Water rights under threat in Quebec

Bill 92 ignores property rights, market forces

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The government of Quebec is proposing to abolish all private property rights to water and to empower regulators to dictate who may use water, how much they may use, and how they may use it. Proponents claim that such measures are necessary to protect the natural resources of the province. But such overzealous regulation offers no guarantee that water will be apportioned wisely. Instead, it promises to politicize every aspect of water use, dissuade industrial investment, and deprive citizens of basic rights.

Bill 92, if enacted, would declare both surface water and groundwater to be "part of the common heritage of the Québec nation" and off limits to appropriation "except under the conditions defined by law." Currently, surface water is considered to be a public resource, but legal precedent in the province holds that property owners have a claim to the groundwater beneath their land.

This is no small matter for several million Quebecers whose private wells constitute their primary source of drinking water. Indeed, nearly half the population of the province relies on the groundwater beneath their property (Quebec, Ministry of Sustainable Development, Environment and Parks, 2003). To terminate these private property rights would constitute a massive transfer of wealth from citizens to the government.[1]

Economic growth and investment in Quebec are also at stake. Industry and agriculture—both of which require ready access to water supplies—are staples of the provincial economy. The imposition of a costly regulatory scheme would thus dissuade investors and undercut the economy.

The proposed legislation is riddled with vague and arbitrary provisions, and it grants virtually limitless regulatory power to the minister of sustainable development, environment and parks. For example, all water withdrawals of 75,000 litres or more per day would require authorization from the minister who, at her discretion, may "refuse to issue or renew an authorization, or, on the minister's own initiative, modify the conditions to which it is subject."

There already exist prohibitions on bulk water withdrawals and diversions under provincial, federal, and international law. However, the proposed legislation is specifically structured for subsequent imposition of water royalties. Indeed, at the press conference following her introduction of Bill 92 last year, Line Beauchamp, minister of sustainable development, environment and parks, announced that water royalties would be imposed in the near future (Radio-Canada, 2008, June 5).

Agriculture and industry do siphon hundreds of millions of litres of water from the Great Lakes-St. Lawrence River Basin. But Canadian withdrawals have declined by 30% since the mid-1990s (Environment Canada, 2003). Moreover, the vast majority of waters withdrawn are returned to the basin, often after treatments that improve water quality. Only about 5% is actually "consumed" (depleted) by human activity (Environment Canada, 2003). According to researchers at Environment Canada (2003), "[a] loss of this magnitude does not appear to be placing significant pressure on water resources" (table 1).

The legislation prescribes the application of the "prevention principle" to water regulation—that is, the principle that environmental quality is best achieved by avoiding pollution rather than mitigating impacts. But it is possible to ascribe risk to almost any use of water and thereby to prohibit many perfectly legitimate—and economically beneficial—activities.

Quebec's water supplies are hardly threatened. The province contains 20% of Canada's freshwater land area and encompasses more than 3% of the world's fresh water reserves (Environment Canada, 2004). The renewable reserves of groundwater in Quebec's inhabited regions total an estimated 200 cubic kilometres (200 trillion litres), according to the Ministry of Sustainable Development, Environment and Parks. Still, 75% of Quebecers are concerned that provincial water reserves will be commercialized (Girard, 2007, Oct. 14). Moreover, 66% of Canadians surveyed in 2004 opposed the idea of water sales to the United States (EKOS Research Associates, cited in Lasserre, 2005: 7).

Who owns the water?

The policy framework adopted by the province in 2000 noted "a certain ambiguity with respect to defining the legal status of water, leading to many debates as to its ownership" (Quebec, Ministry of Sustainable Development, Environment and Parks, 2002).

Table 1: Uses of water withdrawals in Quebec, 2002

Uses of water withdrawals	Millions of litres per day
Public	4,164
Domestic	271
Irrigation	34.9
Livestock	72.3
Industrial	475
Fossil Fuel	178
Hydro Power	1,150,371
Total	**1,155,566**

Source: Great Lakes Commission (2002).

The government of Quebec, in its 2002 Quebec Water Policy, attempted to end the debate with a simple declaration: "Water, both surface and groundwater, is recognized in the Civil Code of Quebec as something whose use is common to all, subject to rights of use or limited appropriation rights that may be recognized." The status of water as "common to all" effectively empowered the provincial government to regulate all water use (Quebec, Ministry of Sustainable Development, Environment and Parks, 2002).

Bill 92 is an attempt to codify that declaration as well as other elements of the Quebec Water Policy. The bill is contrary, however, to legal precedence in the province that suggests land owners do have property rights to the groundwater beneath their parcel. As noted by Robert Dutrisac (2002, Sep. 11) in *Le Devoir*: "The jurisprudence suggests that water taken from the water table belongs to the owner of the land lying above it, even if this water table is not often confined to a single lot or a single piece of land."

The Ministry of Sustainable Development, Environment and Parks likewise recognizes landowners' rights to groundwater, stating on its website: "Under the Civil Code of Quebec, groundwater is considered to be property under private ownership linked to the ownership of immovable property" (Quebec, Ministry of Sustainable Development, Environment and Parks, 2000).

As previously noted, enacting Bill 92, in its current form, would extinguish those private property rights. While for some this may seem justified for the sake of protecting the water table, evidence abounds that private property rights, in many cases, result in superior environmental stewardship than government regulation (Anderson and Leal, 2001).

The bottled water exemption

Bill 92, if enacted, would prohibit the out-of-province transfer of any water withdrawn in Quebec. However, the legislation does exempt "water withdrawn … to be marketed for human consumption, if packaged in Quebec in containers of 20 litres or less."

Quebec's water-bottling industry is undergoing rapid growth; it currently generates sales of $75 million a year (Agriculture and Agri-Food Canada, 2000).

However, the industry is already tightly regulated by the province. As Daniel Colpron (2003), former president of the Quebec Water Bottlers' Association, explains:

"Since 1994, nobody can take water for bottling purposes without first obtaining a certificate of catchment authorization from the Quebec environment department. To get this catchment authorization, environmental and hydro-geological studies must be conducted and must show that water catchment will not have harmful effects on the environment or on the quantity of water available for neighbouring activities. This legal supervision ensures the public that there will not be excessive pumping by bottlers that could degrade the resource or deprive neighbours of access to the resource. The fears of local communities when a bottling plant is installed are thus unfounded."

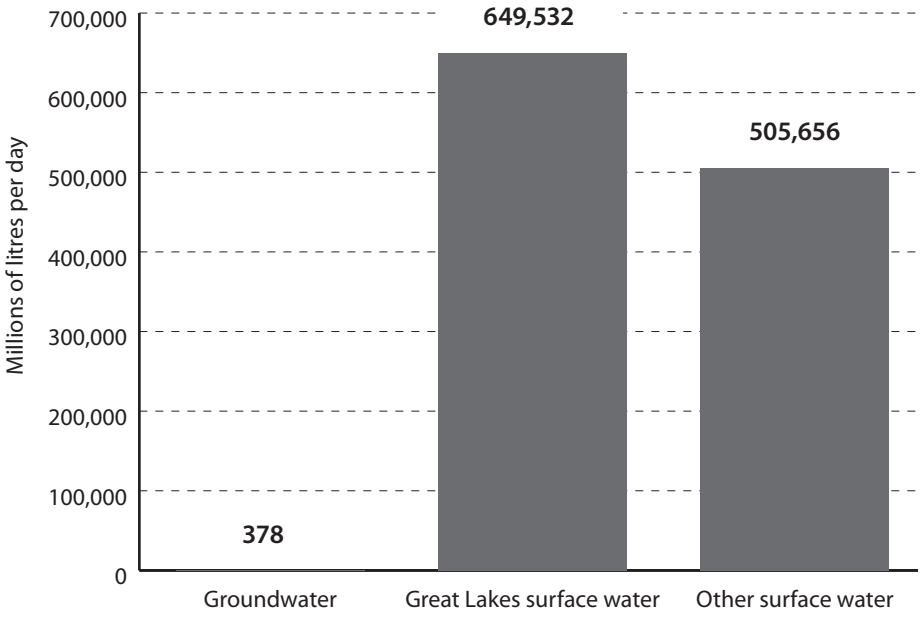
Among some environmental activists, bottled water is Public Enemy No. 1. For example, the municipality of London, Ontario, has banned the sale of bottled water in municipal buildings. The City of Toronto is slated to consider such a ban this fall. Vancouver, Kitchener, and Ottawa also have shown interest in a similar prohibition (Tison, 2008, Aug. 22). But in reality, withdrawals related to the beverage industry, in general, and bottled water specifically, do not approach those of industry and agriculture (Côté, 2006). According to the Quebec Water Bottlers' Association, spring-water bottlers use only 0.08% of the annual total volume of groundwater extracted in Quebec.

Conclusion

Proponents of Bill 92 may be sincere about ensuring the sustainability of Quebec's water supplies. However, given the actual rates of withdrawal and consumption, any fears of water depletion are overblown (figure 1).

To the extent that local action might be warranted, government officials have wholly ignored market-based incentives, such as tradable water rights, as a stewardship method. But as noted earlier, property rights and market incentives have proven far more effective than regulation in protecting the environment. As noted by researchers Clay J. Landry and Laurel E. Phoenix (2003), "there is a broad recognition and understanding

Figure 1: Types of water withdrawals in Quebec, 2002



Source: Great Lakes Commission (2002).

among researchers and policy makers that well defined property rights to resources such as water are fundamental to giving people the proper incentives for sustainable management."

A water market would allow farmers, industry, municipalities, and even environmental groups to buy and sell water rights as dictated by supply and demand. The prices would reflect the true value of water with far more accuracy than any government royalty scheme and thus better encourage efficiency and conservation.

Unfortunately, Bill 92 ignores the power of market forces in favour of government force. In so doing, the legislation, if enacted, will rob Quebecers of their property rights and discourage investment in the province.

Note

1 For discussions on the environmental, public health, and economic benefits of property rights and water markets see T. Anderson and P. Snyder, *Water Markets: Priming the Invisible Pump* (Cato Institute, 1997); T. Anderson (ed.), *Water Rights: Scarce Resource Allocation, Bureaucracy and the Environment* (Pacific Institute for Public Policy Research, 1983); and F. Segerfeldt, *Water for Sale, How Business and the Market Can Resolve the World's Water Crisis* (Cato Institute, 2005).

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