



# BRITISH COLUMBIA ASSEMBLY OF FIRST NATIONS

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## BCAFN ANNUAL GENERAL MEETING

Musqueam Community Centre, Xʷməθkʷəy̓əm, Vancouver, BC  
September 18-20, 2019

## Resolution 21(e)/2019

**SUBJECT:** BC WATER SUSTAINABILITY ACT ENGAGEMENT FRAMEWORK

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**MOVED BY:**

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**SECONDED BY:**

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**DECISION:**

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### WHEREAS:

- A. Water is our lifeblood. All living things depend on it. It is a sacred element of our Aboriginal Title, Rights and Treaty Rights;
- B. Without a clearly defined and adequate consultation process with BC First Nations, in 2010 the BC Provincial Government initiated the Water Act Modernization process, and in 2016 passed into legislation the *Water Sustainability Act (WSA)*;
- C. The BC government is undertaking a phased approach to implementing the *Water Sustainability Act* and will continue to develop key regulations over the next 3 to 4 years, including those that have high potential for significant and direct impact on Aboriginal Rights and Title;
- D. The BC government has committed to fully adopting and implementing UNDRIP and the Calls to Action of the Truth and Reconciliation Commission, and through their mandate letters Cabinet Ministers have been directed to “mov[e] forward on the calls to action and reviewing policies, programs, and legislation to determine how to bring the principles of the declaration into action in British Columbia;”

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A handwritten signature in blue ink, appearing to read "Terry Teegee".

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Terry Teegee, BC Regional Chief

- E. The BC Government has still not articulated or implemented a framework for consulting with First Nations on the *Water Sustainability Act*;
- F. The Crown has a constitutional duty to consult with Aboriginal peoples when it contemplates conduct or a decision that may have an adverse impact on a recognized or asserted Aboriginal or Treaty Rights;
- G. The *United Nations' Declaration on the Rights of Indigenous Peoples* states (emphasis added):

**Article 18**

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

**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 32**

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources;
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources;
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact;

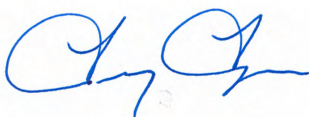
**Article 39**

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

- H. BCAFN Resolution 11/2010 directs the Regional Chief to communicate to the Province and Canada that the prior and unextinguished water rights of First Nations of British Columbia must be addressed and

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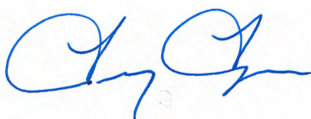
**Terry Teegee, BC Regional Chief**

given priority before the Province proceeds with legislative and policy changes as proposed in to 2010 Discussion Paper;

- I. BCAFN Resolution 06(k)/2011 directs the Regional Chief to work with the National Chief to instruct the Provinces and Canada that mutually negotiated water consultation protocols between individual First Nations and the provincial government must be a prerequisite before all future water rights are assigned and that adequate consultations between First Nations and the provincial governments result in up-front watershed planning that considers the cumulative impacts on First Nations' lands and resources.
- J. BCAFN Resolution 06(k)/2011 also directs the Regional Chief to work with the National Chief to instruct the Provinces and Canada that the prior and unextinguished water rights of First Nations must be addressed and given priority before the Province assigns either short-term or long-term water access and water use rights to third parties in First Nations' territories.
- K. BCAFN Resolution 03(m)/2013 supports and endorses the Report on Key Findings of the BC First Nations Consultation and Accommodation Working Group, "Advancing an Indigenous Framework for Consultation and Accommodation in BC."
- L. BCAFN Resolution 06(a)/2013 conveys the Chiefs in Assembly's full support and endorsement of the Draft BC First Nations Water Rights Strategy, developed by the FNLC.
- M. BCAFN's submissions to the BC provincial government on the WAM Discussion Paper in 2010 and on the WSA Legislative Proposal in 2013, state that any legislation and regulations developed in the province that have the potential to impact Aboriginal rights and title and treaty rights must be developed in conjunction with First Nations.
- N. BCAFN in partnership with the Union of BC Indian Chiefs and the First Nations Summit requested on numerous occasions the immediate engagement of the Province on the proposed *Water Sustainability Act* (WSA) and further to this, has requested and been denied an opportunity to enter into a Memorandum-of-Understanding.
- O. The First Nations Leadership Council provided comprehensive letters on numerous occasions setting out our collective position on the WSA policy proposal.
- P. The work of the First Nations Leadership Council pertaining to the *Water Sustainability Act* does not replace any existing discussions or negotiations respecting water sustainability that any Nations may currently have underway with additional partners, including Ministries, First Nation communities and/or Aboriginal organizations, nor does it preclude Nations from initiative new discussions or negotiations or any challenges that Nations feel need to be brought forward.
- Q. BCAFN Resolution 03(f)/2018 mandates the BCAFN Chiefs in Assembly work with the First Nations Summit and the Union of BC Indian Chiefs, as the First Nations Leadership Council, to call upon the BC

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provincial government to immediately co-develop a framework for, and to provide adequate resources to, First Nations to appropriately engage on the regulations pertaining to the *Water Sustainability Act* which have high potential for significant and direct impact on Aboriginal Rights and Treaty Rights.

- R. BC Ministry of Environment and Climate Change Strategy provided the First Nations Fisheries Council with resources to advise BC on an Engagement Framework to guide the development of remaining regulations and policies under the WSA in accordance with BC's reconciliation commitments to First Nations;
- S. The First Nations Fisheries Council convened a small working group to identify recommendations for a WSA Engagement Framework; and
- T. The May 2019 report, "Towards a *Water Sustainability Act* First Nations Engagement Framework: Working Group Recommendations for Collaborative Development of Regulations and Policies", makes the following recommendations:
  - 1. Reset the Relationship Based on Recognition and Respect. The existing WSA and priority regulations must be reviewed and reformed on the proper foundations.
  - 2. Adhere to UNDRIP Moving Forward. The relevant minimum human rights standards for ensuring the survival, dignity and well-being of Indigenous peoples must be complied with at all times.
  - 3. Enable Harmonious First Nations-Crown Governance and Management Processes. First Nations must be supported in developing and implementing their own laws and policies related to the governance and management of fresh water in their territories, and the WSA should enable First Nations' own laws and policies to be exercised in a more harmonious manner and afforded due respect alongside BC laws and policies.
  - 4. Enable Diverse, Flexible and Dynamic Options for Collaborative Development of Policies and Regulations. BC must enable and facilitate the participation of First Nations to the extent that they wish to participate and through processes and mechanisms of their choosing with no one option limiting a First Nation's ability to engage with the Crown through any means the First Nation may deem appropriate. Four options are recommended: (a) participation through existing or emerging First Nation-Crown Processes; (b) participation through a First Nations water caucus; (c) participation through regional advisory workshops; and (d) participation through a process of First Nations submissions.
  - 5. Enable Early and Sustained Participation. Collaboration with First Nations is enabled at the very beginning of any regulation or policy development process and sustained throughout each stage of regulation and policy development under the WSA.
  - 6. Improve Transparency in Decision-Making. First Nations must be able to understand how their collaborative efforts are demonstrably and substantively considered and addressed by BC throughout the process.
  - 7. Provide Sufficient, Stable and Predictable Resources. First Nations must have sufficient, stable and predictable fiscal and human resources to meaningfully participate in the collaborative development of the regulations and policies under the WSA, and to develop and implement their own water laws and policies.

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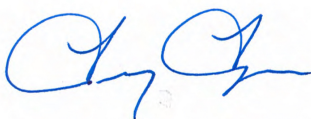
- U. An independent BC Water Sustainability Fund, supported by a sustainable revenue stream from water rentals and license fees, could provide dedicated and lasting financial support to First Nations as well as other community partners to build and strengthen their capacity to undertake watershed stewardship, planning and governance activities.

**THEREFORE BE IT RESOLVED THAT:**

1. The BCAFN Chiefs-in-Assembly support the recommendations contained in the May 2019 report “Towards a *Water Sustainability Act* First Nations Engagement Framework: Working Group Recommendations for Collaborative Development of Regulations and Policies”;
2. The BCAFN Chiefs-in-Assembly call on the Provincial government to commit to implement the recommendations immediately and to provide the necessary financial resources to First Nations to participate in collaborative processes to develop remaining *Water Sustainability Act* regulations and policies; and
3. The BCAFN Chiefs-in-Assembly call on the Provincial government to establish an independent BC Water Sustainability Fund which will provide resources to First Nations and community partners to develop and implement freshwater planning, governance and management initiatives across the province.

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