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ASSEMBLÉE DES PREMIÈRES NATIONS
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HONOURING OUR TRADITIONS
Achieving Action for our Future

HONORER NOS TRADITIONS
Agir pour notre avenir

***STRATEGY TO PROTECT AND ADVANCE
INDIGENOUS WATER RIGHTS***



United Nations Declaration on the of Indigenous Peoples

Article 25 states:

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.

Article 32 states:

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.



Rights Based Approach

- “First Nations have responsibilities regarding lands and waters, given by the Creator, and they exercised these duties and roles throughout their territories before European contact.”
- “...no treaties indicate that the signatory First Nations released all their governance powers and all their land, water and resource rights.” (*Aboriginal Water Rights Primer, M.A. Phare.*)
- A First Nation Water Strategy must begin with the assertion that we have retained our rights to water and they have never been extinguished.
- UNDRIP affirms that 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.”



Context

- As water is multi-faceted and interconnected to all things, a National First Nation Water Strategy must also have many interconnected elements that work cooperatively towards defining a national approach and strategic actions.
- A National First Nation Water Strategy should include mutually supportive strategies addressing rights, water and watershed planning and management, and communications to ensure a cooperative and comprehensive First Nation-led approach to water protection.
- The role of women as keepers and protectors of the water through ceremony and awareness is a vital component of this work.
- Traditional knowledge as learned from the teachings of the elders will guide us through this process.



Key Resolutions and Studies

- Key Resolutions:
 - Resolution 15-2007: First Nation Water Management mandated AFN to investigate and seek avenues of support and funding for those First Nations that will require assistance in complying with a regulatory framework both financially for infrastructure, training, management, accommodation and human capacity in water and wastewater and source water protection
 - Resolution 50-2008: Indigenous Commission on Water – Chiefs-in-Assembly support the establishment of a process and/or institution created by and for Indigenous Peoples to gather information, provide analysis, educate the public and support Indigenous advocacy on issues related to water and wastewater in Canada
 - In addition, over 15 resolutions related to water rights, water legislation and need for consultation have been passed by the Chiefs in Assembly since 2009.
- Key national studies initiated by the Government of Canada that provide critical information to support this work include:
 - Report of the Expert Panel on Safe Drinking Water for First Nations
 - The Senate Standing Committee on Aboriginal Peoples study on Safe Drinking Water for First Nations
 - National Engineering Assessment
 - National Roundtable on the Environment and the Economy – “Charting a Course: Sustainable Water Use by Canada’s Natural Resource Sectors”.



Expert Panel on Safe Drinking Water for First Nations

- Set-up in 2006 to review frameworks, hear from stakeholders and recommend options.
- Report included several options for creating a regulatory framework for First Nations.
 - existing provincial regimes could be used, as “laws of general application;”
 - regulations might be passed by Orders in Council under existing federal statutes;
 - Parliament could enact a new statute setting out uniform federal standards and requirements;
 - Parliament could enact a new statute referencing existing provincial regulatory regimes; or
 - First Nations could develop a basis of customary law that would then be enshrined in a new federal statute.
- After legal analysis, the Expert Panel concluded that the first two options were not workable. On May 26, 2010, the Government of Canada introduced Bill S-11 - legislation referencing provincial standards.
 - Moving forward to 2012, Bill S-8, successor to Bill S-11, has passed through the Senate and was introduced in the House of Commons on June 19, 2012



Previous / ongoing work

- AFN held a water experts meeting on February 2009 to gather ideas and suggestions on how support mechanisms could be developed to support strategic components of the First Nations Water Commission. The creation of a new body, a First Nations Water Commission, responsible for regulation, enforcement and accountability was one of the recommendations of the Expert Panel Report.
- In April 2010, a follow up technical working group meeting was convened to further elaborate in greater detail some of the strategic components.
- As this convened group had strength in the technical/operations aspects of water management, it was agreed that a separate research activity could be pursued that would take on the governance and legal aspects of the strategy.
- A partnership with other bodies such as Forum for Leadership on Water (FLOW) and Centre for Indigenous Environmental Resources (CIER) would be supportive of this work and should be considered.
- FLOW could assist in scoping of a First Nations Water Strategy.



First Nations Water Rights Conference

- AFN convened a one-day conference on First Nation Water Rights on March 2012. Recommendations from the conference supporting a National First Nations Water Strategy include:
 - Need for a National First Nation Water Strategy to support and coordinate work
 - Support for First Nations to use their own Traditional Knowledge and Laws with regard to water management
 - First Nations and non-First Nations need to understand water rights and responsibilities
 - Dealings with governments must be founded upon the recognition of First Nations as Nations and reflected the Treaties
 - Youth and community engagement necessary on watershed and community water management
 - First Nations need to be vigilant in asserting jurisdiction – and watching this is not eroded thorough policy changes
 - Call for a national day on water to create greater awareness



Elements of a National First Nation Water Strategy

The AFN carries out its mandate to advocate and take action on issues as directed by First Nations through a number of main functions. A First Nations Water Strategy would involve direct action in all these areas:

- Communications & Information Sharing
- Parliamentary, intergovernmental, International advocacy and partnerships
- Undertaking policy research & development
- Facilitating dialogue



Elements of a National First Nation Water Strategy

- This strategy could look at a number of things, including
 - the basis for legal challenges regarding safe drinking water for First Nations
 - strategies to assert First Nation water rights
 - the role of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in protecting First Nations water sources
 - strategic partnerships with environmental and social justice organizations
 - development of a First Nations Water Commission



Draft Resolution on a First Nation Water Strategy

- Direct the AFN to further development of a National First Nations Water Strategy.
- Direct the AFN to facilitate dialogue and seek input from First Nations and technical working groups to develop the comprehensive First Nations Water Strategy.
- Direct the AFN to report to the Chiefs in Assembly at the December 2012 Special Chiefs Assembly on a National First Nations Water Strategy for ratification and direction on implementation.
- Call upon the AFN to engage with all levels of government to ensure that First Nations engagement, accommodation and consultation processes are accountable, respectful and appropriate prior to the implementation of any legislation, policies, and regulations that may impact Aboriginal and Treaty rights, First Nations governance authorities or stewardship of watersheds in or near their traditional territories.