



BC ASSEMBLY OF FIRST NATIONS

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BCAFN 17th ANNUAL SPECIAL CHIEFS ASSEMBLY
March 3 - 4, 2021
Online via Zoom

Resolution 06/2021

SUBJECT: SUPPORT FOR THE ADVANCEMENT OF FIRST NATIONS WATER RIGHTS

MOVED BY: CHIEF HARVEY MCLEOD, UPPER NICOLA BAND

SECONDED BY: CHIEF KEITH CROW, LOWER SIMILKAMEEN INDIAN BAND

DECISION: CARRIED

WHEREAS:

- A. Water is the fabric of human existence and our most sacred and vital resource. Our waters remain at imminent risk due to impacts of climate change, pollution, increased population, industrial development and mismanagement;
- B. First Nations have both inherent and constitutionally protected rights to manage, conserve and ultimately govern the waters that run through our territories and this must be acknowledged by all levels of government;
- C. First Nations rely on access to clean water to support our way of life and rely on this access to exercise constitutionally protected Aboriginal and Treaty rights including but not limited to: hunting, fishing, trapping, harvesting, cultural ceremonies, spiritual purposes, and economic wellbeing;
- D. Through mandate letters released in December 2020, Premier Horgan directed the Ministry of Indigenous Relations and Reconciliation to "facilitate partnership with First Nations around key decisions on regional land and resource use allocation through evolving shared decision making, building on the *Declaration on the Rights of Indigenous Peoples Act* (DRIPA), to provide a clear, stable and sustainable path for everyone to work together";
- E. In the mandate letter provided to the Ministry of Environment and Climate Change Strategy, Premier Horgan included the development and implementation of a Water Security Strategy and a Watershed Security Fund to work "to plan, manage and protect local watersheds for the public good – while making sure BC gets fair rates for the bulk sale of water moving forward"

- 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 right;
- G. The BC government has unanimously passed *United Nations Declaration on the Rights of Indigenous Peoples* (Declaration) into legislation through DRIPA;
- H. The Declaration, which sets out the minimum standards for the survival, dignity and well-being of Indigenous peoples, has been adopted by the Province of British Columbia, which affirms:

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 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.

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.

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Terry Teegee, BC Regional Chief

- I. BCAFN Resolution 11/2010 directs the BC 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 given priority before the Province proceeds with legislative and policy changes as proposed in the 2010 Discussion Paper;
- J. BCAFN Resolution 06(k)/2011 directs the BC 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;
- K. AFN Resolution 20/2012 calls upon the AFN to engage with all levels of government to ensure that First Nations engagement, accommodation and consultation processes are accountable, respectful and appropriate prior to the implementation of any legislation, policies and regulations that may impact Aboriginal and treaty rights, First Nations governance authorities or stewardship of watersheds in or near their traditional territories;
- L. 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 BCAFN Resolution 06(a)/2013. This Strategy has served as a core guiding document for the FNLC and other Indigenous water-related organizations. This strategy requires updating to more accurately identify modern strategic goals to help advance First Nations jurisdictional water rights in B.C and accurately reflect and align with the implementation of DRIPA.

THEREFORE BE IT RESOLVED THAT:

- 1. The BCAFN Chiefs-in-Assembly directs BCAFN and the Regional Chief to:
 - i) Urge the Provincial Government to recognize and affirm First Nations inherent rights to manage and protect our waters and to seek the free, prior and informed consent with all First Nations rightsholders on matters related to water legislation, policy, strategies and action plans and provide adequate and sustainable resources for First Nations communities to meaningfully contribute to these initiatives;
 - ii) Work in solidarity with like-minded organizations with respect to advocating for First Nations jurisdictional water rights and support First Nations legal right to affirm water rights on their traditional lands;
 - iii) Call on the Ministry of Environment and Climate Change Strategy to ensure that any strategy, action plan or work related to water governance including the BC Water Security Strategy and the Watershed Security Fund is co-developed and in partnership with First Nations, and would encompass Indigenous-led approaches and joint-decision making with regards to water protection, conservation and overall management;
 - iv) Work with the First Nations Summit and Union of BC Indian Chiefs, together as the First Nations

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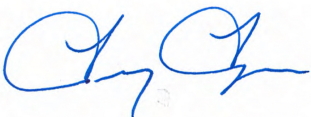


Terry Teegee, BC Regional Chief

Leadership Council to revise and update the 2013 BC First Nations Water Rights Strategy to reflect relevant and modern strategic goals to help advance First Nations jurisdictional water rights in B.C; and

2. The BCAFN Chiefs-in-Assembly support BCAFN staff to seek funding to support ongoing work and engagement related to First Nations Water rights which includes a review, amendment and update of the First Nations Leadership Council's 2013 First Nations Water Rights Strategy.

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A handwritten signature in blue ink, appearing to read 'Terry Teegee', is positioned above a horizontal line.

Terry Teegee, BC Regional Chief