

Subject: FW: Porous Water, NAFTA, Half Truths

Date: Wed, 3 Oct 2001 21:29:28 -0700

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Dave If your are into more myths tonight, here are the rest, and the reason I would NOT rule out PPP for Cap water or most anything else.

What killed Cap water DBO was GVRD gross mismanagement of the process, so bad that some suspect their own people did it deliberately to maintain control. That is, some people in the GVRD did not want to lose control of projects and facilities as that loses them things personally. Unions perhaps fear loss of members, lower benefits, and worst of all, loss of control.

BC in the NDP days published a "how to do PPP" book, but GVRD broke many key rules. If you wanted to cause this PPP attempt to fail, you could not have written a better script than did GVRD.

Feel free to circulate to the usual crowd. I do not have a group address for them

It's a bit long with my old e mail below, but if you like fairy tales, read on.

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> -----Original Message-----
> From:
> Sent: July 4, 2001 7:13 PM
> To: John Hunter
> Subject: Re: GVRD meeting and the Half Truths (or, "Don't drink the
> bottled water"!)
>
>
> John - you won't get any challenges from me. Your analysis of the issues
> surrounding PPP is very impressive. In your list of areas where we currently
> permit private sector operation (i.e. gas, bottled water, electrical
> standards) you could have added our food supply. It's amazing how whenever the issue of
> water is raised, the usual suspects (unions, Council of Canadians etc.)
> typically light their hair on fire. Like you, I'm certainly not going to
> defend the GVRD since I don't know the background as to why EPCOR was excluded. I
> understand that you were not arguing in favour of a DBO of the Seymour
> filtration plant, but rather, in debunking some of the myths tossed around
> with respect to PPP. Yours is a voice of reason. Good work.
>
> -Brian
>
> John Hunter wrote:
>
>> By the way, for those who do not trust the private sector with water for the Cap project, perhaps someone
>> could explain to me
>>
>> -why we drink bottled water?
>>
>> -why, after Walkerton and the North Battleford cases, we trust public
>> sector water so implicitly?
>>
>> -why White Rock has been drinking its private sector tap water for decades?
>>
>> -why we look at the ratings of the Canadian Standards Association on our
>> electrical appliances?
>>
>> -Why does the Canadian Gas Association write the regulations for many
>> aspects of natural gas safety?
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Why we fly on planes under air traffic control?

Why we eat food?

all, of course, being private sector

Sure some of these are regulated by bureaucrats that we all believe really do a wonderful effective job of regulating. But so is PPP. It is called the Concession Agreement. Even the NDP admit in writing that PPP may not cause a loss of control of previously public facilities, but in fact may improve control because it is easier to enforce a Concession Agreement than control your unionized civil service and your bureaucrats.

>>

>>

>> And explain: Why we berate the GVRD for being unresponsive,
> unaccountable, and unelected, and in the same breath say that only they are the best
>> steward of our water systems?

>>

>> For the GVRD Board reps., I'd suggest a useful exercise at some date is a
>> workshop with open (but properly chaired) debate on the PPP issues, to
>> eliminate the misinformation floating around about PPP. You can also
> read the BC government report on the web which talks of the 9 myths re PPP (and this
>> from the NDP watch!). The unions will not want to read that!

>>

>> Some examples of misinformation and half truths from the anti PPP literature
> floating around at the GVRD water project meetings (most from the unions):
>>

>> 1) From the blue pamphlet re the GVRD meeting, "P3 means no public access
> to information! Private corporations are exempt from FOI legislation".

>>

>> Not a lie, but a typical half truth. The point it ignores is that (using
>> the water project as an example) GVRD can by contract demand any and all
>> information it requires from the private sector operator (and they will
>> obviously), and then GVRD can publish it or you can FOI GVRD. In fact, by
>> contract, GVRD can require the private company itself to publish
> information if they wish. Now if GVRD are too stupid to do that?? But if
> they are, why do we trust them with our water?

>>

>> 2) From the "legal opinion" prepared for CUPE dated May 31, 2001 (and
>> remembering that legislation is open to many interpretations and that
>> lawyers are not required, in giving an opinion, to give a balanced one - hence the old expression
"shopping for an opinion". They should not lie, but they do not have to argue the opponent's case.)

>>

>> a) "eliminating the possibility of ensuring that local economic benefits
>> result from the Seymour project by including purchasing and other local
>> preferences as conditions of the DBO contract". Another misleading half truth.
>> Yes, NAFTA (IF the private sector company is Mexican or American) prevents demanding as a
>> condition of the contract local content - this is important to avoid
>> corruption - for example, "you Canadians for your project here have to buy
>> all cement in this southern US state in our town, and guess what, only my
>> brother makes cement here". This requirement to let the contractor source
>> where he wants also let's him minimize cost for the customers - the
>> taxpayers.

>>

>>> From a practical perspective, especially with our dollar, does anyone
>> seriously think that a non- Canadian company will import labour, cement,
>> rebar, and the like from the US for Capilano? So some truth is there IF
> it is not a Cdn company, but the practical effect? And it is nothing to do
>> with DBO or PPP; it's because GVRD picked a non-Cdn company.

>>

>> b) "Subjecting environmental and public health measures - from safe
>> drinking water standards to the remedial orders of local health
> officials - to the rigors of international trade adjudication or commercial
>> arbitration".

>>

>> Try reading NAFTA article 1101 point 4, which would suggest to an open
> mind the opposite.

>>

>> It is true that a government could not order all foreign owned water

> plants to do X while not enforcing it on domestic plants. The thrust is
>> non-discriminatory treatment. What is wrong with that? Canadian
> investors overseas need that same protection.
>>
>> As well, and as we did on the Mexican project I worked on for a year
> (owned by a foreign joint venture including Canadians), the contracts provide for
>> change in tax, change in law, change in environmental legislation or
>> standards, force majeure, and just about anything that can happen. If
>> something happens, the new laws or standards must be followed, so the only
>> issue is "who pays". The contract dictates this, or that the parties must
>> agree on a new formula, failing agreement there is typical binding
>> commercial arbitration - same as if it were a Canadian company. Yes, if
> the water standards are tightened, GVRD might have to pay the contractor more,
>> but it puts the GVRD in no worse position than if he had built it
>> themselves. And it is appropriate.
>>
>> c) "transforming what otherwise would have been a contractual dispute,
> such as a decision by the GVRD to terminate the DBO contract, into a claim for
>> damages to be resolved by a commercial arbitration tribunal and in
>> accordance with international, not Canadian, law and procedures". Another
>> lovely part truth. Only if the DBO contractor is not Canadian. Only if
> the contract itself did not contain the termination provisions used, and only
> if some Canadian government body terminated the contract WITHOUT VALID
>> COMPENSATION where they had NO CONTRACTUAL RIGHT to do so.
>>
>> This is the standard myth. The customer (GVRD in our case) has full
> rights to terminate the contract at any time and for any reason that the contract
>> allows, without any NAFTA repercussions.
>>
>> d) The MetalClad case. "Ignoring the evidence of Mexico's constitutional
>> law experts, including the ex-chief justice of the Supreme Court . . . ,
> the tribunal ruled" Reality check please. Would "Ignoring the
>> evidence of the hired legal guns who gave the opinion they were hired by
> the defendant to give" not be an equally fair characterization? Also, why does
>> the CUPE opinion fail to mention that the then current secretary of the
>> Mexican federal body responsible in this area testified that Metalclad's
>> position was correct? They also fail to mention that this was not a new
>> facility, but an existing Mexican one that Metalclad bought to upgrade,
> and that the locals did not act against Metalclad until it was nearly
> complete. And after a year in Mexico, I can tell you Mexico desperately needs
>> professionally run waste facilities!
>>
>> Unfortunately, in these emotional affairs, the truth is not nearly as
>> interesting as the fiction.
>>
>> PS I was not supporting GVRD on this, and I think they picked the wrong
>> project and excluded EPCOR (the fully Cdn company) for all the wrong
>> reasons. But it pains me to see decisions being made on wrong
> information as it will affect the future. There is a place for PPP.
>>
>> I suppose if, like the NDP policies on the island highway, we wish to pay
>> more for unionized projects and/or public sector projects or less
> efficient approaches, that is the majority's right. But let us just admit that, not
>> try to kill ideas with half truths and false information.
>>
>> I am happy to have challenges to my read of it!!!!!!
>>
>> John Hunter
>>
>

John Hunter