable Development Resolution: [http://bernie.house.gov/legislation/imf/global\\_resolution.asp](http://bernie.house.gov/legislation/imf/global_resolution.asp)  
 Global Trade Watch: [www.tradewatch.org](http://www.tradewatch.org)  
*Global Water Contract*: [WWW.FactoryFarm.org](http://WWW.FactoryFarm.org)  
 Great Lakes United: [www.glu.org](http://www.glu.org)  
 Halifax Initiative: <http://www.sieraclub.ca/national/halifax>  
 Independent Media: <http://vancouver.indymedia.org/>  
 Inter-American Development Bank: [www.iadb.org](http://www.iadb.org)  
 International Forum on Globalization: [www.ifg.org](http://www.ifg.org)  
 International Institute for Sustainable Development: <http://iisd.ca>  
 International Joint Commission: [www.ijc.org](http://www.ijc.org)  
 Jubilee 2000: [www.web.net/~jubilee](http://www.web.net/~jubilee)  
 Knowledge Network: [www.knowtv.com](http://www.knowtv.com)  
 Making the Links Radio: [www.makingthelinksradio.com](http://www.makingthelinksradio.com)  
 Mazumder's website: [web.uvic.ca/biology/people/mazumder.html](http://web.uvic.ca/biology/people/mazumder.html)  
 Nalco: [www.nalco.com](http://www.nalco.com)  
 Public Citizen Global Trade Watch: [www.citizen.org/pctrade/shell\\_Game/Ftaa.html](http://www.citizen.org/pctrade/shell_Game/Ftaa.html)

Public Service International: <http://psi@world-psi.org>  
 Public Television: [pbs.org](http://pbs.org)  
 Ralph Cole: [democracy@aol.com](mailto:democracy@aol.com)  
 Robin Round of the Halifax Initiative: [rjround@halifaxinitiative.org](mailto:rjround@halifaxinitiative.org)  
 Russow, Joan: [jrussow@coastnet.com](mailto:jrussow@coastnet.com)  
 Sierra Legal Defence Fund: [www.sieralegal.org](http://www.sieralegal.org)  
 SmashFTAA!: [www.tao.ca/~kdawg/smashftaa.html](http://www.tao.ca/~kdawg/smashftaa.html)  
 Stop FTAA: [www.stopftaa.org](http://www.stopftaa.org)  
 Suez-Lyonnaise des Eaux: [www.suez-lyonnaise-eaux.fr/english/](http://www.suez-lyonnaise-eaux.fr/english/)  
 The Canadian Labour Congress Environmental Department: [dbennett@clc-ctc.ca](mailto:dbennett@clc-ctc.ca)  
 The Organization of American States: [www.oas.org](http://www.oas.org)  
 Tony Clarke of Polaris Institute at: [tclarke@web.net](mailto:tclarke@web.net)  
[www.grida.no/geo2000/pressrel/water.htm](http://www.grida.no/geo2000/pressrel/water.htm)].  
 US Filter: [www.usfilter.com](http://www.usfilter.com)  
 Vivendi: [www.vivendi.com/](http://www.vivendi.com/)  
 Water Accord: [http://www.ccme.ca/le\\_about/leg\\_communiques/leg7\\_water.html](http://www.ccme.ca/le_about/leg_communiques/leg7_water.html)  
 Watertalk: <http://www.watertalk.org/waterwalk>  
 West Coast Environmental Law Association: [www.wcela.org/international/trade](http://www.wcela.org/international/trade)  
 World Commission on Water for the 21st Century: [www.worldwatercouncil.org/site/vision/wcw.cfm](http://www.worldwatercouncil.org/site/vision/wcw.cfm)  
 World Water Vision process: [www.watervision.org](http://www.watervision.org)  
 World Bank Boycott campaign: [watkinsn@preamble.org](mailto:watkinsn@preamble.org) or <http://www.preamble.org/cej>  
 WTO Action.Org: [www.wtoaction.org](http://www.wtoaction.org)  
 WTO General Agreement on Trade in Services: <http://www.wto.org/wto/services/gatsintr.htm>

### Additional Websites:

Alternative Information and Development Center: <http://www.aidc.org.za>  
 Corporate Campaigns Inc.: [corpcamp@aol.com](mailto:corpcamp@aol.com)  
 Corporate Observatory [ceo]: [www.xs4all.nl/ceo](http://www.xs4all.nl/ceo)  
 ECOROPA France: Email: [ecoropa@magic.fr](mailto:ecoropa@magic.fr)  
 Essential Action Multinational Monitor: <http://www.essential.org/monitor/>  
 Free Speech TV: [www.fstv.org](http://www.fstv.org)  
 Friends of the Earth: <http://www.foe.org/>  
 Global Exchange: <http://www.globalexchange.org>  
 Humane Society of the United States: [www.hsus.org](http://www.hsus.org)  
 IBON Institute: Email: [atujan@mnl.sequel.net](mailto:atujan@mnl.sequel.net)  
 Institute for Agriculture and Trade Policy: [www.iatp.org](http://www.iatp.org)  
 Institute for Environmental Research and Education: [www.wiere.com](http://www.wiere.com)  
 Public Citizen's Global trade Watch: [www.tradewatch.org](http://www.tradewatch.org)  
 Rainforest Action Network: [http:// www.ran.org](http://www.ran.org)  
 Research Institute for Science and Technology: Email: [vshiva@giasd101.vsnl.net.in](mailto:vshiva@giasd101.vsnl.net.in)  
 Sustainable America [www.sanetwork.org](http://www.sanetwork.org)  
 Transnational Resource and Action Center: [www.corpwatch.org](http://www.corpwatch.org)  
 Transnational Institute: [www:tni.org](http://www.tni.org)  
 The Development Gap: <http://www.developmentgap.org>

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