

FIRST NATIONS LEADERSHIP COUNCIL

Intentions Paper

Towards Revenue
Sharing of Water
Licence Rentals
in British Columbia

September 2022





About the First Nations Leadership Council

The First Nations Leadership Council (FNLC) is a collaborative political partnership amongst the three First Nations provincial territorial organizations in BC (BC Assembly of First Nations, First Nations Summit and Union of BC Indian Chiefs). The FNLC seeks to coordinate approaches on shared mandates to advocate on behalf of First Nations in BC. The contents of this paper serve as exploratory considerations for First Nations Rights and Titleholders in BC and do not preclude the BC government's duty to obtain free, prior, and informed consent from First Nations.

The FNLC is not a decision-making authority and does not hold Aboriginal Title, Rights, or Treaty Rights. The FNLC acknowledges and respects the self-determination, sovereignty, and decision-making authority of First Nations.

Table of Contents

Executive Summary	4
1. Water Licence Rental Revenue Sharing: Why it Matters and Why Now	6
1.1 Context.....	6
1.2 Rationale	8
1.3 Opportunity	9
2. Understanding the Current Water Licence Rentals Structure in BC	10
2.1 What are Water Licence Rental Fees?	10
2.2 How Much Does BC Collect from Water Licence Rentals?	10
2.3 How are Revenues from Water Licence Rentals Currently Allocated?	11
3. What Could Revenue Sharing for Water Licence Rentals Look Like?	12
3.1 What Proportion of Water Licence Rental Revenues Should be Shared?	12
3.2 How Could Water Licence Rental Revenues Be Shared?	12
3.3 Other Province-Wide Revenue Sharing Agreements in BC	13
4. Summary and Recommendations	14
Appendices	15
Appendix A: Water Licence Rental Revenues Distribution Models	15
Appendix B: FNLC Resolutions	16



Executive Summary

This Intentions Paper explores what revenue sharing of water licence rentals with First Nations in British Columbia might look like, what it could support, and why it should be prioritized.

Since time immemorial, First Nations have been the caretakers and stewards of our watersheds in what is now called British Columbia. From creating laws that protect streams and wetlands, to establishing fish weirs in rivers, to using Indigenous knowledge to monitor creek levels and temperature, First Nations continue to use innovative, holistic, and effective approaches to manage and govern fresh water for the benefit of present and future generations.

For First Nations, water is a sacred being that is integral to ceremony, healing, and human sustenance. The BC government's continued commodification of water threatens First Nations' inherent, constitutionally protected, and Treaty rights to water. As the BC Government works with First Nations to implement the *Declaration on the Rights of Indigenous Peoples Act* (*Declaration Act*), recognition of First Nations jurisdictional water rights must be upheld and shared decision-making frameworks must be central to the work ahead.

The BC government's recent commitments to reconciliation with Indigenous Peoples presents an opportunity to further support First Nations-led freshwater governance. This includes the adoption of the Declaration Act in 2019 as well as the *Declaration Act* Action Plan which identifies near-term mutual priorities, goals, and actions to advance the *United Nations Declaration on the Rights of Indigenous Peoples* in BC. These actions include co-developing resource revenue sharing policy frameworks with First Nations.

For many First Nations in BC, increased capacity funding is essential to carry out initiatives and projects to support community development and well-being that are directly and indirectly related to watershed stewardship. It is an opportune time to consider how water revenue sharing between First Nations and the BC government can support fair and equitable government-to-government relationships.

The First Nations Leadership Council recommends the following actions to advance First Nations' rights to water revenue sharing with the BC government:

- 1 Call for full recognition of First Nations' jurisdictional water rights including amendments of provincial policies, regulation, and legislation that support shared decision-making regarding the use and management of water in BC.
- 2 Initiate and formalize discussions with the BC government on water licence rentals revenue sharing with First Nations.
- 3 Advocate for the prioritization of water licence rental revenue sharing under BC's *Declaration Act* Action Plan.
- 4 Advocate for water revenue sharing frameworks to be meaningfully co-developed with First Nations Rights and Titleholders.
- 5 Call for dedicated capacity funding for the FNLC to support discussions with First Nations in BC on water revenue sharing frameworks including determining options for distributing revenues.
- 6 Initiate discussions with the BC government to increase water licence rental rates to levels that both reflect the true administrative, ecological, and restorative costs associated with water use, and encourage water users to maximize efficiency and conservation. Include a regular review of water licence rental rates every 3 to 5 years with Rights and Titleholders, including any exemptions.



1. Water Licence Rental Revenue Sharing: *Why it Matters and Why Now*

1.1 Context

In British Columbia, nearly 50,000 licences permitting the use of surface and groundwater are regulated under the *Water Sustainability Act* (WSA).¹ Licence holders include water purveyors such as municipalities and regional districts, agricultural growers and processors, and industrial users such as power, oil and gas, mining, and manufacturing. These water users are required to apply for a water licence and must pay annual water “rental” fees for the use of that water to the BC government.²

Water licence rentals generate over \$400 million³ annually in general revenue, nearly one-quarter of all natural resource revenues.⁴ Except for a small percentage of revenue associated with private run-of-river hydroelectric power projects, none of this revenue is currently shared with First Nations.

For over a decade, First Nations leadership has called on the BC government to share revenues from water licence rentals with First Nations Rights and Titleholders.⁵ The First Nations Leadership Council (FNLC) has received several mandates to advocate for water licence rental revenue sharing with First Nations in BC from the Chiefs in Assembly of the BC Assembly of First Nations (BCAFN), First Nations Summit (FNS) and Union of BC Indian Chiefs (UBCIC).

These mandates include:

1. BCAFN Resolution 06(k)2011, which mandates the Regional Chief to call on the BC government to share water revenues equally amongst affected First Nations and the BC government;
2. BCAFN Resolution 14/2022, FNS Resolution 0622.14, and UBCIC Resolution 2021-58 calls on the BC government to work with First Nations to adopt mutually agreed upon water rental rates for water use and diversion; and,
3. The FNLC First Nations Water Rights Strategy, supported and adopted by the BCAFN, FNS and UBCIC Chiefs in Assembly in 2013, which identifies water revenue and benefit sharing as a key political priority for FNLC advocacy, including undertaking research and information sharing with First Nations.

Water Licence Rentals and FPIC

Water is a sacred being and lifeblood that must be honoured, respected, and protected for future generations. Since colonization began, the BC government has enabled the extraction and diversion of fresh water in First Nations' traditional territories throughout the province without achieving free, prior, and informed consent (FPIC).

Sharing of water licence rental revenues with First Nations would not achieve FPIC for BC's current water licensing and pricing regime. Instead, water licence rental revenue sharing with Rights and Titleholders would recognize the privilege of accessing and using water on First Nations' traditional territories.

The passing of the *Declaration Act* provides an opportunity for the BC Government to work with First Nations toward shared decision-making and jurisdictional authority frameworks over water. Initiating discussions around water revenue sharing is a timely opportunity to continue to work towards this critical goal for Rights and Titleholders in BC.

1.2 Rationale

There are several reasons why a dedicated proportion of all water licence rental fees collected by the BC government should be allocated to First Nations. These include:

- 1. First Nations in BC have inherent jurisdiction over water** and any revenues generated from the commodification of this resource must be shared with Rights and Titleholders in alignment with the *United Nations Declaration on the Rights of Indigenous Peoples* provincial and federal legislation. Furthermore, the BC Government must work with Rights and Titleholders to implement shared decision-making over water.
- 2. The cumulative impacts of water use disproportionately affect First Nations compounded by climate change impacts** through overallocation and diversion⁶ resulting in impacts on water quantity and quality, on fish and fish habitat, and on related human, cultural, and ecological health;
- 3. First Nations play a critical leadership role in water stewardship** which benefits all British Columbians, yet with the exception of private run-of-river hydroelectric power projects, First Nations do not receive any portion of water licence rental revenues collected by the BC government;
- 4. The BC government claims water licence rental revenues are intended to cover costs associated with administering the WSA.⁸ There is no evidence of this.** More importantly, water licence rentals do not account for the costs borne by the many First Nations who are active partners in implementing various aspects of the WSA;
- 5. First Nations require stable, predictable, and sustainable funding** in order to support nation-rebuilding efforts; and,
- 6. Reconciliation requires a new fiscal relationship with First Nations** that supports economic reconciliation, governance capacity, and the equitable sharing of benefits derived from the use of water.

A 2021 survey of 65 Nations in British Columbia highlights that First Nations are diverse with regards to access to financial, human resources, and technical capacity to work on water. For example, Nations with limited budgets for water management and governance continue to be much less likely to be able to undertake important work such as strategic water planning or revitalizing Indigenous water laws. First Nations with more resourcing are more likely to develop strategies or plans to protect water and to engage with stakeholders and other levels of government in the development of these plans than are those with less resourcing for work on water.⁷

1.3 Opportunity

Now is an opportune time to engage the BC government on revenue sharing for water licence rentals, for three key reasons:

1. The BC government has committed to advancing a new fiscal relationship with First Nations under the *Declaration Act* Action Plan, and specifically Action 1.5 which commits the BC Ministry of Finance and Ministry of Indigenous Relations and Reconciliation to “co-develop and implement new distinctions-based policy frameworks for resource revenue-sharing and other fiscal mechanisms with Indigenous Peoples”⁹;
2. Recent agreements between the BC government and First Nations related to revenue sharing provide examples and precedents for revenue sharing of water licence rentals¹⁰ and,
3. In 2020, the BC government committed to co-developing a BC Watershed Security Strategy with First Nations and to implementing a new BC Watershed Security Fund.¹¹ These are key initiatives within which water licence rental revenue sharing can be advanced.

The BC government’s launch of the \$27-million Healthy Watersheds Initiative in Fall 2020, renewal of the program in the 2022 budget, and commitment to co-developing a Watershed Security Strategy and Fund with First Nations, all point to a rapidly evolving context, with increasing support and new opportunities for First Nations to work on water. Revenue sharing of water licence rentals could ensure consistent base support for this important work.

2. Understanding the Current Water Licence Rentals Structure in British Columbia

2.1 What Are Water Licence Rentals?

In British Columbia, all non-domestic users of fresh water¹²— which includes surface water diverted from rivers, lakes and streams, and groundwater withdrawn from wells and aquifers — are required to obtain a water licence from the BC government. Similar to other natural resources such as timber, water licence holders are required to pay a one-time application fee as well as annual rental fees to divert and/or use the water allocated by their licence. The BC government charges water licence rental fees for both surface water (since the 1920s) and groundwater (since 2016).

Some exemptions exist for water licence rental fees:¹³

- Water licences held by provincial and federal ministries;
- First Nations using water on reserve land;
- A person or entity that is exempt from fees and rentals for water use out of a treaty water reservation under a First Nations treaty final agreement;
- Use approvals, change approvals, and permits that are connected to mineral exploration and that are processed by the BC Oil and Gas Commission specific to deep groundwater; and,
- Placer mining activities and/or mineral exploration activities.¹⁴

2.2 How Much Does the BC Government Collect from Water Licence Rentals?

The BC government receives over **\$400 million annually** in revenue from water licence rental fees. Hydroelectric producers account for approximately 95% of this amount. The remaining 5% is derived from a broad range of water uses, such as crop irrigation, livestock watering, municipal drinking water, pulp and paper, water bottling, mining, oil and gas, as well as manufacturing and processing.¹⁵

Water licence rental rates depend on the type of water use and the quantity of water authorized for use under the licence. The highest rate that is charged by the BC government is \$2.25 per 1,000m³ (equivalent to 2 million 500ml bottles of drinking water) but many water users pay considerably less than this amount.¹⁶ Despite the BC government's introduction of new rates in 2015, the province still has among the lowest water licence rental rates across Canada, and which fail to cover the costs of administering and managing water licences.¹⁷



2.3 How are Revenues from Water Licence Rentals Currently Allocated?

Although the BC government has stated that revenues from water licence rental fees are intended to offset the cost of administering the WSA,¹⁸ no publicly available information exists to confirm this. Collected fees are currently directed to general revenue within the BC government, with the exception of the estimated 2% of water licence rental revenues generated by independent hydroelectric projects that are directed to the First Nations Clean Energy Business Fund.

Reviewing Water Licence Rental Rates

At the direction of First Nations leadership through BCAFN Resolution 4/2022, UBCIC Resolution 2021-58 and FNS Resolution 0622.14, **water rental rates should be re-evaluated as a component of water revenue sharing discussions** between First Nations and the BC government. Current water licence rental rates do not account for the costs borne by the many First Nations that undertake water stewardship and protection activities in their traditional territories and which benefits all British Columbians. Nor do they support the role of First Nations governments in the implementation of the WSA through activities such as reviewing referrals for water licence applications, data collection, and other water planning and governance initiatives.

The BC government should conduct a regular review of water licence rental rates every 3 to 5 years with Rights and Titleholders, including a review of any water licence exemptions. Fair and adequate water licence rental rates could ultimately promote water conservation and continue to uplift First Nations' water stewardship through increased funding to support watershed restoration and stewardship initiatives throughout the province.

3. What Could Revenue Sharing for Water Licence Rentals Look Like?

3.1 What Proportion of Water Licence Rental Revenues Should be Shared?

BCAFN Resolution 06(k)2011 calls on the BC government to share revenues from water licence rentals equally with First Nations. In 2022, this would amount to approximately \$200 million.

Overall, water licence rental revenues must be set at a level that recognizes the ecological impacts of water use and diversion on First Nations' territories. It should also support nation rebuilding efforts which include but are not limited to upholding First Nations governance systems, ecosystems and economies, and which are central to protecting and stewarding fresh waters in and beyond our communities.

3.2 How Could Water Licence Rental Revenues Be Shared?

A range of options exists for how revenues from water licence rentals could be distributed to achieve fair and equitable outcomes for First Nations throughout British Columbia.

Options for distributing revenues from water licence rentals include:

1. **By territory:** Individual revenue sharing agreements could be made with First Nations whose territories are directly impacted by licenced water use, including by hydroelectric power generation.
2. **By watershed:** Existing or new First Nations watershed-based forums could receive revenues generated from water use throughout the watershed and distribute based on collaborative priorities.
3. **Centralized province-wide funding mechanism:** A single revenue sharing agreement with a First Nations-governed funding entity could allocate funds to First Nations across BC based on a formula.
4. **Hybrid:** A combination of 1) a percentage of revenues from direct water licence rentals in the territory, including of large users (e.g. BC Hydro) **and** 2) a proportion of total revenues across the province distributed to each First Nation based on a specific formula.

Regardless of the model(s) used, a portion of shared revenue might also be allocated to specifically support First Nations capacity for water management, stewardship, and governance at a Nation or band level through a dedicated funding stream or distribution mechanism.

Appendix A further explores different allocation models and their opportunities and challenges.

3.3 Other Province-Wide Revenue Sharing Agreements in BC

Several recent agreements related to revenue sharing provide examples and precedents for revenue sharing of water licence rental fees:

First Nations Clean Energy Business Fund (2010)

Established in legislation as part of BC's *Clean Energy Act*, the First Nations Clean Energy Business Fund (FNCEBF) is the one existing precedent for sharing provincial revenue from water licence rental fees. Independent run-of-river hydroelectric power projects are a distinct category of water use and represent a small portion of total water revenues received by the BC government (between approximately \$7 million and \$9 million annually, or 2% of total water licence rental revenues). Through the FNCEBF approximately 70% of this amount is directed to individual revenue sharing agreements with First Nations whose territories are impacted by run-of-river projects. The remaining revenue supports capacity and equity investment through an application process that supports diesel displacement initiatives in remote communities and the administration of the FNCEBF program.

BC First Nations Gaming Revenue Sharing Limited Partnership (2019)

Described by the BC government as the first step in a new fiscal relationship with First Nations, the *Gaming Control Act* was amended in 2019 to create a \$3 billion, 25-year revenue sharing agreement. The agreement allocates 7% of all gaming revenues to the BC First Nations Gaming Revenue Sharing Limited Partnership, a special purpose entity led by First Nations. This revenue sharing model is not tied to territorial impacts and is limited to bands under the *Indian Act*.

Forest Revenue Sharing (2022)

Most recently, the BC government announced the doubling of forestry revenue rates for First Nations. One hundred and twenty-six First Nations currently have forest revenue sharing agreements, with a total of 184 that are eligible. Revenue sharing is expected to total up to \$130.8 million in the fiscal year 2022–23, representing an increase of \$63 million. Forest Revenue Sharing Agreements (FRSA) are intended to address territorial impacts from logging, with total revenues divided by the number of Nations that claim an area. If an impacted Nation does not have an FRSA in place, the BC government retains that portion of revenue.



4. Summary and Recommendations

Central to the *Declaration Act* Action Plan is a new relationship that is based on shared decision-making and First Nations rights recognition. Revenue sharing of water licence rentals between the BC government and First Nations Rights and Titleholders is an opportunity to enact this new government-to-government relationship while recognizing the impacts of water use and diversion on First Nations' territories. The FNLC has received a mandate from the BCAFN, UBCIC, and FNS Chiefs-in-Assembly (see Appendix B) to undertake the following steps as part of a coordinated approach to engaging with the BC government on this issue:

- 1 Call for full recognition of First Nations jurisdictional water rights including amendments of provincial policies, regulations, and legislation that support shared decision-making regarding the use and management of water in BC
- 2 Initiate and formalize discussions with the BC government on water licence rentals revenue sharing with First Nations.
- 3 Advocate for the prioritization of water licence rental revenue sharing under BC's *Declaration Act* Action Plan.
- 4 Advocate for water revenue sharing frameworks to be meaningfully co-developed with First Nations Rights and Titleholders.
- 5 Call for dedicated capacity funding for the FNLC to support discussions with First Nations in BC on water revenue sharing frameworks including determining options for distributing revenues.
- 6 Initiate discussions with the BC government to increase water licence rental rates to levels that both reflect the true administrative, ecological, and restorative costs associated with water use, and encourage water users to maximize efficiency and conservation. Include a regular review of water licence rental rates every 3 to 5 years with Rights and Titleholders, including any exemptions.

Appendix A

Distribution Model	Description	Operational	Example	Opportunities	Challenges
OPTION 1: First Nation Traditional Territory	Distributed to First Nation(s) in whose territories the water use is occurring based on all water licence rental revenues generated in the territory	Individual revenue-sharing agreements made with First Nations across BC	Forestry Revenue sharing	Revenue sharing with individual First Nations can support general community capacity building efforts and needs	Potential equity challenges regarding quantity of water licences and volume of extraction variances across traditional territories Water use impacts all Nations downstream of any water source; difficulties quantifying impacts and cumulative effects Shared territory overlaps
OPTION 2: Major Watershed	Distributed to collaborative regional entities of First Nations based on BC's 9 major watersheds	Existing (or new) regional watershed forums could receive and distribute revenue based on collaborative priorities, such as existing First Nations fisheries or watershed authorities, the First Nations Fisheries Council's 14 fisheries regions,	Coast Funds	Promotes collaborative stewardship partnerships amongst First Nations based on water priorities for the watershed as a whole	First Nations may wish to use revenues to undertake general capacity initiatives indirectly related to water Requires greater coordination, capacity and time to set watershed-based priorities
OPTION 3: First Nations-Governed Funding Mechanism	Distributed to a First Nations-governed single-purpose funding entity	Single revenue sharing agreement with one entity that would allocate funds to Nations based on a formula	Gaming Revenue sharing	First Nations-led fund that supports intersectional community needs including but not limited to water stewardship and conservation projects	Some impacts from water use are clearly tied to a specific area, but this model would see all Nations sharing the benefits despite a smaller number of Nations having to bear the costs. A formula addressing intensity of water use could partly address this challenge
OPTION 4: Hybrid model	A combination of 1) percentage of revenues from direct water licence rentals in the territory, including of large users (e.g. BC Hydro) and 2) a proportion of total revenues across the province distributed to each First Nation based on a specific formula.	Revenue sharing agreements with directly impacted Nations + % of total revenues generated province-wide allocated to a First Nations-specific funding stream	First Nations Clean Energy Business Fund	Flexible allocation supports Nations whose territories are directly impacted by water use and withdrawals, combined with a more equal distribution of revenues from larger users that are spread across territories and aimed at supporting work on water	First Nations may wish to direct all revenues to initiatives unrelated to water

Appendix B - FNLC RESOLUTIONS



BC ASSEMBLY OF FIRST NATIONS

1004 Landooz Road
Prince George, BC V2K 5S3
Website: www.bcafn.ca

BCAFN 19th ANNUAL GENERAL MEETING
September 21, 22 & 23, 2022
Hybrid - In person & online via Zoom

Resolution 27/2022

SUBJECT: CALL TO PRIORITIZE WATER REVENUE SHARING FRAMEWORKS UNDER BC'S
DECLARATION ACT ACTION PLAN

MOVED BY: CHIEF HARVEY MCLEOD, UPPER NICOLA INDIAN BAND

SECONDED BY: CHIEF STUART JACKSON, LOWER NICOLA INDIAN BAND

DECISION: CARRIED

OPPOSED: CHIEF DON HARRIS, DOUGLAS FIRST NATION

WHEREAS:

- A. First Nations are the original caretakers and stewards of the lands of what is now known as British Columbia, whose inherent and constitutionally protected Aboriginal and Treaty rights supersede Crown jurisdiction;
- B. The Provincial Government's current water referral application, withdrawal process, and water rights assignments fails to obtain free, prior, and informed consent from First Nations Rights and Titleholders;
- C. More than 50,000 water users hold water licenses in BC which are regulated under BC's *Water Sustainability Act* and are allocated under BC's First In Time First In Right allocation system;
- D. The Provincial Government generates approximately \$400 million in revenue from water licenses each year which includes surface water and groundwater license revenues in addition to BC Hydro water license revenues. None of this revenue is currently shared with First Nations.


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Terry Teegee, BC Regional Chief

- E. The [*Declaration on the Rights of Indigenous Peoples Act*](#) (Declaration Act) was unanimously adopted by the BC Government in 2019 which affirms all articles under the *United Nations Declaration on the Rights of Indigenous Peoples* including but not limited to:

- Article 2 States shall provide effective mechanisms for prevention of, and redress for:
(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
- Article 11(2) States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious, and spiritual property taken without their free, prior, and informed consent or in violation of their laws, traditions and customs.
- Article 19: States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior, and informed consent before adopting and implementing legislative or administrative measures that may affect them.
- Article 25: Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.
- Article 26: (1) Indigenous peoples have the right to the lands, territories, and resources which they have traditionally owned, occupied or otherwise used or acquired.
- (2) Indigenous peoples have the right to own, use, develop and control the lands, territories, and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
- (3) States shall give legal recognition and protection to these lands, territories, and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the Indigenous peoples concerned.

Certified copy of a resolution adopted on the 23rd day of September 2022



Terry Teegee, BC Regional Chief

Article 28(1): Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair, and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

F. Under BC's [Declaration Act Action Plan](#), the Provincial Government commits to the following:

1.4 Co-develop with Indigenous Peoples a new distinctions-based fiscal relationship and framework that supports the operation of Indigenous governments, whether through modern treaties, self-government agreements or advancing the right to self-government through other mechanisms. This work will include collaboration with the government of Canada.

1.5 Co-develop and implement new distinctions-based policy frameworks for resource revenue-sharing and other fiscal mechanisms with Indigenous Peoples.

G. BCAFN Resolution 06(k)2011 mandates the Regional Chief to call on BC to share water revenues equally amongst affected First Nations and the provincial government

H. The First Nations Leadership Council (FNLC) First Nations Water Rights Strategy, which was supported and adopted by the BC Assembly of First Nations (BCAFN), First Nations Summit (FNS), and Union of BC Indian Chiefs in Assembly (UBCIC) in 2013, identifies resource revenue and benefit sharing specific to water as a key political priority for the FNLC's advocacy including undertaking research and information sharing with First Nations.

I. The FNLC organizations adopted mirrored resolutions that call on BC to work with First Nations to adopt mutually agreed upon water rental rates for water extraction through BCAFN Resolution 14/2022, UBCIC Resolution 2021-58 and FNS Resolution 0622.14.

J. The FNLC drafted an Intentions Paper entitled, *Towards Water Revenue Sharing on Water Licenses in British Columbia* to prompt considerations and discussions with First Nations and BC on potential water revenue sharing frameworks in August 2022.

THEREFORE BE IT RESOLVED THAT:

1. The BCAFN Chiefs-in-Assembly support and endorse the FNLC Intentions Paper, entitled *Towards Water Revenue Sharing on Water Licenses in British Columbia* as a mechanism and framework to initiate discussions with First Nations and BC on water revenue sharing.


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Terry Teegee, BC Regional Chief

2. The BCAFN Chiefs-in-Assembly direct the Regional Chief to call on BC to recognize and honour First Nations' jurisdictional water rights and Indigenous Laws to amend provincial policies, regulation, and legislation that provides for shared decision-making regarding the use and management water as per the principles and standards laid out in the UND and DRIPA.
3. The BCAFN Chiefs-in-Assembly to call on the BC government to ensure engagement with First Nations regarding the return of water resources back to the ecosystem.
4. The BCAFN Chiefs-in-Assembly direct the Regional Chief and BCAFN staff to work with the First Nations Summit and the Union of BC Indian Chiefs as the First Nations Leadership Council to engage with and call on the Provincial Government to:
 - a. Initiate and formalize discussions with BC on Water Revenue sharing with First Nations
 - b. Advocate for the prioritization of water revenue sharing under BC's *Declaration Act Action Plan*
 - c. Advocate for water revenue sharing frameworks to be meaningfully co-developed with First Nations Rights and Titleholders.
 - d. Call for dedicated capacity funding for the FNLC to support discussions with First Nations in BC on water revenue sharing frameworks including determining options for distributing revenues.
 - e. Initiate discussions with the BC government to increase water licence rental rates including all water users inclusive of Crown corporations to levels that both reflect the true administrative, ecological, and restorative costs associated with water use, and encourage water users to maximize efficiency and conservation. Include a regular review of water licence rental rates every 3 to 5 years with Titleholders as a Right within our natural laws, including any exemptions.
5. BCAFN Chiefs-in Assembly ensure that any discussions with BC do not inhibit or obstruct any First Nations undertaking overlapping initiatives or negotiations as part of their right to self determination and sovereign rights.

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Terry Teegee, BC Regional Chief

OUR LAND IS OUR FUTURE

UNION OF BRITISH COLUMBIA INDIAN CHIEFS

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UNION OF B.C. INDIAN CHIEFS
54TH ANNUAL GENERAL ASSEMBLY
SEPTEMBER 27TH TO 29TH, 2022
MUSQUEAM COMMUNITY CENTRE, x̓m̓əθk̓ʷəy̓əm (MUSQUEAM TERRITORY)

Resolution no. 2022-40

RE: Support for Prioritizing Water Revenue Sharing Frameworks Between First Nations and BC

WHEREAS First Nations are the original caretakers and stewards of the lands of what is now known as British Columbia, whose inherent and constitutionally protected Aboriginal and Treaty rights supersede Crown jurisdiction;

WHEREAS the Provincial Government's current water referral application, withdrawal process, and water rights assignments fail to obtain free, prior, and informed consent from First Nations Rights and Title holders;

WHEREAS the *United Nations Declaration on the Rights of Indigenous Peoples*, which the government of Canada has adopted without qualification, and has, alongside the government of BC, passed legislation committing to implement, affirms:

Article 11(2): States shall provide redress through effective mechanisms, which include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 19: States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Certified copy of a resolution adopted on the 28th day of September of 2022 in x̓m̓əθk̓ʷəy̓əm (Musqueam) territory

Grand Chief Stewart Phillip, President

2022-40
Page 1 of 3

Article 25: Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26(1): Indigenous peoples have the right to the lands, territories, and resources which they have traditionally owned, occupied or otherwise used or acquired.

(2): Indigenous peoples have the right to own, use, develop and control the lands, territories, and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

(3): States shall give legal recognition and protection to these lands, territories, and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the Indigenous peoples concerned.

Article 28(1): Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent;

WHEREAS Under BC's [Declaration Act Action Plan](#), the Provincial Government commits to the following:

1.4 Co-develop with Indigenous Peoples a new distinctions-based fiscal relationship and framework that supports the operation of Indigenous governments, whether through modern treaties, self-government agreements or advancing the right to self-government through other mechanisms. This work will include collaboration with the government of Canada.

1.5 Co-develop and implement new distinctions-based policy frameworks for resource revenue-sharing and other fiscal mechanisms with Indigenous People;

WHEREAS the First Nations Leadership Council's (FNLC) *First Nations Water Rights Strategy*, which was supported and adopted by the BC Assembly of First Nations (BCAFN), First Nations Summit (FNS), and Union of BC Indian Chiefs in Assembly (UBCIC) in 2013, identifies resource revenue and benefit sharing specific to water as a key political priority for the FNLC's advocacy including undertaking research and information sharing with First Nations;

WHEREAS the FNLC organizations adopted mirrored resolutions that call on BC to work with First Nations to adopt mutually agreed upon water rental rates for water extraction through BCAFN Resolution 14/2022, UBCIC Resolution 2021-58 and FNS Resolution 0622.14; and

WHEREAS the FNLC drafted a Water Revenue Sharing Intentions Paper to prompt considerations and discussions with First Nations and BC on potential water revenue sharing frameworks in August 2022.

Certified copy of a resolution adopted on the 28th day of September of 2022 in x̱m̱ə0ḵʷəy̱əm (Musqueam) territory



Grand Chief Stewart Phillip, President

THEREFORE BE IT RESOLVED the UBCIC Chiefs-in-Assembly fully support and endorse the First Nations Leadership Council Water Revenue Sharing Intentions Paper as a resource and framework to initiate discussions with First Nations and BC on water revenue sharing; and

THEREFORE BE IT FINALLY RESOLVED the UBCIC Chiefs-in-Assembly direct the UBCIC Executive to work with the BC Assembly of First Nations and the First Nations Summit as the First Nations Leadership Council to engage with and call on the Provincial Government to:

- a) Initiate and formalize discussions with the BC government on water license rentals revenue sharing with First Nations;
- b) Advocate for the prioritization of water license rental revenue sharing under BC's *Declaration Act* Action Plan and the standards and principles set out in the UN Declaration;
- c) Advocate for water revenue sharing frameworks to be meaningfully co-developed with First Nations Rights and Titleholders;
- d) Call for dedicated capacity funding for the FNLC to support discussions with First Nations in BC on water revenue sharing frameworks including determining options for distributing revenues;
- e) Initiate discussions with the BC government to increase water license rental rates to levels that both reflect the true administrative, ecological, and restorative costs associated with water use, and encourage water users to maximize efficiency and conservation. Include a regular review of water license rental rates every 3 to 5 years with Rights and Titleholders, including any exemptions.

Moved: Louise Gordon, Taku River Tlingit First Nation (Proxy)

Seconded: Kúkpi7 Lee Spahan, Coldwater Indian Band

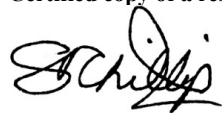
Disposition: Carried

Opposition: Councillor Colin Linger, Xa'xtsa (Proxy)

Abstention: 1

Date: September 28, 2022

Certified copy of a resolution adopted on the 28th day of September of 2022 in xʷməθkʷəy̓əm (Musqueam) territory



Grand Chief Stewart Phillip, President

First Nations Summit

RESOLUTION #1022.15

SUBJECT: SUPPORT FOR PRIORITIZING WATER REVENUE SHARING FRAMEWORKS BETWEEN FIRST NATIONS AND BC

WHEREAS:

- A. First Nations are the original caretakers and stewards of the lands of what is now known as British Columbia, whose inherent and constitutionally protected Aboriginal and Treaty rights supersede Crown jurisdiction.
- B. The provincial government's current water referral application, withdrawal process, and water rights assignments fail to obtain free, prior, and informed consent from First Nations Rights and Title holders.
- C. The United Nations Declaration on the Rights of Indigenous Peoples, which the government of Canada has adopted without qualification, and has, alongside the government of BC, passed legislation committing to implement, affirms:

Article 2 States shall provide effective mechanisms for prevention of, and redress for:

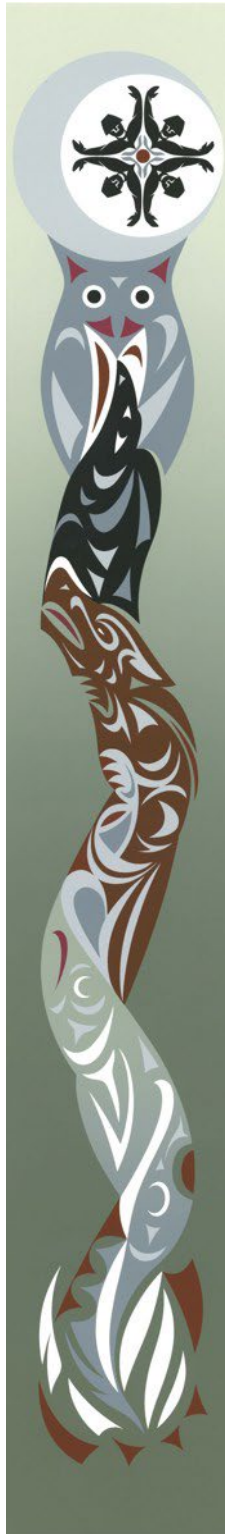
- (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
- (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

Article 11(2) States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 19 States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and consent before adopting and implementing legislative or administrative measures that may affect them.

Article 25 Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26 (1) Indigenous peoples have the right to the lands, territories, and resources which they have traditionally owned, occupied or otherwise used or acquired.



PAGE TWO

RESOLUTION #1022.15

**SUBJECT: SUPPORT FOR PRIORITIZING WATER REVENUE SHARING FRAMEWORKS
BETWEEN FIRST NATIONS AND BC**

(2) Indigenous peoples have the right to own, use, develop and control lands, territories, and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

(3) States shall give legal recognition and protection to these lands, territories, and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 28 (1): Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

D. Under BC's Declaration Act Action Plan, the Provincial Government commits to the following:

1.4 Co-develop with Indigenous Peoples a new distinctions-based fiscal relationship and framework that supports the operation of Indigenous governments, whether through modern treaties, self-government agreements or advancing the right to self-government through other mechanisms. This work will include collaboration with the government of Canada.

1.5 Co-develop and implement new distinctions-based policy frameworks for resource revenue-sharing and other fiscal mechanisms with Indigenous Peoples.

- E. The BC First Nations Water Rights Strategy (2013), which was supported and adopted by the BC Assembly of First Nations (BCAFN), First Nations Summit (FNS), and Union of BC Indian Chiefs in Assembly (UBCIC) in 2013, identifies resource revenue and benefit sharing specific to water as a key political priority for the FNLC's advocacy including undertaking research and information sharing with First Nations.
- F. The FNLC organizations adopted mirrored resolutions that call on BC to work with First Nations to adopt mutually agreed upon water rental rates for water extraction through BCAFN Resolution 14/2022, UBCIC Resolution 2021-58 and FNS Resolution 0622.14.
- G. The FNLC drafted an Intentions Paper entitled "*Towards Water Revenue Sharing of Water License Rentals in British Columbia*" to prompt considerations and discussions with First Nations and BC on potential water revenue sharing frameworks in August 2022.
- H. Similar resolutions were passed at the UBCIC and BCAFN Annual General Assemblies in September 2022.

PAGE THREE

RESOLUTION #1022.15

SUBJECT: SUPPORT FOR PRIORITIZING WATER REVENUE SHARING FRAMEWORKS BETWEEN FIRST NATIONS AND BC

THEREFORE, BE IT RESOLVED:

1. That the First Nations Summit (FNS) Chiefs in Assembly support and endorse the First Nations Leadership Council's (FNLC) intentions paper entitled, "*Water Revenue Sharing of Water License Rentals in British Columbia*" as a resource and framework to initiate discussions with First Nations and the Government of British Columbia ("BC") on water revenue sharing.
2. That the FNS Chiefs in Assembly direct the FNS Political Executive to call upon BC to:
 - a. recognize and honour First Nations' jurisdictional water rights and Indigenous laws as pertaining to water and resources; and
 - b. amend provincial policies, regulation, and legislation that provides for shared decision-making regarding the use and management of water as per the principles and standards laid out in the *United Nations Declaration on the Rights of Indigenous Peoples* and the *Declaration on the Rights of Indigenous Peoples Act*; and
 - c. ensure engagement with First Nations regarding the return of water resources back to the ecosystem.
3. That the FNS Chiefs in Assembly direct the FNS Executive to work with the BC Assembly of First Nations (BCAFN) and the Union of BC Indian Chiefs (UBCIC), as the First Nations Leadership Council (FNLC), to:
 - a) initiate and formalize discussions with the BC government on water licence rentals revenue sharing with First Nations;
 - b) advocate for the prioritization of water licence rental revenue sharing under BC's *Declaration Act* Action Plan;
 - c) advocate that any provincial water revenue-sharing frameworks be meaningfully co-developed with First Nations Rights and Titleholders;
 - d) call for dedicated capacity funding for the FNLC to support discussions with First Nations in BC on water revenue-sharing frameworks including determining options for distribution of revenues;
 - e) initiate discussions with the BC government to increase water licence rental rates including all water users inclusive of Crown corporations to levels that both reflect the true administrative, ecological, and restorative costs associated with water use, and encourage water users to maximize efficiency and conservation; and
 - f) call upon the BC government to commit to a regular review of water licence rental rates every 3 to 5 years with Titleholders as a right within our natural laws, including any exemptions; and

PAGE FOUR

RESOLUTION #1022.15

SUBJECT: SUPPORT FOR PRIORITIZING WATER REVENUE SHARING FRAMEWORKS BETWEEN FIRST NATIONS AND BC

- g) explore new alternatives for regulation of water use and sale.
4. That the FNS Chiefs in Assembly affirm that any discussions with BC must not inhibit or obstruct any First Nations undertaking overlapping initiatives or negotiations as part of their right to self-determination and sovereign rights.

MOVED BY:

Chief Maureen Chapman, Sq'ewa:lxw First Nation

SECONDED BY:

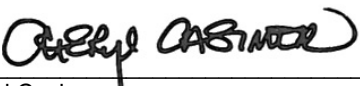
Chief Hank Adam, Stswecem'c Xgat'tem First Nation


DATED:

October 20, 2022

Passed by consensus.

ENDORSED BY:


Cheryl Casimer


Robert Phillips


Hugh Braker

References

- ¹ Public Accounts 2020/21. BC Office of the Comptroller General. Available at: <https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/government-finances/public-accounts/2020-21/public-accounts-2020-21.pdf>. See also Wei, Mike. (Dec 16, 2019). Water Rental Fees. Available at <https://hydrogeo-logic.com/blog/water-rental-fees/>
- ² New water licences are also subject to a one-time application fee of between \$250 and \$10,000.
- ³ Second Quarterly Report November 2021. BC Government. Available at: <https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/government-finances/quarterly-reports/2021-22-q2-report.pdf>
- ⁴ Public Accounts 2020/21, BC Office of the Comptroller General.
- ⁵ Most recently, in February 2022 Chief Corrina Leween of Cheslatta Carrier First Nation called for water licence rental revenues to flow back to impacted First Nations communities to support community capacity building. See <https://www.burnslakelakesdistrictnews.com/news/nechako-watershed-stakeholders-want-portion-of-water-rental-fees/>
- ⁶ Tapped Out: A Special Report on Water Scarcity and Water Solutions in British Columbia. (September 2019) Watershed Watch Salmon Society. Available at <https://watershedwatch.ca/wp-content/uploads/2019/09/2019-09-24-Tapped-Out-RGB.pdf>
- ⁷ First Nations Fisheries Council of BC (2022). Making Waves: 2021 Survey of First Nations-Led Freshwater Management and Governance in British Columbia. Available at https://www.fnfisheriescouncil.ca/wp-content/uploads/2022/05/Fisheries_Report_Final_May24.pdf
- ⁸ 2015 Water Pricing Changes. BC Government. Available at <https://engage.gov.bc.ca/watersustainabilityact/waterpricing/>
- ⁹ Declaration Act Action Plan (2022). Available at: https://www2.gov.bc.ca/assets/gov/government/ministries-organizations/ministries/indigenous-relations-reconciliation/declaration_act_action_plan.pdf
- ¹⁰ For example, in April 2022 the BC government announced it will more than double the forestry revenues that will be shared with First Nations as part of the work to co-develop a new forestry revenue-sharing model. See <https://news.gov.bc.ca/releases/2022IRR0025-000653#:~:text=Under%20the%20existing%20forestry%20revenue,FRCSA>
- ¹¹ See Honourable George Heyman Mandate Letter (November 2020). https://www2.gov.bc.ca/assets/gov/government/ministries-organizations/premier-cabinet-mlas/minister-letter/heyman_mandate_2020.pdf
- ¹² In BC, all non-domestic groundwater users must obtain a water rental licence, and any domestic surface water users may obtain a water rental licence which provides assurances of water access under the BC government's "First in Time, First in Right" water licence allocation system.
- ¹³ See <https://www2.gov.bc.ca/gov/content/environment/air-land-water/water/water-licensing-rights/water-licences-approvals/water-application-fees-rental-rates>
- ¹⁴ See https://www2.gov.bc.ca/assets/gov/environment/air-land-water/water/laws-rules/info_update_mineral_exploration_and_small_scale_placer.pdf
- ¹⁵ Wei, Mike (2019) and Public Accounts 2020/21. BC Office of the Comptroller General.
- ¹⁶ See schedule 2 Table 1 in the Water Sustainability Act: Water Sustainability Fees, Rentals and Charges Tariff Regulation for current water rental rates for all licenced uses. Available at https://www.bclaws.gov.bc.ca/civix/document/id/loo99/loo99/37_2016#section4
- ¹⁷ Water for the Future: Why BC Needs an Immediate Moratorium on all New Water Bottling Licences. (June 2021) University of Victoria Environmental Law Centre. Available at: <https://elc.uvic.ca/wordpress/wp-content/uploads/2021/06/2021-01-02-Water-for-the-Future-2021Jun30.pdf>
- ¹⁸ 2015 Water Pricing Changes, BC government. Available at: <https://engage.gov.bc.ca/watersustainabilityact/waterpricing/>

For more information, please contact:
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sophia.iliopulos@bcfn.ca



FIRST NATIONS LEADERSHIP COUNCIL