



# ASSEMBLY OF FIRST NATIONS

## STRATEGY TO PROTECT AND ADVANCE INDIGENOUS WATER RIGHTS

*“The Creator placed us on this earth, each in our own sacred and traditional territories to care for all creation. We stand united to follow and implement our knowledge, laws and self determination to preserve water, to preserve life.”*

National Chief A-in-chut Atleo, AFN Water Rights Conference, Enoch Cree Territory, March 5, 2012.

### BACKGROUND

The Assembly of First Nations (AFN) is the national political advocacy organization representing First Nation citizens in Canada. This includes more than 800,000 citizens living in 633 First Nation communities, as well as remote, rural and urban areas. The AFN receives direction on First Nation priorities and objectives through resolutions from the Chiefs-in-Assembly.

Through resolution and the direction of First Nations, the AFN has been mandated to address the urgent situation of First Nation water rights, protection and access to safe drinking water.

### CONTEXT

Water is life. It is our sacred duty to protect it for today and for our future generations. It is also our duty to honour and respect the spirituality of water and to respect local protocols. Our women are the keepers of water and they shall be given the opportunity to conduct the ceremonies whenever we gather for water.

Our duty is to consider this responsibility as a never ending circle from the tiny droplets of water falling from the skies to the continuation of its journey to the lakes and rivers and the ground where it is stored. We are just a small part of this, like the grain of sand that cleans and filters the water to make it safe. But small as we are, we as humans make the greatest impact through how we treat or mistreat the waters.

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. The National First Nation Water Strategy outlines priorities and areas of focus in three key areas: Water Rights, Water

Management, and Watershed Management. Each element and the overall strategy must be supported by communications, research and advocacy in accordance with AFN's role in support of First Nations interests.

## PREVIOUS RECOMMENDATIONS AND ACTIVITIES

The Assembly of First Nations takes direction from the Chiefs-in-Assembly through resolutions. There have been several resolutions dealing with water as well as national studies initiated by the Government of Canada.

Resolution 48/2010, Advancing the United Nations Declaration on the Rights of Indigenous Peoples, resolved to affirm our direction and 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 Declaration. Articles 25 and 32 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.

The 2006 Report of the Expert Panel on Safe Drinking Water for First Nations was a very important study that was supported by the AFN. The report recommendations included several options for creating a regulatory framework for First Nations. In addition, it recommended the creation of a new body responsible for regulation, enforcement and accountability, which would be called the **First Nations Water Commission**. This Commission would be largely arm's length from government and the First Nations community. The report found that there is ample precedent for this style of operation.

In consideration of this recommendation AFN worked on a conceptual approach to a First Nation-driven path to water management on reserves. In February 2007, at the Housing and Water Policy Forum held in Toronto, AFN and the Centre for Indigenous Environmental Resources (CIER) presented "***A Path to Safe Water for All First Nations: A Conceptual Framework for Water Management***".

The pre-conditions for success as envisioned at the time were:

- Enforceable Legislation,
- Necessary funds to bring all First Nations water systems to comparable operational standard,
- Ensure funds go where needed,
- Baseline data/inventory on current state of all FN water and wastewater treatment systems.

Essentially, this concept saw the development of a **First Nation Water Commission** to include the following components of expertise to support First Nations: focus on matters related to governance, finance, management, legal, technical, and communications.

In December 2007, Resolution 15/2007 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.”

AFN SCA Resolution 50/2008, Indigenous Commission on Water, resolved that the 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.

It was further resolved that this entity be characterized as an Indigenous Commission on Water, whose membership and participation shall be inclusive of all Indigenous Peoples in Canada.

## TOWARDS A FIRST NATIONS NATIONAL WATER STRATEGY

### WATER RIGHTS

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. Indigenous peoples around the World as well as within Canada have issued important Declarations regarding Water including the Chiefs of Ontario Water Declaration and the KI Consultation Protocol and Watershed Declaration and of other work done or in progress by others.

Actions to further the exercise of Inherent and Treaty rights include examining the basis for legal challenges regarding safe drinking water for First Nations; strategies to assert First Nation water rights with particular emphasis on the application of customary law to water management; the human right to water; the role of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in protecting First Nations water sources; and the development of institutions to support First Nations’ capacity, such as a First Nations Water Commission.

This strategy will work to support recognition of First Nations and their regional organizations negotiations with provincial and territorial governments related to their prior and un-extinguished water rights. This advocacy will include the First Nations concerns with water allocations and water licensing schemes initiated by provincial and territorial governments.

Consultation to attain the free, prior and informed consent of the affected First Nations rights holders is a prerequisite prior to any decisions or actions related to water contemplated by Canada, provinces or territories.

This strategy will respect the declarations and initiatives of regional, and treaty organizations and of individual First Nations.

Additional actions to further this work include:

- 1) Outreach and advocacy with decision-makers, parliamentarians and public officials on all matters affecting First Nation water and water management rights and interests.
- 2) Specific liaison and outreach to organizations in the United States, to develop protocols and share resources and best practices.
- 3) Ongoing advocacy with International bodies, such as the United Nations Permanent Forum on Indigenous Peoples, Permanent Missions and Embassies.
- 4) Optimize Provincial & Territorial forums to encourage awareness of First Nation water rights and interests across jurisdictions

## WATERSHED MANAGEMENT AND PROTECTION

First Nations in Canada have a direct and long-standing relationship with the land, waters and all natural resources and their environment that sustains them. First Nations depend on healthy watersheds in order to exercise their Aboriginal and Treaty Rights, to engage in economic activities like hunting, trapping, fishing, aquaculture and other harvesting and gathering practices. First Nations are taking a national stand on water issues. First Nations assertion over water resources has been established under many land management and land use and environmental stewardship plans. First Nations communities maintain their responsibility for keeping water healthy as traditional stewards of the watersheds.

A watershed refers to a region or area of land that drains into a stream, river system or other basin or body of water. First Nations have observed many changes in Canada's biodiversity and have witnessed the terrestrial and aquatic species fluctuate in numbers, from robustness to massive declines where species no longer exist. Together, science and traditional knowledge have identified variation within species and populations, the habitats, their life stages and places where they occur. Other influences of weather and climate can contribute to the effects of disturbance, including human harvesting and various management and economic development activities.

First Nations are looking to develop Watershed Protection strategies that will bridge new relationships with a variety of partners. It is important that any strategy must include First Nations as equal partners in government-to-government relationships with respect to the designing and implementation of strategy plans on all water issues in First Nations communities. Jurisdictional issues and treaty rights must be addressed.

First Nations are faced with many longstanding issues and challenges in reacting or responding to the many competing pressures to protect their watersheds. The community vision in designing watershed protection strategies can support First Nations' interests by protecting aquatic ecosystems from other activities that may

damage the environment (e.g., ocean dumping, undersea mining, certain types of fishing, and oil and gas exploration and development). Climate change has dramatically

impacted First Nations' ability to harvest fish, both commercially and for subsistence purposes, changed fish habitat, migratory patterns and spawning beds, and to changes in water quality and temperatures.

First Nations are not opposed to development on their lands or waters, but must be involved from the outset in decision-making processes for effective watershed planning. First Nation rights and responsibilities require full partnerships in discussions about exploration, ownership, participation and production and long term sustainability of all environments as stewards of their communities and their territories. First Nations support responsible economic development and sustainable practices built on sound conservation and protection principles.

In situations where fishing could adversely affect the health of the marine areas and prevent the achievement of conservation objectives, First Nations must be consulted on these impacts by virtue of their aboriginal and treaty rights to fish. First Nations must have a place in the decision making processes to make those determinations on their rights. Many First Nations exercise their own seasonal conservation plans to ensure that future stocks and game are protected for generations to come.

First Nation watershed protection strategies must drive the protection and management strategies and be involved in the planning activities initiated by provinces and territories. First Nations must be recognized as a level of government whose rights within these areas are to be respected. This includes full recognition of First Nations' jurisdictional rights over their watersheds, involved from the outset, including decision making, and consultation.

In order to effectively build plans for watershed conservation or management, focus needs to be provided in a number of areas:

- a) Provide assistance in building capacity in First Nation watershed protection strategies at the local and regional levels;
- b) Recognize the importance of watersheds and aquifers to First Nations to access clean drinking water as a basic human right;
- c) Support first Nations rights to access water, and protect water and other natural resources and traditional activities within their territories;
- d) Respect First Nation Treaty and Aboriginal title and rights as the basis to manage lands and enable partnerships with industry and NGOs;
- e) Observe opportunities for First Nations to apply and share traditional knowledge and practices throughout their traditional territories;
- f) Promote responsible and sustainable development to use environmental resources in a balanced fashion with community social, health, environment and economic needs; and,
- g) Confirm First Nations involvement at the national, regional and community levels to ensure best efforts are achieved towards a coordinated approach.

Many First Nations have developed watershed strategies as a means of governance over their resources. These are critical matters to the survival, rights and interests of First Nations and crucial in developing sound strategies that must not and cannot be denied. Many First Nations who are actively pursuing Watershed protection strategies are engaging Youth as our next generation of watershed warriors. The AFN will continue to support First Nations in the development and implementation of watershed protection strategies in their traditional territories with tools and mechanisms that development long-term capacity.

Areas for further focus and consideration include:

- 1) Ensuring recognition that First Nations have Treaty and Inherent rights to fish and to protect fish habitat and the ability to enjoy their rights to aquatic resources. This could be done through creation of a First Nation advisory committee composed of people outside government from a variety of interests, to provide strategic advice from coastal and inland regions.
- 2) Encourage the development and inclusion of First Nation-led watershed-wide management strategies designed to resolve current water-related issues in First Nation territories and communities that can create new economic development opportunities built on healthy water and can contribute traditional knowledge for the overall development and implementation of effective conservation plans.
- 3) Develop consultation processes for First Nation input regarding any policy options being considered on water use and management.
- 4) Support regional engagement processes to allow First Nation input, develop a plan to ensure the key aspects of any water policy reform includes front end engagement and is properly resourced to provide capacity and technical support.
- 5) Ensure projects with the potential for harmful impacts on water are permitted only in areas identified as appropriate through watershed and aquifer planning with full First Nation decision-making authorities.
- 6) Engage First Nations in dialogue on future projects that may contain harmful impacts on water, tri-lateral or joint dialogue sessions with First Nations.

## WATER MANAGEMENT

First Nations have expressed the need to develop watershed-based source water protection plans, to manage water resources and ensure proper treatment and disposal of wastewater as part of the protection of First Nation citizens and access to safe and adequate supplies of potable water.

A First Nation Water strategy will recognize First Nations right to manage their own water resources and develop and enforce their laws consistent their jurisdiction, and affirmed under section 35, *Constitution Act*, 1982.

Further, organizations must be supported in the development and recognition of their own laws as a right given by the Creator enhanced by appropriate regulations that will be equal to or better than the minimum standards now in effect. A truly source-to-tap and tap-to-source management of our water resources is needed.

One way of supporting this work could be the creation of a First Nation Centre of Excellence. Whether virtual or physical in nature the Centre of Excellence could provide a central point of contact for informing policy, sharing of best management practices, and support for the development of water laws and regulations.

AFN will continue its role to advocate for First Nations' right to protect and manage water resources. Most importantly, it will be critical to work with Canada to ensure that resources are made available to support the implementation of First Nation laws and regulations, and to fulfill clear health and safety standards.

Activities to further these goals include:

- 1) Continue work on the First Nation Water Commission to include further definition of the supporting mechanism to assist First Nations towards a regulatory environment;
- 2) Continue collaboration with external organizations on the research in governance models for water.
- 3) Convene a National Gathering to seek further input and cooperation from First Nations and other key partners to support development and implementation of a comprehensive First Nations Water Strategy

## COMMUNICATIONS & RESEARCH

At the March 2012 First Nations Water Rights conference, Elders and First Nation leaders spoke of the need to develop a communications strategy to assist in bringing to public attention the need to understand First Nations' rights to water.

In addition, the conference identified that research is needed related to Treaties and the Treaty right to water. This research must form part of the development of the communication strategy.

Proposed actions forward include:

- 1) Conduct preliminary research to identify all the players currently involved in this area. Establish a database of contacts and areas of responsibility.
- 2) Conduct research on First Nation water rights, prior rights, other agencies and countries treatment of indigenous rights to water to support our positions.
- 3) Preparation of summary fact sheets and key information resources for First Nations
- 4) Encouraging full and active networks with First Nations and water rights organizations

## NEXT STEPS

This strategy has been guided by the Chiefs Committee on Housing and Infrastructure (CCHI). It has received ratification by the Chiefs-in-Assembly at the December 2012 Special Chiefs Assembly as a basis for dialogue.

The AFN has been directed through resolution to continue to actively facilitate discussion and seek input from First Nations, regional technical working groups and other organizations to further refine the development of a comprehensive National First Nations Water Strategy, to be overseen by the Chiefs Committee on Housing and Infrastructure (CCoHI).

Work will continue, incorporating this direction, towards a more refined strategy. Work will proceed through regional engagement and guided by the CCHI on the development of a National First Nations Water Declaration to be provided for deliberation and decision at the 2013 Annual General Assembly.