



BC ASSEMBLY OF FIRST NATIONS

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Prince George, BC V2K 5S3
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BCAFN ANNUAL GENERAL MEETING

October 8, 9 & 10, 2024

Hybrid - In person & online via Zoom

Resolution 26/2024

SUBJECT: SUPPORT FOR BCAFN'S LEGAL ANALYSIS AND SUBMISSION TO THE STANDING COMMITTEE ON INDIGENOUS AND NORTHERN AFFAIRS REGARDING BILL C-61

Moved by: CHIEF DAN MANUEL, UPPER NICOLA INDIAN BAND

Seconded by: CHIEF JOE PIERRE, ʔAQ̓AM

Decision: CARRIED

WHEREAS:

- A. First Nations have historic and ongoing inequitable access to safe drinking water due to the federal government's failure to uphold its fiduciary responsibilities to provide First Nations with access to clean drinking water and continue to suffer from long-term boil water advisories;
- B. Access to safe and clean drinking water is a human right pursuant to United Nations Resolution 64/292 (2010);
- C. First Nations have both inherent and constitutionally protected rights to manage, conserve, and govern the waters that run through our territories, and this must be acknowledged by all levels of government;
- D. First Nations rely on access to clean water to support our way of life and rely on this access to exercise our inherent and constitutionally protected rights, including but not limited to: hunting, fishing, trapping, harvesting, cultural ceremonies, spiritual purposes, and economic well-being;

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- E. The *United Nations Declaration on the Rights of Indigenous Peoples* (“UN Declaration”), which the government of Canada has adopted without qualification and has, alongside the government of British Columbia, passed legislation committing to implement, affirms:

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 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 21(1): Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security,

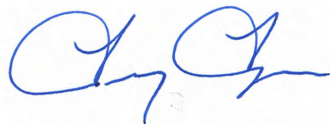
Article 26(1): Indigenous Peoples have the right to the lands, territories, and resources which they have traditionally owned, occupied or otherwise used or acquired,

Article 27(1): States shall establish and implement, in conjunction with Indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to Indigenous peoples’ laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process,

Article 29(1): Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection without discrimination;

- F. By AFN Resolution #01/2018, the federal government repealed the *Safe Drinking Water for First Nations Act* and committed to working with the Assembly of First Nations to replace the legislation.
- G. By AFN Resolution 23/2022, the Chiefs-in-Assembly mandated that the draft legislation be in alignment with the AFN's Preliminary Concepts and have the following components met:
- i. it must identify sustainable and fulsome funding,
 - ii. it must address regionally appropriate standards and regulations, Recognition of rights that goes beyond First Nations advisory committees to promote and enable decision-making,
 - iii. a commitment to First Nations water governance, including but not limited to source water protection,
 - iv. a meaningful co-draft of the legislation is developed with First Nations in its entirety;

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- H. By BCAFN Resolution 27/2023, the Chiefs-in-Assembly called on the National Assembly of First Nations and Indigenous Services Canada to work in full co-development and partnership to ensure that the minimum requirements as identified in AFN Resolution 23/2022 are sufficiently incorporated into *An Act respecting drinking water, wastewater, and related infrastructure on First Nation lands* (“Bill C-61”), including full alignment with the UN Declaration.
- I. On December 11, 2023, the federal government tabled Bill C-61, *An Act respecting water, source water, drinking water, wastewater and related infrastructure on First Nation lands* (the “Act”) before Parliament;
- J. On June 5, 2024, the Second Reading of the Act before Parliament completed and was referred to debate before the Standing Committee on Indigenous and Northern Affairs (“Standing Committee”);
- K. Between June 12, 2024, and September 23, 2024, the Standing Committee held sittings for consideration of the Act. The Standing Committee sittings are on-going and First Nations can request to appear as a witness on the Standing Committee or provide a written submission to the standing Committee.
- L. To date, a number of areas of improvement have been identified to Bill C-61 by First Nations and BCAFN that need to be addressed and improved to ensure Bill C-61 comprehensively and duly implements the UN Declaration, including, but not limited to, calling on the federal government to:
- i. acknowledge, affirm, and uphold the human right to safe drinking water consistent with United Nations Resolution 64/292 (2010) and that, pursuant to Bill C-61, the human right to safe drinking water means that all First Nation residents on reserve lands have a right to drinking water that poses no risks to human health or well-being,
 - ii. affirm its commitment to fully implement Article 19 of the United Nations Declaration on the Rights of Indigenous Peoples to obtain First Nations’ free, prior, and informed consent for decision-making under the Act,
 - iii. expand the recognition of First Nations' inherent right to self-government in the Act to include source waters supplying reserve lands, ensuring comprehensive management of interconnected water systems,
 - iv. include a statutory requirement, beyond a “best efforts” standard, for federal funding or otherwise regulate federal funding for First Nations’ exercise of jurisdiction under the Act,

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- v. establish uniform minimum standards for water quality, water quantity, and wastewater effluent across all First Nations, exceeding provincial standards to ensure equitable access to safe drinking water,
 - vi. address the scope of provisions which apply to modern treaties and self-government agreements, which prevail over the Act,
 - vii. clarify the scope, funding, and creation of the First Nations Water Commission for oversight in ensuring effective implementation of the Act's provisions on water management and protection;
- M. On October 7, 2024, the BCAFN published a legal analysis of the Act with recommendations for specific amendments to the language of the Act.

THEREFORE BE IT RESOLVED THAT:

1. The BCAFN Chiefs-in-Assembly support the affirmation of First Nations' inherent right of self-government provided in Bill C-61, *An Act respecting drinking water, wastewater, and related infrastructure on First Nation lands* (the "Act") to include jurisdiction over water, drinking water, wastewater, and related infrastructure, over, on, through, in, and under First Nations lands.
2. The BCAFN Chiefs-in-Assembly support BCAFN's legal analysis of the Act, including the recommendations for specific amendments to the language of the Act.
3. The BCAFN Chiefs-in-Assembly support BCAFN's submission to be submitted to the Standing Committee on Indigenous and Northern Affairs for consideration of the Act.
4. The Chiefs-in-Assembly call on the Federal Government to fully uphold the application of Section 7 of the *Canadian Charter of Human Rights and Freedoms* in the drafting and implementation of the Act.

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