



Assembly of First Nations

**Submission to the Senate Standing
Committee on Environment and Sustainable Development (ENVI)**

Study on Freshwater

June 11, 2021

Assembly of First Nations

The Assembly of First Nations (AFN) is the national, political organization of First Nations governments and their citizens, including those living on and off reserve. Every Chief in Canada is entitled to be a member of the Assembly, and the National Chief is elected by the Chiefs in Canada, who in turn are elected by their citizens. The AFN has 634 member nations within its Assembly. The role and function of the AFN is to serve as a nationally delegated forum for determining and harmonizing effective, collective, and co-operative measures on any subject matter that the First Nations delegate for review, study, response or action, and to advance the aspirations of First Nations.

The AFN appreciates the opportunity to provide a submission to the House of Commons Standing Committee on Environment and Sustainable Development (ENVI) on its study of freshwater. The AFN advocates on various issues related to freshwater with a direct focus on First Nations Inherent Rights and Title to managing, governing, protecting, and conserving freshwater. Water-related issues are viewed through a multi-dimensional jurisdictional lens which includes elements of infrastructure, fisheries, environment, as well as consideration of the critical roles of First Nations' women with respect to water.

While the AFN interacts with numerous federal agencies, including Indigenous Services Canada (ISC)/First Nations Inuit Health Branch, Environment and Climate Change Canada (ECCC), the Canada Water Agency (CWA), the Department of Fisheries and Oceans (DFO), and Transport Canada, there remain challenges to ensuring the full and meaningful participation of First Nations in decision-making processes related to water. In particular, engaging with ECCC on the development of the CWA has been a challenge.

This is partly because First Nations were not adequately consulted nor engaged on the proposed creation of the CWA, but also, this challenge largely stems from the inexperience of the CWA in engaging with First Nations, in addition to the lack of funding provided during the outreach process that would ensure that First Nations are engaged in any decision, policy, or activity. The short timeframe allocated for the outreach process resulted in inadequate engagement with all of the regions.

The Prime Minister's commitment to reconciliation, as demonstrated by his commitment to a 'nation-to-nation' relationship based on the recognition of rights, respect, cooperation and partnership offers an important opportunity for guidance on the appropriate consideration and participation of First Nations in the conduct of the ENVI freshwater study. Furthermore, Canada's obligations and responsibility to First Nations, reaffirmed under the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) must be seen as the framework for the contextualization and operationalization of reconciliation, especially as it relates to First Nations' relationships with water.¹ AFN Resolution 01/2019, *First Nations Treaty and Inherent Rights to Water*, mandates the AFN to call on Canada to immediately work in full partnership with First

¹ *Call to Action 43*, Truth and Reconciliation Commission of Canada, 2015.

Nations to advance the work needed to achieve reconciliation and the standards as set out in the UN Declaration, including Articles 25 and 32 for the full and meaningful implementation of Indigenous water rights in their territories, including via Canada's legislative commitment to the UN Declaration in Bill C-15.

Water is fundamental for life. For First Nations, the significance of water deepens through our eternal connection to water. Many First Nations consider water to be a *relative* — rather than a resource that can be bought or sold— in which there exists a reciprocal relationship that must be continuously nurtured and respected. We operate under the basic principle that if you take care of the water, it will take care of you. We understand that a healthy ecosystem is necessary in order to exercise our Indigenous rights and laws, which enable us to fish, hunt, gather and practice our traditional customs and ceremonies. While some of these concepts likely resonate with non-Indigenous Peoples as well, the reality is that Western ways of knowing have largely precluded such characterizations and have, thereby, led to the pollution and desecration of Mother Earth.

For First Nations women, this connection to water deepens through their roles as child bearers. Just as water from Mother Earth carries life to us, women carry life and water in their wombs during pregnancy. It is in this way that we recognize that all aspects of creation are interrelated. When settlers arrived on Turtle Island (i.e., North America), Indigenous natural law was largely replaced by colonial law and this changed the ways that water was respected. Colonialism has had negative ramifications for Indigenous Knowledge relating to water, and the intergenerational transfer of this knowledge has thereby been diminished. Our traditional ways of being were not passed on from grandmothers to mothers who, in turn, have been unable to teach our youth. As a result, First Nations have suffered a loss of traditional roles, responsibilities, practices, and stewardship. It has been difficult to reclaim these roles since, to this day, the vast majority of policies in Canada that involve water fail to embody the critical roles of First Nations' women with respect to water.

There are many water-related issues encountered within First Nations territories that require further attention and research. Industrial development and climate change are both negatively impacting our health and way of life. Industrial practices often contravene our water-related rights, including the contamination of water from tailing ponds, unsustainable agricultural irrigation practices, oil and chemical spills, the diversion of waterways (e.g., dams), gray water from pulp and paper mills, the addition of foreign substances in aquaculture (e.g., antibiotics), and plastic water pollution to name only a few. In addition to industrial threats, climate change exacerbates many of these challenges with extreme weather events, which cause increased occurrences of both flooding and droughts. Amongst both freshwater and marine environments, rising water temperatures escalate the likelihood of harmful algal blooms and eutrophication, acidification, melting sea ice and sea level rise. Finally, the rapid melting of glaciers threatens the sustainability of many of our freshwater river systems.

Recognizing the urgent need to ensure our inland waters are protected from further degradation, we provide five simple recommendations for ENVI consideration in its Study:

1. Include the full and meaningful participation of First Nations at all decision-making tables.

The UN Declaration on the Rights of Indigenous Peoples affirms a minimum set of human rights standards. These include State obligations to Indigenous Peoples in developing legislation, regulations, supporting policy and implementation. Being that First Nations have a vested interest in federal water legislation and regulations (e.g., waste water effluent regulations), the AFN looks to the federal government to work First Nations through First Nations, their governments and representative bodies in pursuing this freshwater study.

2. Include a Gender-Based Analysis plus (GBA+) lens approach.

Because of the significance of water to First Nations women, the AFN recommends that ENVI consider utilizing a GBA+ approach, in particular, ones supported by First Nations women to embody the voices of First Nations women, girls, and gender diverse peoples more appropriately in any water-related activity. According to the 2015 Fall Reports of the Auditor General of Canada², the Auditor General identified the need to incorporate a GBA+ lens into all government policy and programs across all federal departments and agencies.

3. Embody and awareness of historical wrongdoings related to water.

The federal government and the public need to have a better understanding of the historical wrongdoings that First Nations have faced regarding water, and today's current water-sharing agreements with provinces/territories and First Nations. Relinquishing water rights was never part of Treaty negotiations, and First Nations water rights must be acknowledged and affirmed in any discussions pertaining to the management and protection of freshwater.

4. Further research and data collection on water-related issues encountered within First Nations territories.

There is a need to better understand the quantity and quality of Canada's freshwater with consideration of the various water-related issues that affect First Nations. Additionally, we require a mechanism that accurately accounts for the amount of freshwater used, how much there is that remains, and how it will be stewarded (or cared for).

5. Consider the role of the AFN.

The AFN as an advocacy body has a critical role to play in coordinating the fair and equal representation of First Nations across all regions, in addition to ensuring that all regions are meaningfully engaged in any decisions, policies or activities that could affect them.

² Government of Canada, Office of the Auditor General of Canada. Report 1-Implementing Gender-Based Analysis. Accessed May 28, 2021. https://www.oag-bvg.gc.ca/internet/English/parl_oag_201602_01_e_41058.html.

While the AFN is not a rights holder, it is a duly delegated body to support First Nations' rights and advocacy.

Thank you in advance for your consideration of this brief. The AFN is committed to ensuring that First Nations Inherent Rights and Title are fully implemented and upheld, and we look forward to our continued, positive nation-to-nation relationship with this Committee and the federal government more broadly.

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55 Metcalfe Street, Suite 1600
Ottawa, Ontario K1P 6L5
Telephone: 613-241-6789 Fax: 613-241-5808
www.afn.ca



Assemblée des Premières Nations

55, rue Metcalfe, Suite 1600
Ottawa (Ontario) K1P 6L5
Téléphone: 613-241-6789 Télécopieur: 613-241-5808
www.afn.ca

ANNUAL GENERAL ASSEMBLY
July 23, 24 & 25, 2019, FREDERICTON, NB

Resolution no. 01/2019

TITLE:	First Nations Treaty and Inherent Rights to Water
SUBJECT:	Water, Treaty Rights
MOVED BY:	Chief Calvin Sanderson, Chakastaypasin First Nation, SK
SECONDED BY:	Brian Hardlotte, Proxy, Peter Ballantyne Cree Nation, SK
DECISION:	Carried by Consensus

WHEREAS:

- A. The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) states:
- i. 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.
 - ii. 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.
 - iii. Article 32 (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.
 - iv. Article 32 (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.

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PERRY BELLEGARDE, NATIONAL CHIEF

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**ANNUAL GENERAL ASSEMBLY
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- B. The articles support our right to the relationship we have with water and our responsibilities to future generations; and for states to obtain 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.
- C. First Nations have sovereign, inherent and Treaty rights over the land and waters in their traditional territories and continue to assert and exercise their rights and responsibilities through ceremony and practices of management and use. This is the responsibility given to us by the Creator as valuable water resources flow through and exist within First Nations territories.
- D. The Government of Canada and provincial governments have not recognized First Nations rights and responsibilities of stewardship of the water, nor have they acquired the free prior and informed consent in relation to water use and allocation. Successive government entities tasked with management of water have not properly protected water, which has had detrimental impacts.
- E. The focus of the Assembly of First Nations (AFN) National Water Strategy has been on the *Safe Drinking Water for First Nations Act* (SDWFNA), which came into force on November 1, 2013. The SDWFNA grants sweeping enforcement, legislative and judicial powers to the Crown as well as the ability to confer those powers to any person or body including private corporations. The SDWFNA and accompanying government policies and programs have failed to address the continuing financial resource gap for First Nations water infrastructure and the required operations and maintenance of that infrastructure.
- F. AFN Resolution 88/2017, *First Nations led Engagement Process for Safe Drinking Water Legislation*, calls for First Nations to take the lead in determining and developing priorities and strategies for new safe drinking water and wastewater legislation, including the co-development of a draft framework for new legislation and a framework for a First Nations Water Commission,
- G. In accordance with AFN Resolution 01/2018, *First Nations Led Process to Develop New Federal Safe Drinking Water Legislation*, the AFN is convening a First Nations led Joint Working Group on Safe Drinking Water for First Nations and is developing a Chiefs Committee on First Nations Drinking Water Legislation.
- H. The AFN developed the first iteration of First Nations Safe Drinking Water Legislation Preliminary Concepts (Preliminary Concepts) that proposed the priorities, principles and interests that are foundational to new First Nations safe drinking water and wastewater legislation.

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- I. The Preliminary Concepts include: protection of First Nations' rights, laws and aspirations regarding water and wastewater; confirms adequate, predictable and sustainable funding for First Nations water and wastewater needs; and supports the consensual transition of care and control over First Nations water and wastewater infrastructure to First Nations. The Preliminary Concepts also include commitments to achieving the standards of the UN Declaration and enshrining a multi-barrier approach to drinking water safety and proper sanitation for First Nations.
- J. The AFN remains committed to honouring the inherent and Treaty Right to water and remains cognizant of the broader political and legal strategy necessary for the full and meaningful implementation of First Nations rights to water where water flows on, around and/or under First Nations.

THEREFORE BE IT RESOLVED that the Chiefs-in-Assembly:

- 1. Direct the Assembly of First Nations (AFN) to call on Canada to immediately work in full partnership with First Nations to advance the work needed to achieve reconciliation and the standards as set out in the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration), including articles 25 and 32 for the full and meaningful implementation of Indigenous water rights in their territories including legislative commitment to the UN Declaration.
- 2. Direct the AFN to broaden their National Water Strategy and consider political and legal strategies that support the full and meaningful exercise of the Inherent and Treaty right to water including our jurisdiction as stewards of lands and waters in our traditional territories.

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PERRY BELLEGARDE, NATIONAL CHIEF