



Submission to the Standing Committee Study of Freshwater in Canada

Submitted by the Forum for Leadership on Water (FLOW)

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The [Forum for Leadership on Water](#) (FLOW) has been working for over 15 years to help secure the health of Canada's freshwater by bringing together past political leaders, former senior officials with federal and provincial governments, and staff of respected research institutes and non-governmental organizations. We convene leading thinkers, provide critical analysis and commentary, and engage with governments to advance progressive public policies and influence important decisions about the future of our most precious resource. Our board represents over 200 years of collective experience in the Canadian water sector.

The purpose of this submission is to advise the Standing Committee in support of their study of freshwater in Canada. It is intended to provide an overview from FLOW members collectively; individual Forum members may wish to provide advice on additional issues and/or comment in more detail on some of the topics introduced here.

THE EVOLVING GOVERNANCE LANDSCAPE

Until about fifty years ago, the water governance emphasis in Canada was almost entirely on economic development, including basic drinking water and wastewater services and massive hydroelectric, navigation, irrigation and flood control projects. Freshwater was considered limitless, and because there was a broad national consensus around "nation-building," governments placed little emphasis on either environmental or social concerns. Due to the enormity of the expenditures and their interjurisdictional implications, the federal government played a dominant and largely unquestioned role.

Then, in response to growing concerns about pollution, First Ministers agreed to create environmental agencies at the federal and provincial levels, and a plethora of environmental laws and programs were put in place. At the federal level, these included the Canada Water Act and dozens of federal-provincial agreements in areas such as river basin planning, flood damage reduction, and boundary water management. These changes also included amendments to the federal [Fisheries Act](#) to facilitate sector-based water pollution regulations, the passage of the *Environmental Contaminants Act* (the precursor to the current [Canadian Environmental Protection Act](#)), and the launching of environmental assessment processes. At the provincial level, many laws were passed to deal with, among other things, water allocation and water quality management.

Thirty years ago, concerns about the financial and conceptual sustainability of many of our water management approaches led to a significant assessment of many of our water management approaches, beginning with the Inquiry on Federal Water Policy and the tabling of the 1987 [Federal Water Policy](#) in Parliament. Most provinces followed suit with similar policy statements of their own. Many of these policy shifts reduced the cost of governance and all, at least conceptually, advanced notions of sustainability. Significant policy shifts included discouraging new development in high flood-risk areas, managing water demand through more realistic pricing, and managing chemicals through their full life cycle.

Today, we have reached an inflection point. It has become clear that climate change has and will continue to have much more significant economic, ecological and social impacts than previously anticipated. At the same time, these negative impacts can be blunted to some extent with timely and effective mitigation and adaptation approaches. Meanwhile, Canada has formally adopted rights-based international declarations with important freshwater implications, including the 2010 United Nations resolution declaring water a fundamental human right and the 2007 [United Nations Declaration on the Rights of Indigenous Peoples](#) (UNDRIP).

We would contend that this evolving landscape has, despite setbacks from time to time, been generally healthy and that it has been and will inevitably continue to “bend the arc of history in the direction of justice.” We recognize that the Committee will wish to recommend specific short-term actionables but would urge them to keep the broader evolving landscape in mind.

SUGGESTED PRIORITIES

A wealth of priority suggestions has come forward over the past three years through deliberations around the creation of the Canada Water Agency. These include, for example, the ten freshwater objectives in Environment and Climate Change Canada’s [“Towards the Creation of a Canada Water Agency”](#) and the [“Five Foundational Pillars for the Canada Water Agency,”](#) which were suggested by the Forum for Leadership on Water, and supported by over 50 other non-governmental organizations.

This brief overview submission will introduce several short, medium and long-term suggestions consistent with the evolving landscape discussion above.

Short-Term Priorities

- a) **Canada Water Agency** - FLOW is pleased with the government’s decision to establish a Canada Water Agency in Winnipeg. We are less satisfied with its speed of execution and scope. In 2017, a [Blue-Ribbon Panel](#) of national and international experts suggested that a lack of clear vision and direction is an overriding problem limiting the federal government's ability to fully meet its water responsibilities. The Panel raised concerns about fragmentation within ECCC and across government and fragmentation between federal water quantity and water quality programs. Creating a largely "coordinating" Canada Water Agency will help, but serious consideration must eventually be given to some further amalgamation of water programs and enhanced coordination.
- b) **Inter-Ministerial Collaboration** - As the governance evolution proceeds, we will need “all hands on deck” to work collaboratively. In the past, the national water agenda was coordinated through an effective interdepartmental committee on water and federal-provincial Consultative Committees on Water. It is recognized that such mechanisms would be challenging to resurrect today due to internal fragmentation within ECCC, but something analogous is critically needed. It is further suggested that indigenous governments should be included in future collaborative mechanisms.

- c) **Canada – U.S. Shared Waters** - About 80% of Canadians live in river basins shared with our neighbours to the south, who are also facing increasing threats to their water security. This reality stress-tests the limits of institutional and bilateral frameworks for water management and apportionment, as well as our capacity to deal with specific international concerns such as Lake Winnipeg eutrophication, St. Mary-Milk Basin water apportionment, Colombia River Treaty renegotiations, and the unpalatable notion of bulk water export from the Great Lakes – St. Lawrence Basin to water short basins in the U.S. It will be critically important for the Canada Water Agency to continually analyze and bring transparency to all water-related proposals in the U.S. that may affect Canada, and to ensure that we are well-prepared to negotiate effectively when responding to these proposals; and for the Government of Canada to fulsomely utilize and support the International Joint Commission, which has served us so well for over a century.
- d) **Indigenous Drinking Water** - Contamination and inadequate water and sanitation services in indigenous communities are a real and present threat to human health and the environment. Primarily, these threats emanate from industrial and other upstream sources of contaminants, so in addition to local infrastructure, the solutions must entail broader source water protection, drinking water standards appropriate to indigenous needs, monitoring, resources and support necessary to ensure on-site safe drinking water.
- e) **Flood Damage Reduction** – In the early 1990s, the federal government unwisely eliminated a very effective National Flood Damage Reduction Program. A recent independent Task Force advised the government to reintroduce similar measures and a low-cost flood insurance program. ECCC will also begin funding research on climate change and flood risk. Policies are evolving in a generally appropriate direction, but much too slowly, partially due to fragmentation within and between governments. We would suggest that the new Canada Water Agency be given a clear mandate to bring the multiple actors together to move quickly towards fully implementing the Task Force recommendations.
- f) **Climate Change Adaptation** – Climate change is altering the amount, timing, and reoccurrence frequency of precipitation, rapidly melting glaciers and icefields, thawing permafrost in the north, and shifting seasonal patterns of snowpack and snowmelt runoff. These trends impact virtually every aspect of water management. The federal government has developed a broad adaptation strategy, but adaptation across the water sector requires highly specialized knowledge in many areas. The Canada Water Agency should be willing to enter into agreements with other orders of government wherever technology development and transfer and specialized adaptation assistance is required.
- g) **Forecasting Centre** - Canada is the only industrialized country without a national water prediction center. The intention would not be to replace provincial and other existing systems but to harmonize the collection and dissemination of water information, flood and drought predictions, information on harmful algae blooms, future water supply and use, and the provision of models and other decision-support services.

- h) **River Basin Priorities** – We appreciate the government providing Action Plan funding for Great Lakes and other river basin activities over the next decade. In the past, with a similar Canada Water Act fund, the lead water agency developed a priority system for the consideration of Cabinet. The system was then used to guide intergovernmental discussions on national priorities. It is suggested that the new Canada Water Agency do something similar with respect to Action Plan funding.
- i) **Water Data** – Earlier mention was made of the Blue Ribbon Panel, which [reviewed the programs of the National Hydrological Service](#). That Panel made several constructive recommendations regarding the water quantity monitoring program. Auditors and others have consistently critiqued water quality monitoring programs in ECCC on both policy and technical grounds. Having a panel of national and international experts review and provide constructive advice on water quality monitoring programs would be helpful. Such a review could also look at potential synergies between water quantity and water quality monitoring programs and the advisability of establishing a national repository of water data.
- j) **Water Research** – During the Inquiry on Federal Water Policy in the mid-1980s, approximately 3400 federal employees were devoted to freshwater-related programs. There are likely only about half that many today, with a significant portion of the reduction being in research areas. Those declines have been offset to some degree by increasing academic capacity. Currently, federally-sponsored water research projects in universities are time-limited and non-renewable. There is a pressing need to ensure long-term national research and development by re-establishing water research subvention programs through the Tri-Council federal research agencies.

Mid-Term Priorities

- a) **Canada Water Act Renewal** – Initiation of work on updating federal water legislation is urgent, and in that sense, it is a short-term priority. But it is also recognized that this effort will take at least 3 – 5 years to complete, so we have placed it in the mid-term category. In May of 2021, in response to the aborted attempt by the Standing Committee to initiate their study, FLOW submitted a ten-part proposal for upgrading the Act (new capacity, indigenous water rights and jurisdiction, climate change resilience and adaptation, cooperative federalism, river basin scale approach, research and monitoring, transboundary water management, flood management, public trust doctrine, and broader scope: water security and sustainability). We still consider that earlier proposal to be a generally appropriate starting point. But we would prefer not to be too prescriptive because we believe indigenous peoples need to be involved in matters that may affect their legal rights.

- b) **Chemicals Management** – *The Canadian Environmental Protection Act* is regularly amended, most recently earlier this year. Through CEPA in Canada, equivalent laws in the U.S., and a slightly different approach in Europe, we have made some progress in reducing exposure to nastier chemicals. But at the same time, our perception of "safe" levels has become more stringent – so we now find ourselves in a situation where some 98% of North Americans have toxic substances in their bodies above safe levels. International experts are rapidly approaching the conclusion that we will never be able to understand hazards associated with tens of thousands of complex substances and to regulate effectively based on risk alone. For that reason, the more progressive jurisdictions, especially in Europe, are moving in the direction of the so-called "Essential Use Approach," under which you focus on uses rather than on hazards; you eliminate all non-essential chemical uses, and you find safer alternatives for the essential ones. We accept that building a consensus around this evolution in Canada will take some time. Still, it is not too early to conduct the necessary research and begin the consensus-building process.

- c) **Water Apportionment** – For over 50 years, the Master Agreement on Apportionment (MAA) has allowed the three Prairie Provinces to collaboratively set goals for managing critical transboundary waters and to share water resources equitably. However, the apportionment formula is a very blunt instrument designed during the water development period, does not account for ecological or social considerations, and is likely to become less and less effective as climate change progresses. Even though apportionment requirements are still being met regarding flow across borders, in some years, including 2023, there will be insufficient flows in many more local situations. We believe it will eventually be necessary to renegotiate an agreement emphasizing integrated basin management. There will initially be considerable resistance from upstream jurisdictions, who will be reluctant to address downstream and indigenous interests. But it is essential to at least begin the dialogue – in the end, reaching an accommodation that benefits all parties should be possible.

- d) **Watershed Approach** – FLOW's Foundational Pillars paper mentioned earlier includes a section on the "Watershed Approach," including developing a pan-Canadian strategy, building durable watershed-level partnerships, linking partnerships to clear outcomes, and supporting the protection and restoration of freshwater ecosystems. As we move towards new or updated agreements in major Canadian watersheds in the future, the reader is referred to the relatively recent bilateral agreements in the Mackenzie River Basin for more concrete examples of these principles. Those agreements involve a risk-informed approach to deal simultaneously with water quantity, water quality, biology, surface and groundwater. Like all agreements, it is imperfect and will take many years to fully implement, but it does have the parties working together towards multiple goals.

Long-Term Priorities

Looking back at the evolving landscape discussion, it is clear that we have a very long way to go to fully integrate economic, environmental and social goals in Canadian water governance. It is impossible to predict the exact “arc of history” over the next several decades, precisely define the desired destination, or estimate how long it may take to reach that destination.

For the sake of argument, we suggest that at some undefinable point in time, senior governments may have to actively recognize appropriate social justice principles or have them evolve through court judgment. What those social justice principles may look like, and where they may or may not be applied, is highly speculative, but simply to start a dialogue, we would suggest they may look something like the following, derived from U.S. public trust law?

- 1 There must be a presumption against private ownership of renewable resources;
- 2 The Crown must continuously ensure the public's ability to use and enjoy such resources;
- 3 The Crown may recognize and convey private proprietary interests in respect of these resources, provided the public interest is not “substantially” impaired;
- 4 The public must have a right to be informed about the state of these resources and to be involved in decisions that may impair their present and future uses and
- 5 The public must have a right to hold the Crown legally responsible for meeting its fiduciary duty in these regards.

On behalf of all Members of the Forum for Leadership on Water, thank you for your consideration of this submission and for your continued focus and work on freshwater in Canada.

Sincerely,

Emily Lorra Hines

Please direct any questions or comments to emily@flowcanada.org