



REALIZING OUR RIGHTS: UNLOCKING OUR ECONOMIES

EXERCER NOS DROITS : LIBÉRER NOS ÉCONOMIES



Assembly of First Nations

Assemblée des Premières Nations

Special Chiefs Assembly

Assemblée extraordinaire des Chefs

December 6 - 8, 2011
Ottawa, Ontario

Du 6 au 8 décembre 2011
Ottawa (Ontario)

First Nations Water Rights and Access to Safe Drinking Water



FIRST NATIONS AND RIGHT TO WATER

- First Nations have a deep sense of the sacredness and spiritual being of water
- To First Nations water is to respected through ceremony and practice
- Water cannot be possessed for purposes of sale or restrictive uses
- Water is to be shared freely and protected



Overview of Strategy Session

- Water Legislation – recap, overview & next steps
- First Nation Water Rights – Merrell-Ann Phare
- Draft Resolution on the National Water and Wastewater Engineering Assessment Report – review and discussion



Safe Drinking Water for First Nations Act - Background

- Introduced in the Senate on May 26, 2010 as Bill-11
- Hearings by the Standing Senate Committee on Aboriginal Peoples, February 2 to March 9, 2011
- Closed with National Chief presentation
- Bill died on the order paper when election was called
- Speech from the Throne committed to re-introducing the Bill



Safe Drinking Water for First Nations Act

- First Nations were not consulted in the development of Bill S-11.
- Bill S-11 would create new regulations and standards but would not provide First Nations with any resources to meet those new standards.
- First Nations may then be punished for not meeting these new regulations.
- This is clearly unfair and is dangerous because many First Nations will still suffer from a lack of safe drinking water.



What Needs to be Done

- There is clear agreement that this Bill must not proceed in its current form and there must be substantial and meaningful changes to ensure First Nations citizens have safe drinking water.
- Canada must commit, to the extent possible, to work collaboratively towards a substantially revised Bill S-11.
- Failing which, First Nations will continue strong opposition through advocacy and through the Parliamentary process.
- The approach must recognize First Nation rights and jurisdiction and deliver access to safe drinking water.
- First Nations must exercise their right to manage their water resources, e.g. Sec. 35



Update on proposed legislation

- In March 2011, AFN, First Nation leadership, regional organizations met with Minister's Duncan staff
- Meeting was without prejudice
- Positions of the various Chiefs and regional organizations on the legislation were restated
- AFN has proposed a joint process for the GoC and First Nations to collaborate on development of the legislation
 - Joint development of a draft legislative framework
 - First Nations information and input
 - Seeking mandates
 - Joint legislative drafting
 - First Nations validation



National Assessment of First Nations Water and Wastewater Systems

- Released July 14, 2011 on the last day of AFN AGM in Moncton, NB.
- AFN supported study as it would inform Treasury Board of the extent of the need for funding to address First Nations water and wastewater facilities.
- The national figures for capital needs is \$4.7 billion over the next ten years.
- While it is comprehensive in the number of First Nation site visits, they are not detailed engineering assessments.
- The consultant cautions the risks identified are those readily identifiable during a simple walk through and thus, detailed feasibility studies need to be done.



National Assessment of First Nations Water and Wastewater Systems

Needed First Nation Water and Wastewater Facility Upgrades

- 39% of water systems are in high overall risk
- 34% of water systems in medium overall risk
- 14% of wastewater systems in high overall risk
- 51% of wastewater systems in medium overall risk



First Nation response

- Need to see a business plan from the Government on how to address these needs
- First Nations water and wastewater facilities need to be brought a level comparable to neighbouring communities before enacting legislation and implementing regulations



2011 June Status report of the Auditor General

- **Ottawa, 9 June 2011—Progress toward improving conditions on First Nations reserves is unsatisfactory**, says John Wiersema, Interim Auditor General of Canada, in a Status Report tabled today in the House of Commons. The Report looks at education, housing, and water quality on reserves, among other things.
- ***“I am very disappointed that conditions on reserves have worsened and are well below the national average,”*** said Mr. Wiersema.
- The audit found that the education gap between First Nations living on reserves and the general Canadian population has widened, housing is in poor condition and the housing shortage has increased. **More than half of the drinking water systems on reserves still pose a significant risk to communities.**



First Nations Rights to Water

International Instruments of support





AGA 2011 Resolution 33/2011 – First Nations and the Human Right to Water

1. Direct the Assembly of First Nation (AFN) to advocate for the application of United Nation General Assembly in Resolution #A/RES/64/292 in Canada as a supporting mechanism for the implementation of Indigenous Rights, and constitutionally protected Aboriginal Title, Aboriginal and Treaty Rights in Canada.
2. Direct the AFN to continue to advocate for the implementation of the United Nations Declaration on the Rights of Indigenous Peoples, including the areas that support the collective rights of Indigenous Peoples and our relationship to our territories, including the waters and to provide regular updates





United Nations Declaration on the Rights of Indigenous People

- Article 25 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) states that *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.*





United Nations Declaration on the Rights of Indigenous People

Article 32 of the UNDRIP further 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.*



UN Resolution on Human Right to Water

- On **July 28, 2010**, the UN General Assembly passed a resolution on the human right to access to clean water and sanitation. The resolution was adopted by a vote of 122 in favour to none against, with 41 abstentions which included Canada.



UN Human Rights Council

- In **October 2010**, the UN Human Rights Council for the first time affirmed that the right to water and sanitation is derived from the right to an adequate standard of living.
- This means that for the UN, the right to water and sanitation is contained in existing human rights treaties and is therefore legally binding.
- Importantly, because this second resolution is an interpretation of two existing treaties, it rendered the General Assembly resolution binding on all countries, even those that did not support it.



Internationally binding nature of UN resolutions

- The internationally binding nature of these UN resolutions give us the legal support to pressure Canada to do what is required to finally provide safe and adequate supplies of water and sanitation for our First Nation citizens



Catarina de Albuquerque, UN Special Rapporteur on the right to safe drinking water and sanitation

- As Catarina de Albuquerque, Special Rapporteur on the right to water and sanitation explains, “The right to water and sanitation is now a human right, equal to all other human rights, which implies that it is justiciable and enforceable. Hence from today onwards, we have an even greater responsibility to concentrate all our efforts on the implementation and full realization of this essential right.”
- Every country is now obligated to come up with a plan of action that sets out the ways in which it will honour its new obligations under these newly recognized rights.



Canada obligated

- Canada, as a member of the United Nations, is obligated to put in place a National Plan of Action and submit its plan in a report to the UN.



Recommendations of the UNPFII 10th Session

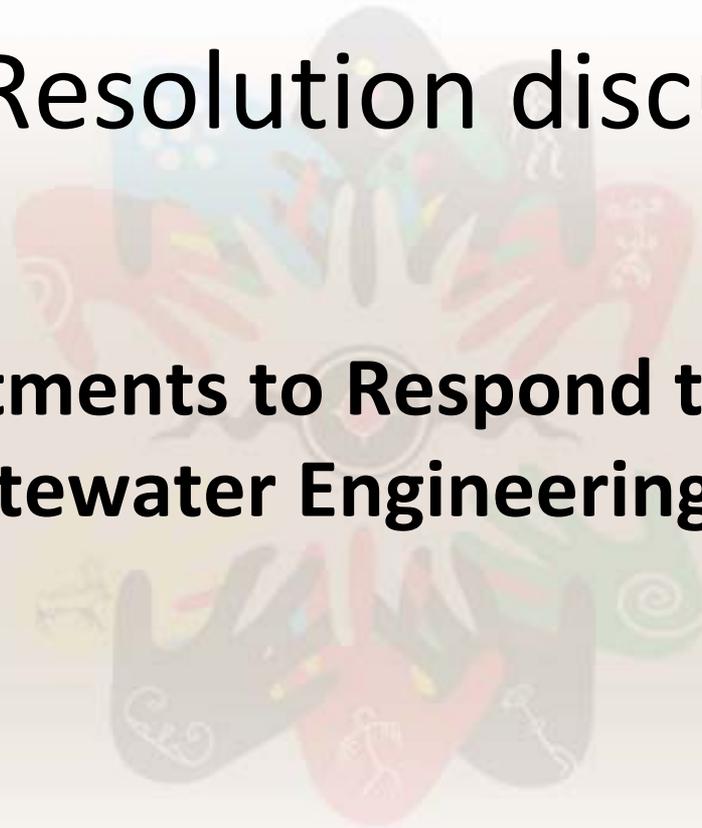
- Paragraph 84:
 - The Permanent Forum urges States to increase the provision of funding to indigenous peoples and communities for water and wastewater systems in order to improve the quality of drinking water and wastewater infrastructure, as well as address water pollution and degradation in indigenous communities.





Draft Resolution discussion

Call for Investments to Respond to the National Water & Wastewater Engineering Assessment Report





Call for Investments to Respond to the National Water & Wastewater Engineering Assessment Report

- Call upon the Government of Canada to undertake its fiduciary responsibility to protect the health and safety of First Nations and immediately develop a 5 year capital plan designed to address the high and medium and low overall risk water and wastewater systems needs identified in the report.
- Direct the AFN to request the government assist First Nations and their technical support organizations to carry out a knowledgeable analysis of their community reports.
- Direct the AFN to request the Government of Canada to provide yearly progress reports on the progress made on reduction of the high, medium and low overall risk water and wastewater systems.



Other areas of Interest

- AFN National Water Conference Edmonton AB
March 5-7, 2012
 - Enoch Cree Resort
 - Day 1 – First Nation Water Rights
 - Co-host Treaty 3
 - Day 2 & 3 – Water Technical Conference



MIIGWETCH QUESTIONS?

