
Assembly of First Nations

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

SPECIAL CHIEFS ASSEMBLY
May 1 & 2, 2018, Gatineau, QC

Resolution no. 01/2018

TITLE: First Nations Led Process to Develop New Federal Safe Drinking Water Legislation

SUBJECT: Drinking Water

MOVED BY: Chief Dan George, Burns Lake Indian Band/Ts'il Kaz Koh, BC

SECONDED BY: Chief Linda Debassige, M'Chigeeng First Nation, ON

DECISION: Carried; 4 Objections

WHEREAS:

- A. The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) states:
- i. Article 4: Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.
 - ii. Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.
 - iii. Article 19: States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting or implementing legislative or administrative measures that may affect them;
 - iv. 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.

Certified copy of a resolution adopted on the 1st day of May in Gatineau, Québec

PERRY BELLEGARDE, NATIONAL CHIEF

01 - 2018
Page 1 of 3

- v. 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.
 - vi. Article 38: States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.
- B.** The *Safe Drinking Water for First Nations Act* (SDWFNA) came into force on November 1, 2013. The Act purports to enable the government to develop enforceable federal regulations to ensure access to safe, clean and reliable drinking water, the effective treatment of wastewater, and the protection of sources of drinking water on First Nations lands.
- C.** The SDWFNA provisions effectively remove the moral and legal responsibilities of the Government of Canada concerning safe drinking water for First Nations and gives the Crown sweeping liability protection from injury and death associated with unsafe drinking water in First Nations.
- D.** The SDWFNA fails to address the continuing financial resource gap for First Nations while granting sweeping enforcement, legislative and judicial powers as well as the ability to confer those powers to any person or body including private corporations.
- E.** At the 2015 Assembly of First Nations (AFN) Annual General Assembly, Justin Trudeau, as the Liberal Party Leader, indicated that the SDWFNA was an example of "the Government dictating terms rather than working in partnership to support First Nations governance."
- F.** Justin Trudeau further promised, at the AFN Special Chiefs Assembly on December 8, 2015, to conduct a full review of legislation imposed on First Nations, and indicated that any legislation that was in conflict with rights, inconsistent with the principles of good governance, or made no public policy sense would be repealed.
- G.** Despite Resolution 76/2015, *Safe Drinking Water for First Nations*, passed by the Chiefs-in-Assembly, calling for the repeal of the SDWFNA, the Government of Canada, under Prime Minister Trudeau, has failed to repeal the Act.
- H.** Resolution 26/2017, *Safe Drinking Water for First Nations Act*, further called for the repeal of the SDWFNA and called for the federal government to work directly with First Nations in developing next steps to deliver safe drinking water for First Nations.
- I.** The Government of Canada responded positively to Resolution 26/2017, and agreed that the AFN should assist in First Nations leading the process of conceptualizing, elaborating, designing and implementing a new engagement process for safe drinking water legislation.

Certified copy of a resolution adopted on the 1st day of May in Gatineau, Québec


PERRY BELLEGARDE, NATIONAL CHIEF

- J. Subsequently, Resolution 88/2017, *First Nations led Engagement Process for Safe Drinking Water Legislation*, called for First Nations to take the lead in determining and developing priorities and strategies for safe drinking water legislation, including the co-development of a draft framework for new legislation and a framework for a First Nations Water Commission, all of which must include multi-year funding to support First Nations engagement sessions.
- K. First Nations continue to face urgent drinking water safety issues. As of April 1, 2018, there were no fewer than 78 Long Term Drinking Water Advisories (DWAs) in First Nations south of the 60th parallel - excluding the Saskatoon Tribal Council and systems with five connections or less. The AFN, in keeping with the direction of the Chiefs-in-Assembly contained in Resolution 76/2015 and Resolution 88/2017, has prepared a concept paper that outlines a proposed First Nations led co-development process to develop a new Federal Bill on Safe Drinking Water for First Nations.

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

1. Direct the Assembly of First Nations (AFN) to immediately communicate to the federal government that, in keeping with the Government's commitments to reconciliation with First Nations, a joint legislative co-development process and mandate will proceed in full partnership with First Nations, including the development of a Joint Working Group on Safe Drinking Water for First Nations.
2. Direct the AFN to immediately appoint a Chief's Committee on First Nations Safe Drinking Water Legislation that will advise and support the development of a Terms of Reference for the creation of the Joint Working Group on Safe Drinking Water for First Nations.
3. Direct the AFN to produce a draft framework for safe drinking water legislation for First Nations, aligned with the phased approach recommended in the concept paper, for consideration at the AFN Annual General Assembly in July 2018.
4. Direct the AFN and the Chief's Committee on First Nations Safe Drinking Water Legislation to develop a draft framework for the creation of the First Nations Water Commission.
5. Direct the AFN to immediately develop and convey a funding proposal to the federal government that will ensure that the Chief's Committee on First Nations Safe Drinking Water Legislation and the Joint Working Group on Safe Drinking Water for First Nations have the resources required to participate in this joint legislative co-development process in full partnership with First Nations and the federal government.
6. Direct the AFN to ensure the draft framework for safe drinking water legislation for First Nations affirms First Nations inherent water laws, standards, guidelines and processes.

Certified copy of a resolution adopted on the 1st day of May in Gatineau, Québec


PERRY BELLEGARDE, NATIONAL CHIEF