

# There is No Market for Water

The Bow River, part of a southern water basin in Alberta, is already over-allocated with water licences, with more permits for withdrawals than the existing amount of water can support.



by **Meera Karunanathan**  
and **Scott Harris**

In her book *Blue Covenant*, Maude Barlow describes one of the most important battles of our time: the struggle between those who define water as a human right and a part of the global commons, and those who define it as a commodity to be bought and sold on the open market.

In recent years, the main Canadian front in this battle has been in Alberta, where the right to buy and sell allocations of the province's scarce water resources has been written into law. The government of Alberta is looking for ways to both expand and deregulate Canada's first — and, for now, only — water market.

It is a battle Canadians cannot afford to lose.

## ROOTS OF A WATER CRISIS

Alberta's water resources have long been used as an incentive for economic development in the region. To attract settlers to the west by guaranteeing them access to water, the 1894 North West Irrigation Act gave the Crown the right to grant water use rights to land owners, setting up a "first in time, first in right" (FITFIR) water allocation system. FITFIR gives those with senior water licences absolute rights in perpetuity to use the full amount of water they have been allocated, even if drought or water shortages mean there isn't enough water left for users with more junior licences.

While this system worked in the early 1900s, it's failing now due to increased population, expansive industrial and agricultural use, and climate change — all leading to a burgeoning water crisis. According to University of Western Ontario water researcher Jeremy Schmidt, poor management of water resources has resulted in a province with only two per cent of Canada's fresh water supporting 60 per cent of the country's irrigation. With 80 per cent of the water in the north and 80 per cent of the population in the south, three of the province's southern basins — the Bow River, the Oldman River and the South Saskatchewan River — are already over-allocated, with more licences for withdrawals than the existing amount of water can support.

## CANADA'S FIRST WATER MARKET

In 1999, the Alberta government introduced the Alberta Water Act, which maintained FITFIR and for the first time allowed "water transfers," or the right to exchange all or part of a water licence

between users. But it wasn't until 2006 that the Alberta government — realizing there was no more water to give away — stopped issuing water licences in the Bow, Oldman and South Saskatchewan River basins, actually creating the conditions for Canada's first market for water.

Senior licence holders, who have historically only used 55 per cent of their allocations, began selling access to public water resources — rights they had received for free — transforming the water commons into an open market where the highest bidder gets access to water.

Millions of dollars have since been exchanged, and 28 licence transfers have already been completed. In just one example, 6,700 cubic metres of water per day were purchased in 2007 for \$15 million for the development of a large shopping mall, horse-racing complex and casino in Balzac, a municipality just north of Calgary. While market proponents refer to the allocation of water for lucrative commercial use as moving water to "higher value uses," the Balzac development demonstrates how the water market in southern Alberta truly operates, allowing for a massive and water-intensive development in an area where water permits are no longer available to meet the basic needs of a growing population.

In an open market system, municipalities and small farmers are forced to bid against large industrial players, while social and environmental needs are neglected.

## EXPANDING THE WATER MARKET

In the face of growing dissatisfaction with the FITFIR system and recognizing the looming water crisis, Environment Minister Rob Renner announced in 2008 that the province would review and update its water allocation system. He commissioned the Alberta Water Council, an industry-led multi-stakeholder body; the Alberta Water Research Institute, headed by former Environment Minister Lorne Taylor; and the hand-picked Minister's Advisory Group (MAG) to make recommendations on ways to "improve" the system.

All three based their reports on the assumption that a water market is the only policy option, and the recommendations paint a troubling picture of where the province may go with its water policy.

The MAG recommends that "the transfer system must now be allowed to work in all parts of the province," and "should apply to all river basins in Alberta, including those where there are only a few licences and a few buyers."

At the same time, the MAG also says that "a number of operational barriers established in the Water Act should be removed to allow the transfer system to operate more effectively," including "abolishing the requirement to have a Water Management Plan" approved by cabinet before a transfer is allowed. In other words, it recommends vastly expanding and deregulating the market, while offering little protection for the environment or basic human needs.

The reports will form the basis for the review and the consultations the province is promising to hold in the summer of 2010, with new legislation expected in the fall. No non-market solutions have been looked at, prompting some environmental groups to treat markets as a fait accompli and make recommendations accordingly. The Council of Canadians plans to challenge water markets on the principle that water is a public trust and a human right, and because the plan for water markets fails to recognize Indigenous rights.

## MARKETS VIOLATE INDIGENOUS RIGHTS

While the Alberta government promises to "seek input" from First Nations in the province, its scheme fails to acknowledge Aboriginal rights. The Alberta government is not the only authority in Alberta and it cannot make decisions about natural resources without the consent of Indigenous governments. The Assembly of First Nations has already declared water markets a violation of treaty rights.

## WATER IS A PUBLIC TRUST

The Alberta government acts on the premise that it has the right to turn access to water into a commodity. Under common law, water is a public trust that is to be managed by governments, which have the responsibility to protect access to the water commons for the greater public good.

In the state of Vermont, public trust legislation was recently extended to groundwater, setting up a hierarchy of use that protects ecological needs and water for basic human consumption, allowing the government to prioritize food production and responsible commercial use.

## WATER IS A HUMAN RIGHT

The market system, which gives greater access to the highest bidder, is a clear violation of the human right to water. Experience from other jurisdictions where water resources have been surrendered to the market show the risks involved in letting markets allocate water. For example, local food production and basic rights are hindered by private water ownership in Chile, where the water market system has resulted in the majority of water rights being owned by foreign energy and mining companies.

According to the environmental organization Chile Sustentable, a single Spanish electrical corporation owns 80 per cent of the water rights in southern Chile, leaving very little for basic human needs

## THERE IS A BETTER WAY

The public has the right to participate in decisions about collective water resources which it must not surrender to the whims of the market. In Uruguay, a 2004 constitutional reform recognizing the right to water placed an emphasis on public participation in decision making for the use of community water supplies, giving communities a direct say in the allocation of water resources and developments that impact water quality.

Communities in Alberta should make the same claims to their collective water resources, and reclaim the water as a commons that prioritizes the environment and basic human needs. This is a battle that, working with with our friends in the environmental justice movement and First Nations communities, we must win.

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## PROTECTING WATER WITH A "BLUE SUMMIT"



The Blue Summit brought together more than 300 water justice activists from across the country to commemorate the tenth anniversary of the Water Watch Coalition, launched in 1999 by the Council of Canadians, the Canadian Union of Public Employees, and allies.

The event, held November 27-29, 2009, in Ottawa, celebrated community water wins including the blocking of private-public partnerships in cities across Canada, the reversal of the decision to build a landfill on top of the Alliston aquifer in Simcoe County, Ontario, and bottled water bans in more than 70 municipalities, schools and hospitals across the country.

The conference allowed activists to share ideas and develop plans for ongoing battles against the destruction of water resources and the privatization of water. Participants discussed "Schedule 2," a

federal loophole that lets metal mining companies dump toxins into Canadian lakes; the environmentally destructive tar sands operations that are poisoning local waterways; the impacts of water privatization on women; the recognition of water as a human right; and many other topics.

Leading Canadian water defenders and concerned citizens took their voices to Parliament Hill that weekend for a rally to demand that addressing the global water crisis be part of the solution to climate change. Participants signed a banner that read "Climate Justice is Water Justice!" which was taken to Copenhagen and presented to Canadian leaders during climate change talks in December.

The exciting two-day event culminated with a Declaration that commits to "engage all Canadians in working to protect water for the planet and future generations."

Visit our website at [www.canadians.org/bluesummit](http://www.canadians.org/bluesummit) to hear speakers, read the declaration and see photos from the event.