



BC ASSEMBLY OF FIRST NATIONS

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BCAFN SPECIAL CHIEFS ASSEMBLY

February 26 & 27, 2024

Online via Zoom

Resolution 03/2025

SUBJECT: ENGAGING WITH THE CANADA WATER AGENCY TO ADVANCE WATER CO-GOVERNANCE WITH RIGHTS AND TITLE HOLDERS

Moved BY: CHIEF JAMES HOBART, SPUZZUM FIRST NATION

SECONDED BY: DEPUTY CHIEF HARLAN SCHILLING, DAYLU DENE NATION

DECISION: CARRIED

WHEREAS:

- A. The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) was adopted by the Government of Canada and the Province of British Columbia without qualification and passed legislation affirming:

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

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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.

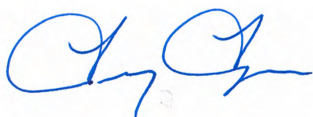
Article 26: **1.** Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. **2.** Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by 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.

- B. In December 2019, the federal government committed to creating a Canada Water Agency through mandate letters sent to Environment and Climate Change Canada "to work together with the provinces, territories, Indigenous communities, local authorities, scientists and others to find the best ways to keep our water safe, clean and well-managed."
- C. The Canada Water Agency Act (S.C. 2024, c. 15, s. 209) that establishes the Canada Water Agency as a stand-alone entity, outside of Environment and Climate Change Canada, came into force on October 15, 2024.
- E. Since the announcement of the Canada Water Agency, the federal government and the agency has not adequately engaged with all BC First Nations and Treaty holders in the creation of its mandate and fails to include First Nations in its decision-making processes.
- F. Under the *United Nations Declaration Act Action Plan*, the federal government commits to

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"create a Canada Water Agency and advance the modernization of the Canada Water Act to reflect Canada's freshwater reality, including climate change and Indigenous rights.

G. BCAFN Resolution 07/2021 directs BCAFN to:

i) Urge the Federal Government to recognize and affirm First Nations inherent rights to manage, govern and protect our waters and to seek the free, prior and informed consent with all First Nations rightsholders on matters related to water-related agencies, policy, strategies, action plans and legislation and provide adequate and sustainable resources for First Nations communities to meaningfully contribute to these initiatives;

ii) Call on Environment and Climate Change Canada to engage with First Nations through a mutually consultative and collaborative framework that considers all First Nations interests, and rights in water, including but not limited to determining how the Canada Water Agency can support First Nations communities access to safe drinking water on Reserves;

iii) Call on Environment and Climate Change Canada to ensure they seek the free, prior and informed consent from all title and rights holders before proceeding with the development of the Canada Water Agency.

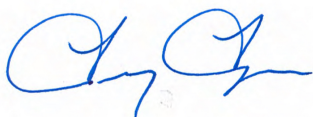
H. BCAFN Resolution 27/2023 calls on Environment and Climate Change Canada to enact the Canada Water Act modernization process, in full co-development and co-drafting with First Nations, including developing a mutually agreed upon co-development framework supported and endorsed by the AFN First Nations-in-Assembly resolution prior to the modernization process. The modernization of the Canada Water Act and the creation of the Canada Water Agency must include a mechanism for First Nations to assert their water rights and must comply with the requirements of the United Nations Declaration on the Rights of Indigenous Peoples.

I. AFN Resolution 53/2023 directs the AFN to call on Canada to fund the creation of a national First Nations-led water stewardship task force, under the guidance and meaningful participation of the Advisory Committee on Climate Action and the Environment and the Chiefs' Committee on Housing and Infrastructure, to inform the implementation and co-development of any such agency, including related legislation, policies, and initiatives.

J. In 2022, BCAFN hosted a Virtual Dialogue Series for First Nations in BC to discuss the potential impacts of the Canada Water Agency and provide considerations for its development and implementation. Several key recommendations were proposed in the [BCAFN Water Dialogue Series: Canada Water Agency What We Heard Report](#) (Water Dialogue Report) including

Uphold and Support First Nations' legal orders: A modernized *Canada Water Act* must ensure that First Nation water laws and law-making powers are affirmed, and provide that First Nations

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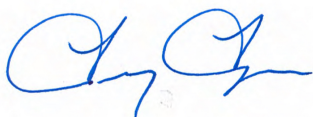
laws and legal orders are paramount over conflicting federal or provincial legislation on reserve.

Enable Shared Governance Mechanisms: Collaborative mechanisms must inform the direction and mandate of the Canada Water Agency including co-decision processes and consent requirements, co-governance structures particularly focusing on watersheds, basins and the connections between local, watershed and basin level structures, and transboundary local, watershed and basin agreement-making and planning (such as source water protection planning).

Supported First Nations Data Monitoring and Collection: Secure and maintain consistent baseline and ongoing water monitoring data within First Nation institutions, that can work with other data sets to give watershed and basin level indications of water and ecosystem health. First Nation data sovereignty must be fulsomely upheld and addressed.

- K. BCAFN conducted a Legal Analysis of the Canada Water Act and Supplementary Addendum in preparation for CWA modernization. The recommendations for the Canada Water Act modernization are as follows:
1. Meaningful engagement through collaboration and co-development on the modernization of the Canada Water Act including joint establishment of a co-development Framework to guide the modernization process.
 2. Increased First Nations' governance role through co-governance entities through equitable participation rights on governance structures established under the modernized Canada Water Act (including co-governance boards, inter-jurisdictional committees, agencies, and advisory bodies), and coordination with (and enhancement of, where applicable based on lessons learned) existing First Nations / Crown governance structures.
 3. Enhanced First Nations' governance authority through G2G agreements
 4. Expanded Focus to Recognize First Nations' Stewardship Rights
 5. Recognized Rights to a Healthy Environment and Legal Rights of Watercourses
 6. Incorporate Traditional Knowledge into Decision-Making
 7. Extended Employment and Oversight Opportunities
 8. Uphold First Nations' rights to redress
- L. The Canada Water Agency has not implemented the recommendations as outlined in the Water Dialogue Report to date, and there are no current shared decision-making mechanisms that invites rights and titleholders as collaborative partners in the Canada Water Agency's mandate and governance structure.
- M. BCAFN developed a Draft Considerations Paper entitled, "Towards Co-governance of Freshwater: Considerations for First Nations in BC regarding the Canada Water Agency" that explores options to engage with the Canada Water Agency, with a recommendation to engage in exploratory dialogue and research required to explore a multi-lateral "Convention on Water

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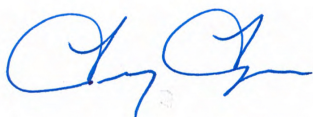
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Governance”, to be convened by BCAFN and like-minded organizations with support from and in partnership with the Canada Water Agency and the Province of British Columbia, with an overarching goal of advancing true co-governance over water with rights and title holders in BC.

THEREFORE BE IT RESOLVED THAT:

1. The BCAFN Chiefs-in-Assembly support and endorse the recommendations as presented in BCAFN's Legal Analysis and call on the Federal Government and the Canada Water Agency to
 - a. fully incorporate the recommendations contained in BCAFN's Legal Analysis in modernizing the Canada Water Act; and
 - b. work in full partnership with rights and titleholders in the modernization of the Canada Water Act process to achieve free, prior and informed consent
2. The BCAFN Chiefs-in-Assembly support and endorse BCAFN's report entitled, *“Towards Co-governance of Freshwater: Considerations for First Nations in BC regarding the Canada Water Agency”* (Considerations Paper) and recommendation with an overarching goal of advancing meaningful co-governance over water with rights and title holders in BC;
3. BCAFN Chiefs-in-Assembly mandate BCAFN to engage in further exploratory research and dialogue required for convening a Convention on Water Governance with rights and titleholders and like-minded organizations; and
4. The BCAFN Chiefs-in-Assembly direct BCAFN to seek funding from the Canada Water Agency to advance the recommendations as outlined in BCAFN's Considerations Paper.

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