



POLIS Project on Ecological Governance
Centre for Global Studies
University of Victoria
PO Box 1700 STN CSC
Victoria, British Columbia V8W 2Y2
Canada



June 10, 2021

Re: Submission to the House of Commons Standing Committee on Environment and Sustainable Development for its study on fresh water in Canada

The POLIS Water Sustainability Project, located at the University of Victoria's Centre for Global Studies, is focused on achieving water sustainability through innovative research and action. Through a combination of practical research and community action, POLIS prioritizes a deeper understanding of freshwater issues to drive important law, policy, and governance reform.

POLIS is an active participant across a number of national and British Columbia-based networks, offering analysis, timely research, and cutting-edge insights, which includes ongoing work on federal water law and policy. In this submission we emphasize a number of these materials and identify some of the most crucial priorities to help support the mandate of the Standing Committee.¹

The protection, conservation, and improved governance of Canada's fresh water is of vital importance, especially with the current and mounting threats of climate change and water insecurity. Safeguarding and ensuring the sustainability of Canada's fresh water requires the federal government to better engage in management, including creating the necessary information to inform decisions and provide resources and enable local solutions to the myriad water issues across Canada. Beyond modernizing its approach to water management, important law reform priorities with a stronger water sustainability and watershed security lens are urgently needed, including, for example, renewal of the *Canada Water Act*.

In this submission, we outline priorities and areas of leadership for the federal government.

Policy and Federal Leadership Priorities

Provide critical capacity, knowledge, planning and data foundation for modernized water management and evidence-based decision making

- Immediately establish and support a Canada Water Agency (including long term budget commitments) which will bring together key water units from across the government and be responsible for all federal freshwater responsibilities.
 - Build world class water science and policy capacity within the Agency to ensure all federal water-related programs are providing the information needed for evidence-based decisions and aligned to common purposes and objectives.
- Ensure sustainable water management principles are fully considered with respect to all major federal infrastructure and other economic development expenditures.
- Ensure environmental flows are protected through appropriate objectives and standards in all future interjurisdictional agreements negotiated with other orders of government.
- Ensure environmental flows are appropriately integrated into regulations for freshwater habitat protection under the renewed *Fisheries Act*.

- Create a comprehensive common national data repository – drawing on existing data sources from community and other orders of government and filling gaps around prediction (Flood, climate, etc.), mapping (groundwater, source drinking water, etc.) and specific environmental and minimum critical flow requirements of all major rivers, streams and water bodies.
- Undertake integrated legislative and policy reviews to ensure water management coherence across the federal government (see modernization of *Canada Water Act* below) – potentially lead by the Canada Water Agency.

Strengthen Transboundary Water Governance

- Place priority on supporting comprehensive agreements in all of Canada’s major interjurisdictional river basins.
- Support the work of the International Joint Commission to advance solutions to major challenges in shared international waterways.
- Enforce the bulk water export and other regulatory provisions in the *International Boundary Waters Treaty Act* and the *International River Improvements Act*.
- Create a co-governed body (with Indigenous partners) that can anticipate, investigate, and help avoid and resolve water-related disputes between and within jurisdictions, including working with other orders of government to establish effective mediation, arbitration and conflict resolution approaches.
 - Enhance capacity and commitment to resolve disputes between and within jurisdictions through a *National Water Commission*. This effort to achieve cooperative federalism includes efforts to understand and make recommendations regarding public priorities and best international practices.
- Explicitly support Indigenous Governing Bodies in resolving disputes and conflicts in that impact reserves and Indigenous titled lands and traditional territories.

Support Indigenous Water Rights.

- Begin by recognizing Indigenous peoples’ unique rights to and relationship with water.
- Ensure United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) principles are respected and upheld in all federal water laws, policies and programs.
- Fulfill the federal government’s stated commitment to advancing government-to-government, nation-to-nation relationships by developing pathways and providing resources for the co-governance of shared waters with Indigenous peoples
- Determine, in partnership with Indigenous peoples, how they will participate in advancing water-related legislative, institutional, and policy initiatives that affect or interest them.

Canada Water Agency Priorities

Defining Responsibilities of the Federal Government

- Ensure that the new Canada Water Agency is established with defined mandate, responsibilities, and accountabilities of the federal government.
- Build world-class science and policy capacity within the Agency

- As an early priority undertake integrated legislative and policy reviews, ensuring sustainable water management and integrated watershed governance principles are prioritized in future reforms and updates

Key Priority Areas in a modernized *Canada Water Act*

Broaden Scope, Applicability, and Equity of the Canada Water Act

- Focus on water sustainability and proactive measures to ensure resiliency and protection (includes broader definitions of water quality and quantity, environmental flows, and ecosystem health).
- Broaden applicability of the Act by replacing “urgent national concern” with “national concern.”
- Require and uphold a duty of care on any water decisions that affect federal, transboundary, or international waters or might impact river basins.
- Mandate gender-based analysis plus (GBA+) in policy and programming design.

Indigenous Water Rights and Participation

- Develop Canada Water Act through a co-drafting process with Indigenous Nations, compliance with UNDRIP must be upheld, Indigenous participation mainstreamed, and co-governance agreements emphasized and achieved with Indigenous governing bodies.
- Ensure Indigenous knowledge and science is incorporated into water research and monitoring.
- Continue to negotiate land claim settlements.
- Support Indigenous governing bodies in their role in transboundary water governance.

Integrating Resiliency and Adaptation to Climate Change

- Enable policies that address climate change impacts and resilience (including flood risk management, policies that integrate climate resilience, integrated surface and groundwater management).
- Prioritize the implementation of Clean Growth and the Disaster, Mitigation, and Adaptation Fund.
- Integrate climate change resilience into federal water programs and establish key partnerships with others for resilience programs.
- Add river basins as fourth category of waters throughout the Act, including the development of river basin agreements with willing partners, establishing river basin plans and boards, and enforcing standards for effects on river basin health.

Enhanced Research and Monitoring

- Support a broadening scope of research and monitoring beyond traditional areas, and enhance focus on community-based water monitoring.
- Focus on integrating Indigenous knowledge and science in research and monitoring efforts.
- Prioritize filling in the gaps of missing or fragmented federal-led monitoring and data collection.

Global Water Leadership

- Collaborate with international organizations and other nations, support the United Nations and other institutions, and participate in meeting the United Nation's 2030 Agenda for Sustainable Development.
- Expand efforts to identify and analyze security threats to Canada's water.

Environmental Flows

- Ensure the consideration of environmental flows in all water management decisions, with commitments to ensure their protection by appropriate objectives and standards.
- Integrate flows into regulations for freshwater habitat protection; including providing the necessary further research and understanding of the specific environmental (and critical) flows, and ongoing surveys of water withdrawals and consumptive use in the municipal and industrial sectors is needed.

Flooding

- Advance comprehensive public-private flood insurance programs, consider structural solutions, coordinate with other governments for financial incentives and disincentives, upgrade national flood risk mapping, and support forecasting and warning systems.

The importance of collaboration between federal, provincial, territorial, and Indigenous governments cannot be overlooked in the context of freshwater protection and management. In particular, establishing shared authority over water management with Indigenous nations, alongside a commitment for active co-development and co-governance processes throughout and within the work of the federal government is essential for promoting a sustainable water future.

The POLIS Water Sustainability Project looks forward to supporting the progression and development of a freshwater study in Canada. Any further inquiries regarding this submission can be directed to Oliver M. Brandes at omb@uvic.ca.

Sincerely, on behalf of the POLIS Water Sustainability Project team,



Oliver M. Brandes, BA(H), Dip.RNS, M.Econ., JD
 Co-Director & Water Sustainability Project Lead, POLIS Project on Ecological Governance,
 Associate Director, Centre for Global Studies, University of Victoria
 Adjunct Professor, Faculty of Law & School of Public Administration, University of Victoria
 Chair, Forum for Leadership on Water (FLOW-Canada)