

1998 RIGHT HONOURABLE JEAN CHRETIEN PRIME MINISTER OF CANADA

Open letter

Saturday May 16, 1998

I am writing to you to support your proposal to draft regulations to ban the bulk export of water, and to counteract the anti-banning-of-water stance that has been taken. I think that the following argument against the ban is flawed: the argument is as follows: If Canada bans the sale of water, then water would be treated as an economic good and the United States would have the right to sue under NAFTA. Ironically, some groups opposed to NAFTA, by making statements like this, end up undermining other viable routes that Non Governmental Organizations (NGOs) and governments can take to initiate strong preventive measures, to implement regulations, and to call for mandatory compliance with international law.

The Canadian Federal Government's environmental assessment report on NAFTA, stated that international agreements would take precedent over NAFTA (even though in the NAFTA agreement itself this is not clear). However, through the government's own statement in its environmental assessment report, the government has created a legitimate expectation that international law will take precedence. Given the recent demise of fish populations, it is time to assert that International environmental law should take precedence over vested economic interest agreements.

Canada has signed and ratified the Convention on Biological Diversity, and the United States has signed but not ratified the Convention. Even if member states of the United Nations have signed but not ratified a Convention, under Article 18 of the Vienna Convention of the Law of Treaties, States that have signed a treaty [convention] must not do anything in the interim that would defeat the purpose of the treaty [convention] i.e. in the case of the Convention on Biological Diversity, the conservation of biodiversity.

In the Convention on Biological Diversity there is a requirement to invoke the precautionary principle, and this principle is now deemed to be a principle of International customary law and thus part of the system of National law. The Principle reads as follows: Where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat.

It could be proposed that there is sufficient evidence that the alteration of water systems through the bulk sale of water, through mega-diversion and through rerouting freshwater where the water is shared could be a threat to biodiversity to justify the call for the banning of that threat.

There is sufficient evidence that the lack of environmentally sound practices, through negligence, have caused a reduction of the biodiversity of fish stocks and other species that have now been listed as endangered or threatened.

This is a time to learn from negligent actions in the past and to move forward with precaution and prevention through strong environmental measures.

Yours very truly

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National Leader of the Green Party

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