
Assembly of First Nations

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Assemblée des Premières Nations

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ANNUAL GENERAL ASSEMBLY
July 23, 24 & 25, 2019, FREDERICTON, NB

Resolution no. 01/2019

TITLE: First Nations Treaty and Inherent Rights to Water

SUBJECT: Water, Treaty Rights

MOVED BY: Chief Calvin Sanderson, Chakastaypasin First Nation, SK

SECONDED BY: Brian Hardlotte, Proxy, Peter Ballantyne Cree Nation, SK

DECISION: Carried by Consensus

WHEREAS:

- A. The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) states:
- i. 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.
 - ii. Article 32 (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.
 - iii. 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.
 - iv. Article 32 (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.

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- B. The articles support our right to the relationship we have with water and our responsibilities to future generations; and for states to obtain 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.
- C. First Nations have sovereign, inherent and Treaty rights over the land and waters in their traditional territories and continue to assert and exercise their rights and responsibilities through ceremony and practices of management and use. This is the responsibility given to us by the Creator as valuable water resources flow through and exist within First Nations territories.
- D. The Government of Canada and provincial governments have not recognized First Nations rights and responsibilities of stewardship of the water, nor have they acquired the free prior and informed consent in relation to water use and allocation. Successive government entities tasked with management of water have not properly protected water, which has had detrimental impacts.
- E. The focus of the Assembly of First Nations (AFN) National Water Strategy has been on the *Safe Drinking Water for First Nations Act* (SDWFNA), which came into force on November 1, 2013. The SDWFNA grants sweeping enforcement, legislative and judicial powers to the Crown as well as the ability to confer those powers to any person or body including private corporations. The SDWFNA and accompanying government policies and programs have failed to address the continuing financial resource gap for First Nations water infrastructure and the required operations and maintenance of that infrastructure.
- F. AFN Resolution 88/2017, *First Nations led Engagement Process for Safe Drinking Water Legislation*, calls for First Nations to take the lead in determining and developing priorities and strategies for new safe drinking water and wastewater legislation, including the co-development of a draft framework for new legislation and a framework for a First Nations Water Commission,
- G. In accordance with AFN Resolution 01/2018, *First Nations Led Process to Develop New Federal Safe Drinking Water Legislation*, the AFN is convening a First Nations led Joint Working Group on Safe Drinking Water for First Nations and is developing a Chiefs Committee on First Nations Drinking Water Legislation.
- H. The AFN developed the first iteration of First Nations Safe Drinking Water Legislation Preliminary Concepts (Preliminary Concepts) that proposed the priorities, principles and interests that are foundational to new First Nations safe drinking water and wastewater legislation.

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- I. The Preliminary Concepts include: protection of First Nations' rights, laws and aspirations regarding water and wastewater; confirms adequate, predictable and sustainable funding for First Nations water and wastewater needs; and supports the consensual transition of care and control over First Nations water and wastewater infrastructure to First Nations. The Preliminary Concepts also include commitments to achieving the standards of the UN Declaration and enshrining a multi-barrier approach to drinking water safety and proper sanitation for First Nations.
- J. The AFN remains committed to honouring the inherent and Treaty Right to water and remains cognizant of the broader political and legal strategy necessary for the full and meaningful implementation of First Nations rights to water where water flows on, around and/or under First Nations.

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

- 1. Direct the Assembly of First Nations (AFN) to call on Canada to immediately work in full partnership with First Nations to advance the work needed to achieve reconciliation and the standards as set out in the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration), including articles 25 and 32 for the full and meaningful implementation of Indigenous water rights in their territories including legislative commitment to the UN Declaration.
- 2. Direct the AFN to broaden their National Water Strategy and consider political and legal strategies that support the full and meaningful exercise of the Inherent and Treaty right to water including our jurisdiction as stewards of lands and waters in our traditional territories.

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