

# FNLC WATER RIGHTS STRATEGY PRE-ENGAGEMENT SESSION

## SUMMARY REPORT



FIRST NATIONS LEADERSHIP COUNCIL  
MAY 2022

# OVERVIEW

In 2013, The First Nations Leadership Council (FNLC) engaged with First Nations communities on the development of a First Nations Water Rights Strategy which was supported and endorsed by the Chiefs in Assembly within the FNLC organizations. Since its adoption, this Strategy has served as a core guiding document for the FNLC and other Indigenous organizations in the pursuit of First Nations water rights advocacy.

In 2021, the BC Assembly of First Nations (BCAFN), First Nations Summit (FNS) and Union of BC Indian Chiefs (UBCIC) together as the FNLC renewed their commitment to advancing First Nations water rights in BC. The Chiefs in Assembly and Chief's Council mandated that the FNLC First Nations Water Rights Strategy be amended to reflect modern priorities towards water security, sustainability, governance, and jurisdiction in BC through BCAFN Resolution 06/2021, FNS Resolution 0621.12 and UBCIC Resolution 2021-43.

On April 27 2022, the FNLC hosted a virtual Pre-Engagement Session to inform preliminary considerations for the Strategy amendments. First Nations Chiefs, leadership, experts, technicians, and community members from across the province were invited to the session to offer input on the 2013 Strategy and share insights on how a revised strategy could best represent First Nations' water-related interests, concerns and priorities in BC. The contents of this report summarizes these discussions to inform the next steps on the 2013 Strategy amendments.

Over the past decade the policy landscape has vastly changed for water with the implementation of the *Water Sustainability Act* (WSA) and the *Declaration on the Rights of Indigenous Peoples Act* (Declaration Act), United Nations on the Rights of Indigenous Peoples Act (UNDRIPA) and the *Safe Drinking Water for First Nations Act*. Furthermore, several provincial and federal water initiatives are underway including BC's Watershed Security Strategy and Watershed Security Fund as well as the federal government's commitment to creating a Canada Water Agency. The most fundamental change, however; is the devastating impacts of the climate emergency and its impact on water. A renewed strategy seeks to wholly incorporate these changes to reflect a modernized water strategy for First Nations in BC.



# SESSION SUMMARY

FNLC policy staff provided a context setting presentation that included updates on the state of water for First Nations in BC, which gave an overview of the high level policy and legislative concerns and challenges impacting First Nations' relationship with and rights to water (See State of Water Summary on p. 5 for further details). The presentation was followed by breakout discussions where participants were invited to share their personal reactions and perspectives related to the following questions:

- **What are the key water-related priorities, issues and/or concerns in your community?**
- **How can the FNLC support your community's priorities and concerns?**
- **What does UNDRIP implementation look like in relation to water? What does co-development look like?**



The remainder of the session was spent on a preliminary dive into the 2013 First Nations Water Rights Strategy with a presentation hosted by FNLC policy staff (see p. 10). The presentation highlighted opportunities to strengthen the 2013 Strategy, particularly with respect to First Nations governance structures, legislative changes, and the impacts of the climate change emergency.

Participants then joined a facilitated roundtable dialogue to provide feedback and recommendations on the revitalization of the 2013 First Nations Water Rights Strategy, and the considerations that must be included in developing a revised strategy that will advance their political, legal, and community interests (see p. 11-12). The roundtable discussion focused on answering the following discussion questions:

- **How relevant are the themes from the 2013 Strategy for addressing your concerns? What is still missing?**
- **What resources and tools would support your community with asserting and implementing your inherent rights to water?**

# TECHNICAL BRIEFINGS

During the Pre-Engagement session, two technical briefings were provided to participants to provide additional context for the state of water in BC. This section provides a summary of the two briefings provided.

## BC WATER TABLE

Hugh Braker, the President of the FNFC was joined by Susi Porter-Bopp (former FNFC Water for Fish Project Manager) to provide a briefing on the new BC Water Table. The BC Water Table, which will be composed of cross-ministerial representatives from BC as well as delegates from the soon-to-launch First Nations Water Caucus will work together to create an enduring space for collaboration on aquatic resource issues at a province-wide scale. The First Nations Water Caucus will include up to 15 First Nations delegates from around BC which will regularly engage with the BC Water Table to address policy, strategy and legislative concerns. Hugh and Susi explained that the BC Water Table does not eliminate the requirement for bilateral engagement between BC and First Nations Rights and Title holders, nor is it meant to fulfill any formal duty to consult or override any ongoing work occurring through G2G agreements and structures.

For more information please contact: [jacquelyne@fnfisheriescouncil.ca](mailto:jacquelyne@fnfisheriescouncil.ca)

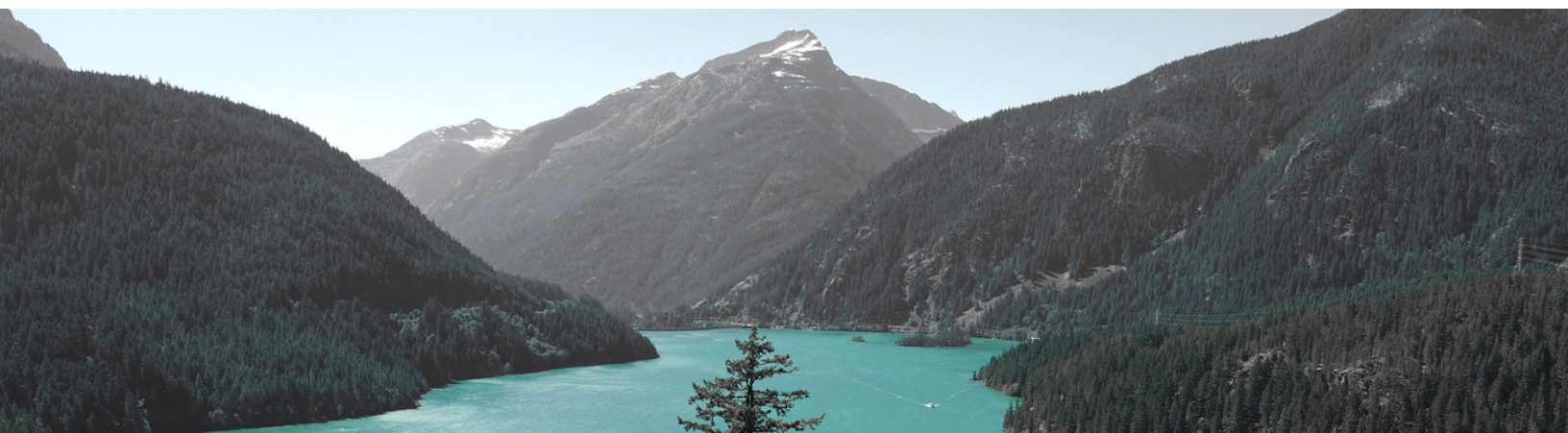
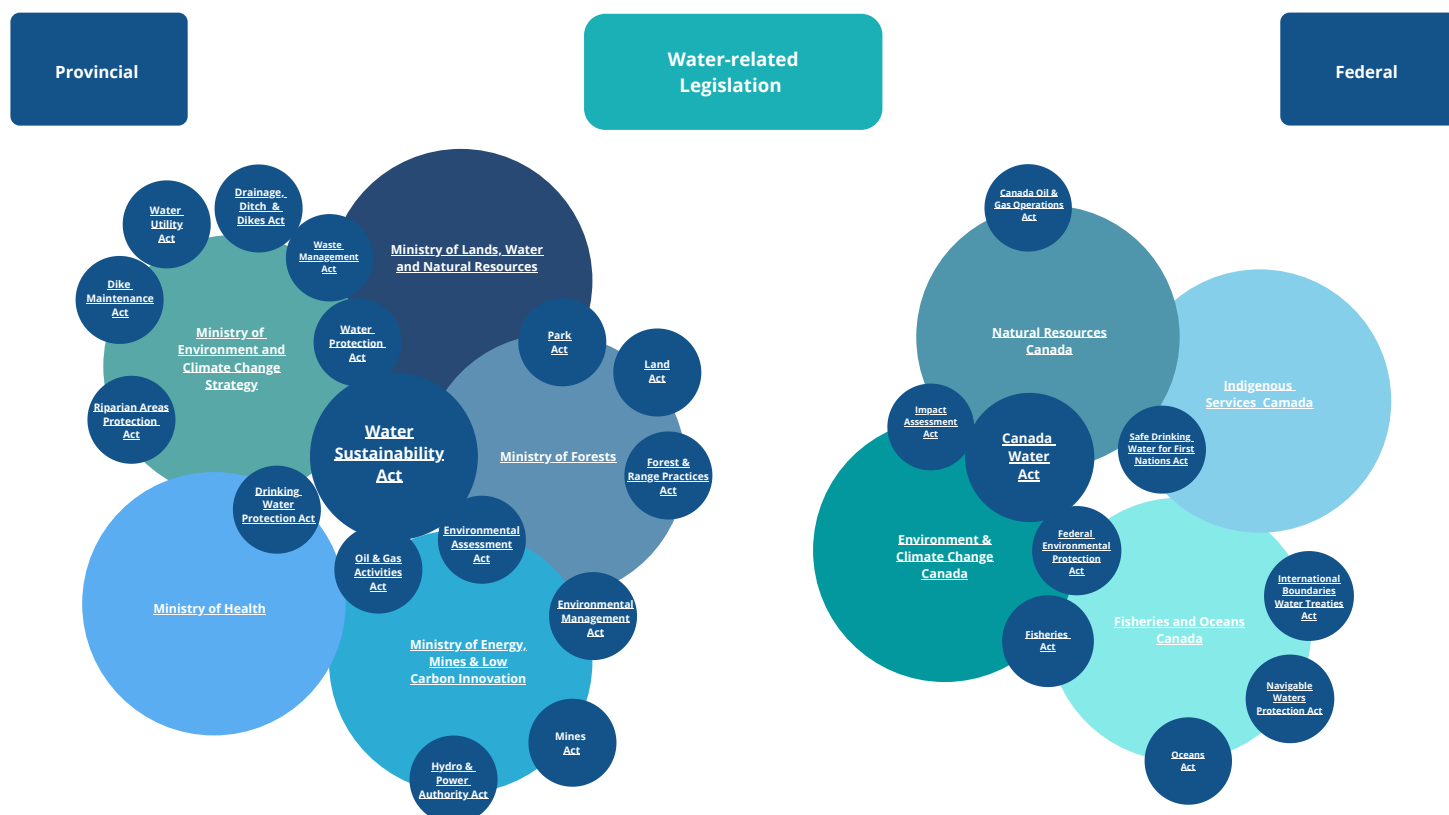
## SAFE DRINKING WATER CLASS ACTION

Deloitte is responsible for administering a portion of the First Nations Drinking Water Class Action Lawsuit Settlement, and two of its representatives joined the session to provide an update on the lawsuit and ongoing claims application process. This settlement includes a total of \$8 billion, and the presentation focused on the \$2 billion of that total which will be administered by Deloitte which includes compensation for individual damages, specific injuries, and First Nations damages. The settlement includes a list of 251 First Nations across Canada which were subject to a long-term drinking water advisory that lasted for 12 consecutive months between the years of 1995 and 2021. These 251 First Nations are currently eligible for compensation, and nearly 100 of them are located in British Columbia. The list of eligible First Nations is available online at:

<https://firstnationsdrinkingwater.ca/>

# STATE OF WATER SUMMARY

In the FNLC's State of Water presentation, a map was provided to participants which demonstrated the complexity of water-related legislation in BC and Canada and the exclusion of First Nations jurisdiction in the 25 laws that oversee Crown-led water management and governance. The following chart depicts the complex federal and provincial-related water legislation:



# STATE OF WATER SUMMARY

The Declaration Act (Bill 41) and UNDRIPA (Bill C-15) have been fully adopted without qualification by British Columbia in 2019 and Canada in 2021. While UNDRIP is still in its infancy stage, BC has since developed a *Declaration Act Action Plan* (Action Plan) in 2022 that sets the priorities for BC regarding reconciliation with Indigenous peoples over the next five years. FNLC Policy Staff shared BC's Action Plan as it relates to water to prompt considerations and priorities for the FNLC First Nations Water Rights Strategy amendments. Out of the 89 actions identified in BC's Action Plan, seven (7) key water-related actions were incorporated. FNLC Policy Staff shared these elements of BC's Action Plan to prompt considerations from participants as they contemplated how a new Water Strategy could work to ensure BC remains accountable to its commitments.

## BC's DRIPA Action Plan

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

### IMPLICATIONS --> Water Revenue Sharing

**2.5** Co-develop and employ mechanisms for ensuring the minimum standards of the UN Declaration are applied in the implementation of treaties & agreements under sections 6 and 7 of the Declaration Act and other constructive arrangements with First Nations.

### IMPLICATIONS --> Water rights, jurisdiction and stewardship recognition in Treaty, G2Gs, MOU's etc.

**2.7** Collaborate with First Nations to develop and implement strategies, plans and initiatives for sustainable water management, and to identify policy or legislative reforms supporting Indigenous water stewardship, including shared decision-making. Co-develop the Watershed Security Strategy with First Nations and initiate implementation of the Strategy at a local watershed scale

**2.8** Includes conservation & biodiversity including species at risk

**2.9** Includes BC Wild Pacific Salmon Strategy.

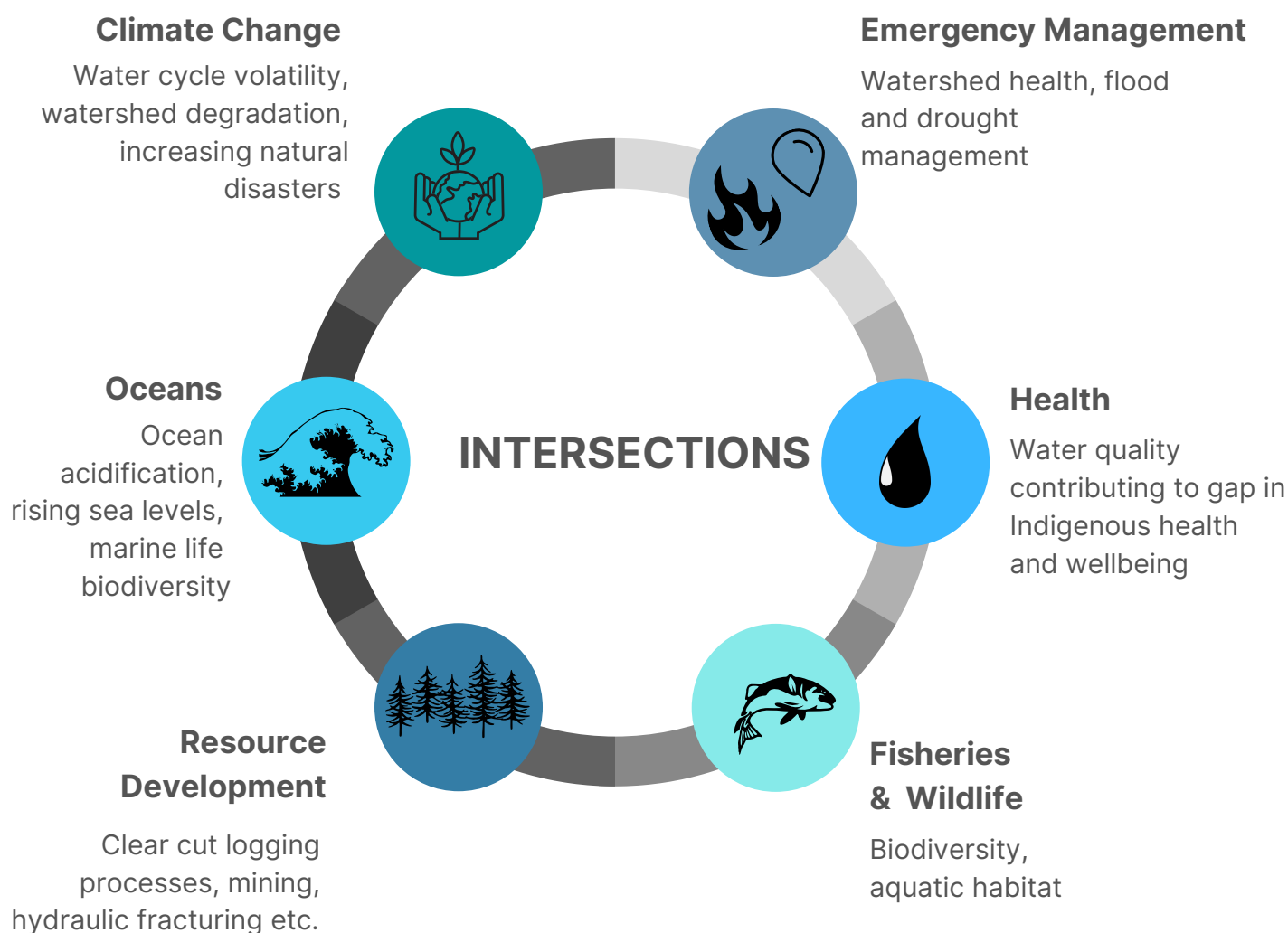
**4.35** Includes Heritage Conservation Act

**4.43** Includes strategic policies and initiatives for clean and sustainable energy

### IMPLICATIONS --> Collaboration/Co-development of BC water-related legislation, policies, strategies, action plans & initiatives including shared decision-making

# STATE OF WATER SUMMARY

The State of Water presentation concluded with an exploration of the various intersections with water to prompt considerations and discussion with regards to the 2013 FNLC First Nations Water Rights Strategy amendments. The following diagram was shared to identify the major complex challenges related to water:



# BREAKOUT DISCUSSION SUMMARY

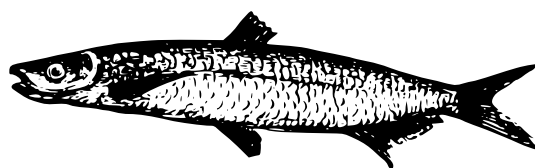
## SPIRITUAL VALUE OF WATER

Participants emphasized the sacredness and spirituality of water, including the important role it plays in ceremony and ritual. One attendee shared that they often go for river baths but are finding that there are fewer private places to do so because of the level of development taking place near their community. In discussing the spirituality of water, another participant likened their duty to protect water to the importance of preserving the work of their ancestors stating, **“glaciers are our ancestors, and we are losing them.”**

Another attendee highlighted work done by the Squamish Nation whereby they acquired a tree farm license and outlined cultural and spiritual sites that are not to be touched or used. Others reinforced the need for sacred spaces to be protected where river baths and other important cultural ceremonies, including water ceremonies, are honoured and performed. They went on to note that in updating the 2013 Strategy, this spiritual value of water should be more clearly articulated and reflected. Participants concluded that water is far more valuable than anything being extracted from the Earth, and it should be treated and cared for accordingly through policy and legislation amendments led by First Nations.

## SALMON, FISH AND FOOD SECURITY

Participants spoke at length about their concerns with water contamination and the impacts that it is having on salmon, fish, and the overall food security of communities. Participants noted that in many areas of BC, fish populations are declining due to unclean water, specifically due to high levels of mercury and other contaminants from industrial activity. These contaminants are endangering fish populations which are negatively impacting First Nations' constitutionally protected inherent and treaty rights to fish. The impacts of the salmon population and other aquatic species decline has a significant impact on community and cultural health which participants emphasized should be addressed in the updated strategy.



# BREAKOUT DISCUSSION SUMMARY

## SAFE DRINKING WATER

Contaminated water poses a clear risk to the health and safety of First Nations, including youth, Elders, and immunocompromised individuals. Several participants acknowledged that they have community members who have fallen ill or whose health has deteriorated due to contaminated water. Participants reminded each other that water is not just for drinking, but its contaminants can also be dangerous when used for bathing, hygiene, washing dishes, and other everyday tasks. **“It’s hard to comprehend that clean drinking water is unavailable to our communities,”** stated one attendee. Further, they noted contamination that has come as a result of nearby industrial activity has negatively affected their rights to protect water. Participants highlighted BC’s outdated and colonial water licensing system, known as the First in Time, First in Right priority allocation system which gives water licensees greater water licensing rights than First Nations Rights and Title holders. **“This expansion is resulting in water rights being carved up [and] we are at the end of the line,”** explained one participant.

Other participants identified similar challenges that they face near agricultural landowners, noting that they need to worry about water sanitation as it relates to pesticides, manure and livestock waste getting into their water systems and contaminating it. These issues highlighted the need for increased and improved water treatment centres and systems that First Nations are currently using, including the need for adequate operations and maintenance funding with one participant stating, **“there’s no use having them [water and wastewater systems] if we can’t keep them [maintained].”**



**“** *It’s hard to comprehend that clean drinking water is unavailable to our communities* **”**



One participant explained another significant challenge related to the contrasting burden of responsibility and liability for contaminated water in First Nations communities. **“When there is water contamination, our communities are liable. But we have no say of what happens down the river,”** they explained.

# 2013 STRATEGY FEEDBACK

FNLC Policy staff gave a brief overview of the 2013 Strategy which is broken down into four components: Political, Legal & Policy, Community Support and Research & Education. This section outlines the key feedback that was received from participants.



# 2013 STRATEGY FEEDBACK

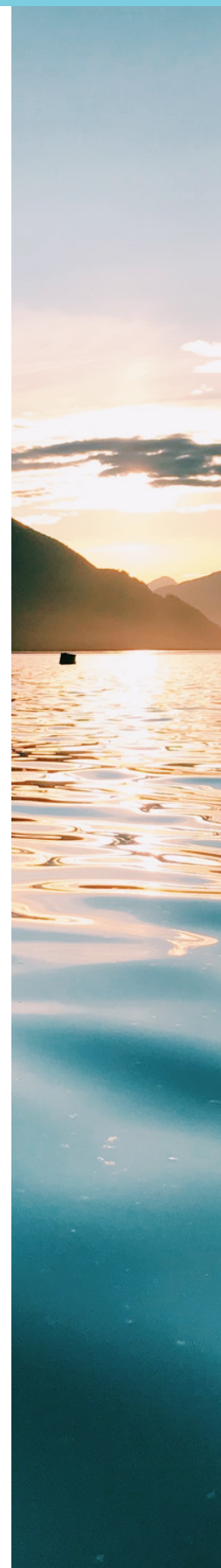
## POLITICAL & POLICY STRATEGY

A key theme of discussion throughout the session was the need for support to develop territorial policies and laws on water. Several attendees reiterated that this work needs to be done both collectively, but also as individual communities because of the unique issues and challenges that different First Nations face. Many noted that First Nations voices and priorities continue to be left out of important conversations at all levels, with one participant specifically identifying that they would like to see more opportunities for involvement at the municipal level. They explained that communities often need more support locally to work with municipalities and local organizations.

Participants agreed that data and information about water, water testing, and water protection should be coming from First Nations directly. When it comes to updating the 2013 Strategy and advancing water rights more generally, participants agreed that education and information needs to come directly from the community; **“learn from us,”** concluded one attendee, **“and if you want to get education from our community, or elsewhere, come back and share it with us”.**

## COMMUNITY SUPPORT STRATEGY

Session participants made several references to engagement fatigue and the low levels of internal capacity that communities are currently facing when it comes to advancing First Nations water rights. They noted that communities need to be able to understand *how* water systems, policy and legislation work, however their internal capacity challenges make it difficult to engage in meaningful ways. One participant stated that Crown governments will often reach out to First Nations for engagement or contributions, but because of these challenges with low capacity, communities are unable to engage in a meaningful way while noting, **“if they want to get all this information from First Nations, they need to support us in giving that information in a good way.”**



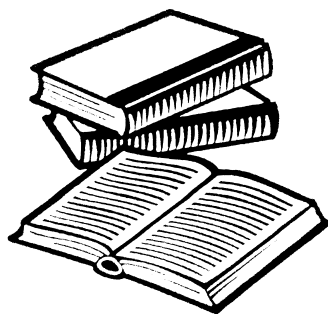
# 2013 STRATEGY FEEDBACK

## RESEARCH & EDUCATION STRATEGY

The importance of First Nation-led research and education was emphasized by session participants as they discussed the future of water protection and conservation in their communities and across the province more broadly.

**"You're looking at education in that 2013 (Strategy) umbrella, but things need to change along with the times,"** stated one person. Issues including climate change, reconciliation and rights recognition, and the adoption of the Declaration Act and UNDRIPA legislation in BC and Canada have changed the framework for what a First Nations Water Rights Strategy should include.

Attendees emphasized that a new Strategy should be made "more palatable" by focusing on education and toolkits that provide First Nation-led guidance on the current state of water, and action plans for addressing concerns and priorities.



One way that communities may be supported in this work is by being provided with information that is accessible to community members. **"We can't be getting long documents using jargon and words that the average community member won't be familiar with. It needs to be in our words,"** shared one community member. Others provided some suggestions about how organizations such as the FLNC may be able to make technical information about policy and legislation more digestible to First Nations government, staff, and members. Suggestions included providing briefing notes and summary materials to First Nations which synthesize information in a way that is helpful to the average person, or even developing an online 'hub' that can be accessed by all First Nations in BC to see what other communities have done as well as highlighting success stories and challenges First Nations have faced when it comes to water governance and stewardship.

## NEXT STEPS

The insights of this report will inform future water-related engagements with First Nations in BC on the amendments of the 2013 First Nations Water Rights Strategy. Further Strategy engagements will be scheduled for 2022/23. The FNLC will keep Chiefs and leadership updated on the Strategy development and apprised of future meeting dates.

BCAFN, FNS and UBCIC would like to thank all Chiefs, leaders and community members who joined the session and shared their experiences, concerns, and success stories. All of these contributions are important in advancing the water rights and priorities of First Nations in BC and will set the stage for future conversations and engagements.

To learn more or to give feedback please reach out to FNLC staff.

## CONTACT

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