

WATER AND NAFTA: The politics of change.

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Back in 1987, when I and others first noticed water's inclusion in the draft Free Trade Agreement, I was still of the opinion that an informed public could change the course of public policy. To this end, I drew together 13 notable Canadians to produce the book *Water and Free Trade*, published on the eve of the '88 election (Lorimer and Sons, Toronto, 1988)

In response, Tom D'Aquino, then head of the Canadian business lobby, ran full page ads in national and local papers claiming "water is not included" and that "the people who think it is confused the words bottled and bulk". (See insert.)

Caught in the fast-spin cycle of a very well oiled machine, Canadians became confused. The Council of Canadians waded into the public discussion under the able stewardship of then-acting Chair Kenneth Wardroper, former Canadian Ambassador and contributor to the book *Water and Free Trade*. When Maude Barlow took over, water became the poster child for everything that was "wrong" with NAFTA, and the Council's message became a simple one: "*Want to save Canada's water? Kill the Trade Agreement!*"

With the policy implications of water's inclusion in the NAFTA lying mugged in the dark alleys of partisan politics, retention of sovereignty over water resources lost its place in Canadian public policy dialogue.

Then in March 2002, in my hotel room in the Hotel Nacional in Havana, the Eleventh Delegation of the Canada Cuba Farmer to Farmer Project challenged me to take up the issue again on behalf of Canada's farmers. We were discussing the strength that came from farmers speaking in "one voice". How Cuban farmers had it. How Canadian farmers didn't. And how politicians were completely inattentive without it. "But you can't get farmers to agree on anything..." said one, "too many different points of view!" Not true, I suggested, it's simply a matter of avoiding the detail swamp and focusing in on the heart of the matter. Water is a good example, I continued. Like Canadians at large, farmers' feelings about NAFTA are all over the map, but on this they agree: Canada must retain sovereign control over our water resources. *The Farmers' Resolution to Exempt Water from the NAFTA* was born.

Fixing the problem simply means fixing the deal. There is no need to 'kill' anything. Because Canadians were repeatedly assured water was not part of the trade agreements, what we have here is an error and a fix. ... And like repairs to a fence, farmers know the quicker you fix it, the smaller the problem.

The issue is not limited to exports. Water use in Canada by American firms – or firms with American investors – is subject to the NAFTA. What this means is when push comes to shove – in the oil patch, by industry, for power, for irrigation – Americans, because they have access to NAFTA and all that it guarantees, have superior rights to Canada's water than do Canadians. Proportional use, no price discrimination, no disruption of "normal channels of supply" and, of course, the protection of Chapter 11 (compensation for profits lost).

Whether you love or hate the NAFTA is not the point. Whether you think water exports are worth exploring or should be banned is not the point. The point is sovereignty.

There is a global struggle emerging between commodity and community. Commodity is winning. It is time to draw a line in the sand and say, "here is where the rights of commodities end and the rights of communities begin. Water is that dividing line.

Already signed by hundreds of farm organizations across Canada, the Farmers Resolution to Exempt Water From the NAFTA is quickly on its way to becoming the “table with 1,000 legs” upon which Canadians can stand with confidence and say, “We support Canada’s farmers in this...” Then, it becomes a simple matter of democracy.

Visit the website and see how far we have come already. Look at the farm organizations that have endorsed the Resolution, and the non-farm groups that have voiced support. See the international support that is building. Add your organization’s voice to this dialogue.

Read the one-pager [Why Water’s In](#). Scan [A Dozen Myths \(And Why They Won’t Hold Water\)](#). Then ask your favourite candidate what steps they are taking to support Canada’s farmers in their Resolution to Exempt Water From the NAFTA. For the past two Februarys, I have traveled to Ottawa to brief Liberals, Conservatives, New Democrats and Bloc MPs on this initiative. All candidates should be up to speed. See if they are. And after the election is over, make sure they know [The Farmers’ resolution to Exempt Water from the NAFTA](#) is one campaign that is not going to go away.

Defending the rights of community over commodity has resonance for the world. It’s Canada’s turn to speak.

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Some Plain Facts about Water

In fact neither the words “bottled” nor “bulk” appear in either agreement (FTA or NAFTA). Water is included by virtue of the Agreement’s definition of “goods” as those defined in GATT’s *Harmonized Commodity Coding System*, which includes Tariff Item 22.01: water: all natural water other than sea water, whether or not clarified or purified.

Like the FTA before it, all provisions of the *Goods, Services and Investment* sections of the NAFTA apply to Canada’s water, including Chapter 11 (rights of compensation) and Chapter 7, Agriculture.

In both the FTA and the NAFTA, water is explicitly defined as an agricultural good subject to all provisions of the agreements. In the FTA, this is done by listing the tariff numbers of agricultural goods; HCCS Tariff Item Number 22.01 appears halfway down the list. NAFTA is a bit less transparent – rather than repeating this brief wording, Article 711 of the FTA is instead “incorporated into and made a part of” the NAFTA by virtue of Annex 702.1 (not even as an Article but as an obscure Annex!) without further reference or elaboration – fully impossible for the lay reader to follow.

The environment provisions of the FTA and the NAFTA do not apply to any good defined as an agricultural good, such items fall under the exclusive jurisdiction of the Sanitary and Phytosanitary provisions of the deal (plant and animal health).