



## **HOUSING AND INFRASTRUCTURE: SAFE WATER FOR FIRST NATIONS**

### **OVERVIEW**

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The Assembly of First Nations (AFN) has a long history of advocacy for First Nations water rights and rights to adequate sanitation. The primary focus areas on these issues, as mandated by the Chiefs-in-Assembly are:

- Repeal and Replacement of the *Safe Drinking Water for First Nations Act (SDWFNA)* (2013).
- Advocacy for First Nations rights to participate in decision making regarding water issues, notably in the development of the Canadian Drinking Water Quality Guidelines.
- Advocating for a First Nations led process to create a First Nations Long-Term Strategy for Water Post-2021.
- Advocacy for improvements to Indigenous Services Canada (ISC) Guidelines and Protocol documents that relate to water and wastewater infrastructure.
- Tracking and, when requested, supporting First Nations litigation on water related issues.
- Bringing together First Nations, particularly leadership and water operators, at national forums such as the 3<sup>rd</sup> Annual AFN National Water Symposium held on November 20-22 in Toronto, Ontario.

In 2013, the SDWFNA came into force despite numerous objections by First Nations. First Nations have repeatedly called for the repeal of the SDWFNA and replacement with a First Nations created national water law.

ISC responded to this sustained advocacy in 2017, proposing that the AFN take the lead in conceptualizing, elaborating, designing and implementing a re-envisioned engagement process for review of the current Act, including exploring co-development of a replacement Act for water and wastewater.

Mandated by the Chiefs-in-Assembly via Resolution 88/2017, *First Nations led Engagement Process for Safe Drinking Water Legislation*. The AFN held its first National Water Symposium and Tradeshow in Coast Salish territories February 6-8, 2018, to renew and expand the dialogue on how to move beyond the flawed SDWFNA. As mandated, the AFN also developed a multi-year funding proposal to ensure that the process will be adequately resourced.

Building upon the dialogue generated at the inaugural National Water Symposium and Tradeshow, the AFN prepared a Concept Paper outlining options for how to co-develop First Nations safe drinking water and wastewater legislation in a manner that respects First Nations inherent rights and Indigenous laws, and meets the spirit and intent of the United Nations Declaration on the Rights of Indigenous Peoples. This concept paper was shared and discussed with the Chiefs Committee on Housing and Infrastructure (CCoHI), the Chiefs-in-Assembly and the federal government.

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At the Special Chiefs Assembly on Federal Legislation May 1-2, 2018, after sharing the *Concept Paper on the Process to Develop a New Federal Bill on Safe Drinking Water for First Nations*, the preferred approach to repeal and replace the SDWFNA was identified and affirmed by the Chiefs-in-Assembly via Resolution 01/2018, *First Nations Led Process to Develop New Federal Safe Drinking Water Legislation*.

The “First Nations Safe Drinking Water Preliminary Concepts” document was then created by the AFN to outline principles, core interests and stimulate discussion on what foundational elements must be included in this work. The document was presented to the Chiefs-in-Assembly at the Annual General Assembly on July 26, 2018, in Vancouver and it was formally endorsed via Resolution 26/2018, *Support for a First Nations Safe Drinking Water Legislation Preliminary Concepts*.

Pursuant to Resolution 01/2018, *First Nations Led Process to Develop New Federal Safe Drinking Water Legislation*, and Resolution 26/2018, *Support for a First Nations Safe Drinking Water Legislation Preliminary Concepts*, the AFN proceeded with national engagements on the options for new First Nations safe drinking water legislation. The Chiefs Committee on First Nations Safe Drinking Water Legislation is being assembled and they will support the functions of the Joint Working Group that will be tasked with creating a Draft Framework for First Nations Safe Drinking Water Legislation. This Draft Framework, informed by the results, insights, feedback, and aspirations of First Nations collected in the 2019 national engagement process, will then be brought forth to the Chiefs-in-Assembly in the coming year for their review and endorsement.

In order to support the regionally-led National Engagement on First Nations safe drinking water legislation, the AFN drafted a Discussion Paper entitled “*Life and Future: First Nation’s Water Law Reform in 2019*”. The AFN shared this paper nationally and it formed, along with the “Preliminary Concepts” the conceptual foundation for the regionally led National Engagement process completed throughout 2019.

Building upon the success and dialogue at the inaugural National Water Symposium and Tradeshow in Coast Salish territories February 6-8, 2018, the AFN hosted the second annual National Water Symposium and Tradeshow in Niagara Falls, Ontario, February 26-28, 2019.

Advocating for meaningful participation in water related laws and standards led to an emergency Resolution that was adopted by the Chiefs-in-Assembly at the Special Chiefs Assembly in Ottawa, December 4-6, 2018, regarding the Federal-Provincial-Territorial Committee’s (FPT Committee) proposed 1, 4-Dioxane guideline for drinking water.

Resolution 98/2018, *Health Canada 1,4-Dioxane Guideline Consultation*, mandated the AFN to call on Health Canada to consult with First Nations on this particular guideline and call for those consultations to be fully funded. Further, the Resolution called on the AFN to write letters to the FPT Committee seeking a renewed consultation with First Nations including adoption of the ‘precautionary principle’ for this likely carcinogen. In regard to the mandated activities arising from Resolution 98/2018, the AFN has drafted these letters and is currently analyzing the response from the Minister of Health and the FPT Committee.

### UPDATE

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Regional led National Engagements were held with First Nations across the country in the Spring and Summer of 2019 to hear what they want and need in the repeal and replacement of the SDWFNA. A total of 22 meetings were held across the country, engaging hundreds of First Nations Chiefs, elders, youth, citizens, Councilors and water operators. The regional final reports from the engagement process have been submitted to the AFN Housing and Infrastructure Sector and a national roll-up report has been drafted and in the process of being finalized.

The AFN affirms that First Nations leadership must be kept informed apprised and have the opportunity to consider or endorse the ongoing process of repeal and replacement of federal First Nations water legislation. Therefore, utilizing the regional final reports from the 2019 engagements, the AFN has drafted the “Refined Preliminary Concepts” document that uses the results from the National Engagement to translate the original Preliminary Concepts ideas, actions and processes prepared in 2018 into concrete actions in the legislative repeal and replacement of the SDWFNA. The core objective was to develop and refine the numerous concepts into five actionable components to inform the affirmation and assertion of our water rights in co-development process for the repeal and replacement of the SDWFNA.

These Refined Preliminary Concepts were presented to the CCoHI on July 21, 2019, in advance of the 2019 Annual General Assembly and endorsed by the Chiefs-in-Assembly via Resolution 14-2019: *Endorsement of the*

*Refined Preliminary Concepts for Repeal and Replacement of the SDWFNA.*

The AFN is planning on follow-up engagements across the country in 2020 to continue the dialogue and ensure the critical issues, concerns shared during the regional led engagements, are considered and included as a new national First Nations water law is being considered.

### **Long-term Strategy for First Nations Water and Wastewater Post-2021**

The AFN Housing, Infrastructure and Emergency Management Services Sector was informed that ISC must submit a “Long-term Strategy for First Nations Water and Wastewater Post-2021” to the Federal Cabinet in order to release the remaining two years of First Nations water and wastewater funding from Budget 2016’s promise of \$1.8 billion over 5 years. Building upon the recommendations and feedback of the CCoHI on this issue the AFN conducted a preliminary engagement process with First Nations experts including water operators, Chiefs and Council members, researchers and advocates throughout October and early November 2019.

The purpose of this preliminary assessment was to identify the kinds of issues that First Nations need to address the development processes needed to ensure First Nations have a meaningful opportunity to create their own Long-Term Water and Wastewater Strategy Post-2021 at the local, regional and national levels.

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The final report and preliminary components of the First Nations Long-term Water and Wastewater Strategy Post-2021 is being drafted now.

The AFN hosted its 3<sup>rd</sup> Annual First Nations Water Symposium and Tradeshow and the theme was oriented towards answering the question of what will happen after the government of Canada's commitment to end all Long-Term Drinking Water Advisories on-reserve by March of 2021 is complete? The AFN National Water Symposium hosted plenary sessions, workshops and dialogue opportunities to hear First Nations views on the long-term goals, objectives and strategies for First Nations water and wastewater future post-2021.

Further three water related Resolutions have been passed since the last update, all of which were put forward and adopted by the Chiefs-in-Assembly at the 2019 Annual General Assembly. They are:

- Resolution 01-2019: *First Nations Treaty and Inherent Rights to Water*
- Resolution 14-2019: *Endorsement of the Refined Preliminary Concepts for Repeal and Replacement of the SDWFNA*
- Resolution 53-2019: *Human Right to Clean Drinking Water*

### NEXT STEPS

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The most critical next step is ensuring that First Nations have a meaningful opportunity to inform the mandated ISC Long-term Strategy document that will go to the new Federal Cabinet in March of 2020. This document releases the last two years of the \$1.8 billion allocated to First Nations water and wastewater infrastructure in Budget 2016 and

Work plans have been created for each of these Resolutions and work is ongoing to fulfil the mandates put forth by the Chiefs-in-Assembly.

To ensure the voices of youths are included in all of this work, the AFN hosted a Youth Water Think-tank in unceded Coast Salish territories in August of 2019. 35 youth from across Canada and members of the AFN Youth Council attended this three day meeting. The final report and the youth-led next steps arising from this Think-tank was presented at the 3<sup>rd</sup> National Water Symposium in Toronto on November 20-22, 2019.

Finally, in the fall of 2019 the AFN was informed that the ISC Strategic Water Management team was undertaking a technical review of protocols and guidelines related to First Nations water and wastewater. Immediate and intense advocacy, informed by feedback from the CCoHI, and in particular the regional Water Technicians team, led to a 'relaunching' of this technical review in mid-September of 2019. The AFN has continually advocated for more resources for First Nations to participate in, and lead, this technical review.

is estimated to be worth approximately \$720 million.

The AFN has consistently maintained that First Nations should have been informed of this 'holdback' on the Budget 2016 monies and there must be a meaningful opportunity for First Nations themselves to create their own

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Long-term Water and Wastewater Strategies. This position has been affirmed by leadership, experts, water operators and researchers throughout the preliminary assessment process on this issue completed in October and November 2019. Therefore, the final report from that preliminary assessment will be conveyed to the CCoHI as soon as possible for their review and assessment.

Upon refinement, informed by the 3<sup>rd</sup> National Water Symposium in late November, the preliminary components of the First Nations Long-term Water and Wastewater Strategy Post-2021 will be summarized and shared with the Chiefs-in-Assembly at the 2019 Special Chiefs Assembly for their review and, if warranted, endorsement via a supporting Resolution.

Building upon the preliminary assessments recently completed plus the forthcoming work noted above, the AFN, in conjunction with all

regions, will develop an approach to engagement throughout 2020 on a long-term strategy for First Nations water and wastewater post-2021.

In regard to the repeal and replacement of the SDWFNA there are Terms of Reference drafted and being reviewed by the AFN legal department that will outline how the forthcoming creation of a Draft Framework for the repeal and replacement legislation will proceed, utilizing the Refined Preliminary Concepts as mandated by Resolution 14/2019.

Furthermore the AFN will develop a follow-up engagement plan, informed by the regional final reports of the 2019 water legislation engagement process. AFN proposes to provide preliminary resources to all regions early in 2020 so that they can create follow-up engagement plans appropriate to their Nations for the spring and summer of 2020.

