



Water Security for Canadians

# Renewing the Canada Water Act

Submission to the Standing Committee on Environment and Sustainable Development for its Study on Freshwater

May 14, 2021



## Water Security for Canadians Initiative

The Water Security for Canadians Initiative is a collaboration of scientists and policy experts who have come together to analyze Canada's emerging water crisis and to chart a path forward to ensure water security for all Canadians. Drawing together a wide range of experience from across the country, the Initiative leverages world class science and policy expertise to propose solutions that strengthen cooperative federalism in the context of water governance and management, with specific attention to enhancing the role of the federal government.

The Water Security for Canadians Initiative is a partnership of eight organizations:

- Aqua Forum
- Centre for Indigenous Environmental Resources
- de Gaspé Beaubien Foundation
- Forum for Leadership on Water
- Global Water Futures
- POLIS Project on Ecological Governance (University of Victoria)
- Public Policy Program, Massey College (University of Toronto)
- United Nations University Institute for Water, Environment and Health

The Water Security for Canadians Initiative welcomes the opportunity to submit this brief to the Standing Committee on Environment and Sustainable Development in support of its freshwater study. Our previous publications, including [Modernizing Federal Freshwater Leadership: Draft White Paper \(2020\)](#) and [Water Security for Canadians: Solutions for Canada's Emerging Water Crisis \(2019\)](#), provide more detailed analyses of federal water law and policy.

We would be pleased to speak to this brief in more detail at the committee's request. Inquiries can be directed to Richard Farthing-Nichol ([richard@flowcanada.org](mailto:richard@flowcanada.org)).

## Key Priorities for Renewing the Canada Water Act

Canada is facing new and intensifying water challenges that must be meaningfully addressed to ensure that Canada's waters are healthy, sustainable, and resilient to climate change for future generations. The federal government has a key leadership role to play in addressing these challenges, and comprehensive renewal of the Canada Water Act is one of the most important steps the government can take. The Act is Canada's primary federal freshwater legislation, yet it has not been modernized since it was passed in 1970 and has not been funded to effectively implement its provisions since the early 1990s.

Water security is a global challenge. Canada has an opportunity to be a leader in this space by safeguarding our own waters, working with our American neighbour to ensure effective transboundary management, and exporting our water expertise and innovations to other parts of the world. We cannot fulfill this role without a robust and modern legislative framework.

This brief identifies 13 key priorities for renewing the Canada Water Act that are categorized into three focus areas: scope, governance, and water management. Addressing these priorities will help bring the Act into the 21<sup>st</sup> century and ensure that it reflects our new freshwater reality. These priorities are a starting point for a renewal process that should be led by the federal government in collaboration with provincial, territorial, and Indigenous governments.

### 1. SCOPE

#### *New Capacity*

- Legislate the new **Canada Water Agency** and define its mandate, responsibilities, and accountabilities. This includes assigning the Agency all federal freshwater responsibilities not specifically assigned to a Minister, as well as defining the Agency's role regarding inter-ministerial coordination.
- Legislate **Canada's Chief Water Sustainability Officer** and define their mandate, responsibilities, and accountabilities.

#### *Broader Application*

- Broaden the scope of the Act beyond water quality to focus on **water sustainability** and on proactive measures that ensure resilience and long-term prevention, protection, and restoration. This includes moving beyond pollution to a more general "causing negative impacts" and including broader definitions of water quality and quantity (especially drought and floods), flow (particularly environmental flow needs), and ecosystem health.

- **Broaden the applicability of the Act** by replacing “urgent national concern” with “national concern” and removing the limitation that restricts the applicability of some sections only to waters where there is a “significant national interest”.

### *Public Trust Doctrine*

- Clearly state the requirement to uphold a **duty of care (“public trust”)** to act in the best interests of present and future generations in making water decisions that affect federal, transboundary, or international waters (the existing federal scope) and that might impact the ecological integrity of river basins (the new scope). This public trust commitment should be rooted in consideration of long-term impacts and a duty to work with people and communities.

### *Equity*

- Mandate **gender-based analysis plus (GBA+)** in policy and programming design and in evidence-based recommendations, as well as social and health vulnerability assessments based on intersecting identities and vulnerabilities.

## 2. GOVERNANCE

### *Cooperative Federalism*

- Work with other orders of government to create and implement a **dispute resolution mechanism** for water-related conflict, such as interjurisdictional water disputes and failing to implement agreements and plans.
- Create an **intergovernmental oversight committee** comprised of federal, provincial, territorial, and Indigenous government representatives.

### *Indigenous Water Rights and Jurisdiction*

- Develop the Act through a **legislative co-drafting process with Indigenous Nations** that is consent-based and rooted in nation-to-nation relationships. In a co-drafting process, Indigenous peoples and the government are co-authors of the proposed legislation, but the subsequent parliamentary legislative process remains unchanged (i.e., once the government introduces the Bill into the House).
- Mandate compliance with the **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)**.
- Mainstream **Indigenous governments’ participation** in water governance mechanisms throughout the Act, including equal participation in intergovernmental committees and intergovernmental agreements.

- Establish the ability of the federal government to develop water **co-governance agreements with Indigenous governing bodies**. This provision will allow Canada to negotiate and address water co-governance with Indigenous governing bodies without litigation over water rights.

### *River Basin Approach*

- **Add river basins as a fourth category of waters** throughout the Act (i.e., beyond the current scope of the Act, which is limited to “federal”, “transboundary” or “international” waters). This includes:
  - Enabling the development of river basin agreements with willing partners that set out mandatory standards for cumulative effects in a river basin that has designated waters. These agreements should be *required* when in the national interest.
  - Establishing river basin plans and boards with a priority on major river basins and consistent with a nested watershed governance approach.
  - Setting and enforcing standards for cumulative effects on river basin health.
- Immediately **designate the following river basin waters** and designate the requirement for river basin agreements to be in place according to specific timelines (these agreements would be legislated and form a Schedule to the Act):
  - Mackenzie River Basin (master agreement already in place, needs legislation).
  - Lake Winnipeg River Basin Agreement.
  - Columbia River Basin Agreement.

## **3. WATER MANAGEMENT**

### *Climate Change Resilience and Adaptation*

- Enable the creation of **harmonized policies to address climate change resilience and public safety needs**, including:
  - Integrated drought and flood risk management through a Canadian Centre for Water Forecasting and Prediction that is responsible for forecasting flood, drought, and water quality, as well as water-earth systems predictions related to climate change.
  - Policies that integrate climate resilience and risk mitigation into all federal water programs, including infrastructure investments, disaster planning,

insurance programs, agriculture and industrial commitments, and military and national security assessments.

- Enabling provisions to allow the Canada Water Agency to work with provinces, territories, municipalities, Indigenous governments, and watershed organizations to develop climate change risk reduction and resilience measures and enhance protection from disasters.
  - Integrated surface water and groundwater management.
  - Integrated river basin planning.
- Ensure **consistency with federal climate commitments** and the Pan-Canadian Framework on Clean Growth and Climate Change.

### *Research and Monitoring*

- Expand the list of cooperative research and monitoring relationships with the Minister to include **Indigenous jurisdictions**.
- Mandate the **incorporation of Indigenous knowledge and science**.
- Add **water research subventions and joint government-university research centres** as tools for advancing research and data collection.
- Expand research beyond traditional physical/chemical areas to include **future socio-economic needs** such as economic instruments, resource pricing, water rights marketing, etc.
- Establish a **formal link between water research (via the Canada Water Agency) and Infrastructure Canada** with respect to technology transfer and linking freshwater and economic development objectives.
- Establish **formal links with Statistics Canada and the Public Health Agency of Canada** to undertake joint research programs.
- Expand **scope of monitoring** to specifically mention water quantity, quality, surface water, groundwater, snow and ice, water withdrawals and consumptive use, effluent, etc.
- Mandate the Canada Water Agency with **establishing and operating national repositories** of water data and information.
- Enable the Minister to support **community-based water monitoring** through assisting with the standardization of protocols, guidelines, training, equipment, etc.

### *Transboundary Water Management*

- **Integrate the International River Improvements Act** into the Canada Water Act, particularly regarding the licensing of works on transboundary waters which may impact the U.S. and provisions pertaining to potential water export.
- **Clarify federal authority and responsibility** in governing unauthorized fill or other obstructions in boundary waters.

### *Flood Management*

- **Acknowledge and address the new context**, in which Public Safety Canada, Natural Resources Canada, Environment and Climate Change Canada, and others have been working closely with provinces, territories, Indigenous governments, and the Insurance Bureau of Canada on comprehensive initiatives which would see private insurance playing a more important role over time.
- **Formalize a public-private insurance arrangement** in law and establish the basis for regulating insurance industry activity.
- Enable the Minister to **establish and operate a national flood forecasting and warning program** on a river basin level that would be supportive of local programs through improved science and models, encouraging best practices, data transfer, etc.

### *International Water Security*

- Mandate the Canada Water Agency with **coordinating Canadian contributions** to meeting water-related international sustainable development goals and targets.
- Expand efforts to **identify and analyze water-related threats to Canadian interests**, and actively pursue solutions including legal agreements, conflict resolution institutions, and innovative water management.

### *Soil and Water Conservation*

- Enable the Canada Water Agency to enter into agreements with other orders of government to **assist the agricultural sector** with adapting to climate-impacted water supply.
- Rebuild and modernize some of the capacity that was lost when the former **Prairie Farm Rehabilitation Administration** was disbanded.