

1999/03/16

Workshop Questions

Introduction

In reviewing the language of the reference, it would appear that a common understanding of the terms “**sustainable use of our shared waters**” and/or “**sustainability of the water resources in boundary and transboundary basins**” is important to participants in addressing the substantive issues raised in this workshop. Therefore, as a guide to participants in their deliberations, the following text on sustainability/sustainable use is offered:

“One should not consider the sustainable use(s) of water as simply those to meet burgeoning human needs. The sustainable use of water should incorporate the “ecosystem approach” which is endorsed by both Parties. This holistic and integrated approach emphasizes system elements and relationships which link people, societies, economies and the environment. It has directed people’s thinking to ways of linking water quality and quantity, ground and surface water, water to land and other environmental aspects, water to the economy and society’s needs, and water to the biological diversity and integrity of ecosystems. Sustainable use outcomes should be consistent with the purpose of maintaining or improving the particular (in this instance, the Great Lakes) ecosystem’s (evolving) integrity and contributing to the well-being of that ecosystem’s living systems, including humans, both now and into the future.”

The questions below are offered to participants in the workshop to stimulate discussion and elicit helpful views and ideas from which the Commission can draw in preparing its reports to governments. If there are issues and/or questions missing, feel free to raise them. While participants can provide a global and North American perspective on any question or issue, the prime focus should be on the Canada-US border region, with priority to the Great Lakes basin.

The questions are arranged under two broad subject areas as shown.

A. Laws and policies that bear on the sustainability of the water resources in boundary and transboundary basins including shared ground water aquifers.

Questions on law and policy:

To what extent is the concept of sustainability of surface and groundwater resources incorporated into the legal and policy regimes of both countries, particularly in the Great Lakes basin? What legal and policy instruments have been used by jurisdictions (federal, provincial/state, first nations) in the two countries to conserve water or otherwise to support this concept of sustainability?

How effective have these instruments been in support of sustainability? If not (or only partially) successful, what needs to be done to assure such success? If serious gaps in law and/or policy remain on moving towards sustainability, what realistic options are available to fill those gaps?

Are the international legal principles governing groundwater resources different from those that apply to surface water, both generally and specifically in the Great Lakes basin, and how do these principles give weight to the concept of sustainability?

Since good policy is founded on sound science, are there scientific needs that also need to be addressed before these policy/law gaps can be filled?

Questions on management principles and conservation measures:

The Governments have expressed concern that current management principles and conservation measures may be inadequate to ensure the future sustainable use of our shared waters. For instance, while trends in consumption of water appear to be not as high as originally projected in the Commission's 1985 report, nevertheless, it represents a substantive (potential) removal from the Great Lakes basin. Also, increased pressures for use of the shared water supplies of the two countries are forecast for the 21st century, which may be compounded by climate change.

Can you suggest ideas on how the waters of the Great Lakes can be protected for the long term to ensure sustainable use of these waters for both countries, including sustaining the Great Lakes indigenous aquatic ecosystems? How does one place a value on the many uses to which waters are or could be put, including in-stream uses, in order to inform the decisions of those who allocate water?

What are realistic alternatives for promoting water conservation, reducing demand and/or extending/stretching available water supplies?

B. Existing diversions, past proposals, and reasonably foreseeable proposals for diversions of water in and out of boundary and transboundary basins, including bulk removals of water for export.

Questions on the experience and impacts/effects of diversions, and the legal mechanisms used :

What has been the experience in the United States and Canada, and elsewhere in the world, regarding inter-basin diversions and bulk shipments of water? What have been the economic, social, environmental/ecological benefits and/or adverse effects for both the sending and receiving areas? What lessons have been learned? What were the legal/policy mechanisms to accomplish, regulate or prohibit such inter-basin transfers?

In particular, what might be the cumulative effects (economic, social, environmental/ecological) of existing and potential consumption, diversion and other bulk removals of water, including the potential effects of climate change, on the Great Lakes basin/ecosystem?

What legal/policy barriers have been imposed in either the US or Canada to the transfer of water between basins or states/provinces? How effective have these been? In particular, the Great Lakes Charter and the US Water Resources Development Act (1986) either seek and/or require the consent of all Great Lakes States for diversions or bulk removals of Great Lakes waters. Would a similar requirement at the binational level provide a sound and feasible basis for management of Great Lakes waters?

Is a prohibition of inter-basin diversions or other bulk removals a sound policy for management of Great Lakes waters? Is it feasible in law and practice?

Questions on trade and commerce:

To what extent have legal issues related to commerce or trade been involved with water removals in North America? Do past legal/court decisions create precedents

which influence/dictate the future as regards the transfer of water between basins or jurisdictions?

Do trade agreements(GATT and NAFTA) impose constraints on and/or risks to policy/law making relating to bulk removals of water for export/sale? How can these constraints/risks be minimized/reconciled?

Questions on markets for water, business case studies, costs of delivery of water as compared with alternative supply options to satisfy the demand for water in areas of need.

Can a business case be made for the bulk export and sale of water from the Great Lakes to distant regions/ countries? Where are the (potential) markets --- continental and/or global --- and is there a demand, or likely to be a demand, in the future? Have any such business cases been done for Great Lakes water? Are there realistic proposals for short or long-distance transfers of water from one basin to another involving U. S. and/or Canadian watersheds? What are the available alternatives (to removals) to regions in need, and how do the costs of these alternatives stack up against bulk transfer by tanker or pipeline? Do business cases typically take social and environmental factors/costs into account?

For those constituencies which oppose bulk removals of water, including bulk export for sale, are there circumstances in which the removal/export of water might be considered appropriate?

Is groundwater currently being moved across the Canada-US boundary (or across the perimeter of the defined surface watershed of the Great Lakes basin), caused either by greater draw-down on one side or by bulk transfer/transport of water, and if so, how much, and from where? (Note: Groundwater basin boundaries are not always coincident with surface water basin boundaries). Are there any safeguards in place for existing users of those aquifers in the event that groundwater supplies might be depleted over time?