

BC First Nations Water Rights Strategy

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INTRODUCTION

Water supports all life and prosperity. It is a sacred resource to First Nations as our very survival relies on access to clean water for: health and well-being; spiritual use, culture, customs and traditions; sustenance; and economic opportunities. Our relationship with our waters is fundamental to our physical, cultural and spiritual survival.

We have rights and a sacred responsibility to protect and manage water for our people today and generations to come, in particular ground water. Our right to water includes the use of water for cultural ceremonies, drinking, domestic purposes, irrigation and other agricultural purposes, commercial purposes, transportation, and access for fishing, hunting, trapping and other harvesting and gathering activities. These rights also include the right to water of sufficient quantity and quality to sustain First Nations as people, mother earth, and enough water to sustain the habitat and ecosystems of plants and animals and fisheries resources so that we can continue to exercise First Nations rights. Finally, these rights include jurisdiction and stewardship over use and access to water and the protection of water and aquatic habitat from both a health and resource management perspective. In many ways, First Nations have been largely alienated from access to traditional water resources and uses, and our traditional laws, title, rights and decision-making authority have not been respected.

There has never been a comprehensive plan or legislation in place in British Columbia aimed at the conservation and protection of water resources. Instead, water has been managed through a myriad of federal and provincial laws designed for a variety of economic and environmental purposes. Recent changes in federal laws have, in fact, dramatically reduced legislated protections that did exist. A healthy water supply is now steadily decreasing due to development, pollution, climate change and population growth. This has a negative effect on habitat, wildlife populations, ecosystems and biogeoclimatic zones that support our medicinal plants, trees and animals/fish. The lack of safe drinking water is also an ongoing problem in many First Nations communities. This is deplorable given that Canada is a first world country with some of the world's the richest water resources in our respective territories.

First Nations are continually forced into lengthy and costly litigation and other processes to advance their Aboriginal Title and Rights as a means of protecting the environment against unsustainable development and practices. This perpetuates a relationship with the Crown, and proponents, based on conflict, rather than mutual respect and cooperation. In this context, BC First Nations passed resolutions calling upon the BC Assembly of First Nations, First Nations Summit, and Union of British Columbia Indian Chiefs to work together to coordinate the development of a BC First Nations Water Action Plan to set out collective First Nations views on water issues, achieve recognition of First Nations' priority water rights, and to set out an approach to federal and provincial legislation and policy regarding water (BCAFN Resolution #11/2010, FNS Resolution #0609.03, UBCIC Resolution #2010-03). This BC First Nations Water Rights Strategy outlines the current context, and proposes a vision, principles, strategies and actions. This Strategy is a tool for collective advocacy and does not in any way affect the self-determination or autonomy of each First Nation in BC.

WATER CONTEXT

Water supports all life and prosperity. Healthy water and watersheds support human and animal life, serve as habitat for fisheries resources, are vital to the economy, Indigenous food security are a source of energy, and serve as transportation ways. Worldwide, available fresh water is less than one-half of one percent of all water on earth. Of the total volume of fresh water on earth, 68.9% is in the form of ice and permanent snow cover in mountainous regions, the Antarctic, and the Arctic. Approximately 97% of all freshwater on earth (not including glaciers and icecaps) is groundwater. It is a limited resource.

In British Columbia over the next 25 years, the population is expected to increase by 1.4 million people. This will place increasing demands on water for drinking, farming, power and energy, resource extraction, and land development. Already at the current time:

- There are approximately 44,000 active water licenses in BC (the annual rents provide more than \$270 million to the provincial government each year);
- Many First Nations reserve lands have associated water licenses; however, many require additional volumes of water for community and economic development purposes;
- Between 2000 and 2005, 35 per cent of groundwater observation wells showed declining water levels, primarily due to increasing use for irrigation and urban development;
- 592 applications have been filed and will begin the process of doing all the studies and evaluations to determine if an IPP project is viable; and,
- British Columbians are one of the largest consumers of water in the world, and use 490 litres of water per person per day (excluding industrial and agricultural uses) and drink less than 3% of the municipally-treated water used.

While there is an increasing demand on this limited resource, the health of the resource itself is also under growing stress and pressure from pollution and climate change. The contamination of groundwater from resource and land-use activities is a growing and significant concern. The main sources of groundwater contamination include: pesticides, herbicides and fertilizers from agricultural operations; fecal matter from agricultural operations; spills during transportation of fuels, chemicals, etc.; leaching from poorly sited septic systems; leachate from garbage dumps and other waste disposal sites; acid mine drainage; spillage from gasoline and fuel tanks; and chemical spills from mills and other industrial operations.

The lack of safe drinking water is an ongoing problem in many First Nations communities. In approximately 20% of the Indigenous communities across Canada, the water supply is contaminated and poses significant health risks. As of January 31, 2013, 113 First Nations communities across the country were under Drinking Water Advisories. The 2011 National Engineering Assessment released by the federal government found that 73% of First Nation water systems are at high or medium risk. Some of these communities have been under a Drinking Water Advisory for 10 years or longer.

Shale gas development is rapidly expanding on First Nations' territories throughout British Columbia, and hydraulic fracturing, commonly known as fracking, is an additional significant impact on our water sources. In this process, immense amounts of water are pressure-pumped below ground to fracture shale rock, which releases its trapped gas. First Nations in BC are extremely concerned that very little traditional and scientific data exists in order to understand the cumulative effects of water loss and contamination in the traditional territories of BC due to hydraulic fracturing

processes, and to understand the impact of fracking on human health from the use and disposal of chemical toxins and the release of deadly gases. These effects could take many years and even decades to be observed. In Northeastern BC there are over 31,000 oil and gas wells, and in western Canada there are over 0.5 million wells. The Oil and Gas Commission continues to avoid sharing information with local First Nations, for example by not forwarding an energy company's water application to First Nations prior to granting companies access to water. First Nations have demonstrated extreme concern that this clearly violates the government's legal and constitutional duty to consult with First Nations. Further, First Nations are concerned about longer-term water licenses issued by the provincial water stewardship officials, which can lock in rights of access to public water supplies for years. Recently, First Nations leaders passed respective resolutions at the BCAFN, FNS and UBCIC supporting Fort Nelson First Nation's call for a moratorium on water licenses.

Climate change also has tremendous implications for water. These implications include: rising global temperature, shrinking snow packs, changes in precipitation patterns which will impact forests, ecosystems, and industry and have risks including flooding (flooding in First Nations communities is particularly common – many communities were located in flood-prone areas and do not have resources for sophisticated flood-proof measures and flood-protection infrastructure); drier conditions and warmer weather which will pose threats such as insect invasions, wildfire and drought; and rising water temperatures, impacting on salmon migration and spawning.

In recognition of these serious challenges, many efforts are underway at local, regional, national and international levels to modernize laws, policy, plans, infrastructure and technologies with the aim of conserving water resources. First Nations must be a key player in leading these efforts, so that we may steward the water resources to support the health of the resource, environment and our communities.

JURISDICTIONAL AND LEGAL CONTEXT

CONSTITUTION ACT (1867)

The *Constitution Act, 1867* sets out the division of powers between the federal and provincial governments. It does not exhaustively distribute powers among the federal and provincial governments. This is of particular relevance here is that it does not specifically provide for jurisdiction over water. However, water flowing through or adjacent to First Nations reserve lands is under federal jurisdiction, as per section 91(24) *Constitution Act, 1867*. Consequently, the Aboriginal Affairs and Northern Development Canada (AANDC), Environment Canada (EC) and Health Canada (HC) are primarily responsible for providing safe water and potable water on-reserve.

In part because the *Constitution Act, 1867* does not specifically mention law-making authority over water, for most of Canada's history, there has been no comprehensive plan to protect water. Rather, water (and the environment generally) has been managed through a mix of provincial and federal statutes, "mainly as part of the management scheme for other resources".¹

ABORIGINAL TITLE AND RIGHTS, CONSTITUTION ACT (1982) AND HONOUR OF THE CROWN

Water is a sacred resource to First Nations. First Nations have a sacred, cultural relationship with water as our very survival relies on access to clean water for health and well-being; cultural practices, customs and traditions; sustenance; and, economic opportunities. Our relationship with our lands, territories and waters is fundamental to the physical, cultural and spiritual survival of our people.

We have rights and a sacred responsibility to protect water for our people and natural environment today and generations to come. Our rights include, but are not limited to, the right to use water for drinking, irrigation, commercial purposes, transportation, cultural ceremonies, and access for fishing, hunting, trapping and other harvesting and gathering activities. These rights also include the right to protect water and the aquatic habitat that supports plants, trees and other life forms with whom First Nations share their traditional lands and upon whom they depend.² Finally, these rights include jurisdiction and stewardship over use and access to water and the protection of water and aquatic habitat from both a health and resource management perspective.

The Aboriginal right to water flows from the historic and on-going connection of First Nations to our traditional lands and resources. First Nations have constitutionally protected Aboriginal title and rights, and treaty rights, which set out a clear legal context for First Nations governance in relation to water and water resources. Aboriginal title and rights, which exist in BC and are protected under section 35 of the Constitution, include the ability of First Nations to make decisions about their lands and resources, and to benefit from the resources that are used or extracted. We have continuing Aboriginal legal systems and invaluable traditional knowledge that have enabled us to be effective

¹ EAGLE, "Lifeblood of the Land. Aboriginal Peoples' Water Rights in British Columbia" ed. Ardith Walkem et al., June 2004 at p.3-1, 3-2.

² B.C. Aboriginal Fisheries Commission, "First Nations and Water Use Planning in British Columbia. Legal Analysis", August 2, 2001 at p.21.

stewards of the resources since time immemorial, which, applied today, could be the key to addressing modern day issues such as climate change.

A number of treaties exist in British Columbia that reference First Nations rights related to water resources. The Douglas Treaties include the right to “carry on their fisheries as formerly”; Treaty 8 guarantees the rights of hunting, trapping and fishing” for as long as the rivers run”; and recent final agreements, amongst other things, set out provisions about the issuance of public water licenses, provide water reserves for First Nations, include powers to make laws for wastewater and water licensing, and contain provisions regarding the extraction and use of groundwater. The Simpcw First Nation Chief and Council have developed a Water Declaration that sets out their rights, laws and mandate with respect to the management of water in Simpcw Territory.

First Nations must be involved in all decisions that impact upon our lands and resources, including water resources, from mega-projects, run-of-river projects, to decisions made by local governments. As confirmed by the Supreme Court of Canada, this involvement must occur not only at the local operational level, but also at the strategic planning and decision-making level. The Honour of the Crown requires that the Crown consult and accommodate First Nations on decisions at each of these levels have the potential to impact Aboriginal title, rights or treaty rights.

The Supreme Court of Canada has determined that the honour of the Crown must be understood generously in order to reflect the underlying realities from which it stems. In all its dealings with Aboriginal peoples, from the assertion of sovereignty to the resolution of claims and the implementation of treaties, the Crown must act honourably. Nothing less is required if we are to achieve the reconciliation of the pre-existence of aboriginal peoples with the sovereignty of the Crown. It is widely understood that the honour of the Crown gives rise to different duties in different circumstances. Where the Crown has assumed discretionary control over specific Aboriginal interests, the honour of the Crown gives rise to a fiduciary duty.³ In all situations, the Crown’s duty requires it to engage substantively and meaningfully with First Nations at an early stage and to demonstrate a good faith intention to fully engage at each successive stage of decision-making as part of its ongoing duty. The honour of the Crown obliges the Crown to ensure that resources are adequately protected so that species, ecosystems and habitat are healthy and sustained. First Nations cannot exercise rights, such as gathering rights, if the species or stocks are unhealthy or cannot be sustainably harvested. As one author argues, drawing upon the principles established in the courts, “the constitutional protection for s.35 harvesting rights imposes upon the Crown a “duty to conserve” the conditions necessary for the exercise of those rights. Like the duty to allocate priority to fisheries resources, established in Sparrow and subsequent cases, the duty to conserve obligates the Crown to given the conservation of s.35 harvesting resources due priority amongst competing legislative objectives, and to tailor administrative decision to reflect the status of those rights.”⁴

Aboriginal title and rights, and treaty rights – and corresponding Crown obligations - provide the legal and constitutional foundation for intensive First Nations involvement and leadership in planning and decision-making processes related to the management of water.

³ *Supra*, note 12 at para 18.

⁴ Tim Thielmann, Devlin Gailus, Barristers & Solicitors, “A Duty to Conserve: Articulating the Crown’s Obligation to Protect Species of Significance to Aboriginal Peoples”, presented at Insight 6th Annual Western Canada Aboriginal Law Forum, May 11, 2010., at p.2.

FEDERAL AND PROVINCIAL WATER-RELATED LEGISLATION AND POLICY

Current federal and provincial legislation and policies have created water disputes with First Nations across the Province, including on Vancouver Island and in the Okanagan. As well, many First Nations have had to challenge the governments and proponents in various review and assessment processes, quasi-judicial processes and in court with regard to development projects that would significantly impair or destroy important water resources. For example, the communities of Takla, Tsay Keh Dene and Kwadacha, supported by First Nations in BC, challenged the proposed expansion of a gold and copper mine that would dump 800 million tonnes of tailings and waste rock into the pristine, high elevation, freshwater lake called Amazay Lake. Another example is the Halalt First Nation's legal action to protect water resources, including groundwater, from being pumped and diverted to the neighboring town, potentially affecting, among other things, fish stocks upon which the Halalt relied on for spiritual, cultural and economic purposes. First Nations are continually forced into lengthy and costly litigation and other processes to advance their Aboriginal title and rights as a means of protecting the environment against unsustainable development and practices. This perpetuates a relationship with the Crown, and proponents, based on conflict, rather than mutual respect and cooperation.

Federal legislation

The federal government does not have any legislation pertaining to water resource management specifically. However, they do have environmental and fisheries legislation that impact on water management in BC. The most pertinent Acts include the *Fisheries Act*, the *Canadian Environmental Assessment Act*, the *Species at Risk Act*, and the *Navigable Waters Protection Act*. The federal government has recently pass the *Safe Drinking Water for First Nations Act* which allows for the development of regulations around drinking water on reserves.

The *Fisheries Act* sets out laws relating to fishery leases and licenses, fishery officers and guardians, fish habitat protection and pollution prevention, and offence and punishment for contravening the *Act*. Further, the federal government has adopted a policy of "no net loss" and enacted Metal Mining Effluent Regulations. These allow for the destruction of fish habitat (lakes) for use as mining waste ponds, as long as project developers create an artificial habitat to support a comparably-sized fish population. This has led to a number of conflicts and disputes between First Nations, governments and proponents of mining projects through the federal and provincial environmental assessment processes (such as Kemess North and Prosperity).

Through Bill C-38, the omnibus Federal Budget Implementation Bill introduced on April 26, 2012, a number of changes were unilaterally made to the *Fisheries Act* by the federal government. In particular, the Act was amended to make it easier and quicker for resource development projects such as mines and pipelines to receive required permitting. Specifically, the amendments are intended streamline and reduce the number of approvals and authorizations required to be obtained under the Act, and shift protection measures from protecting "fish, fish life and fish habitat" to protecting fish based on their use (i.e. bodies of water that support commercial, recreational and aboriginal fisheries or fish that support such fisheries). Many of the major projects that may benefit from these changes are located in BC, including Enbridge's proposed Northern Gateway Pipeline (e.g. by reducing requirements under fish habitat protection rules for the approximately 1,000 waterways the pipeline would need to cross). The amendments also include changes to definitions, raising questions about the ongoing protection and exercise of section 35 fishing rights and the scope of

those rights. They also raise questions regarding the Cohen Commission Report, which makes recommendations in relation to the decline of Fraser River sockeye and its habitat. The content and timing of Bill C-38 and the proposed *Fisheries Act* amendments were viewed by First Nations as an affront and threat to the work of the Commission and inconsistent with statements made by Department of Fisheries and Oceans officials to the Commission that the Department consults with First Nations on all matters, and that modernizing of the Act or making any changes in Ministerial discretion, would require significant consultation. The *Fisheries Act*, as amended, also includes provisions empowering the Minister to enter into agreements with provinces to further the purposes of the Act (e.g. to facilitate cooperation and joint action in “areas of common interest”; reduce overlap; facilitate communication, public consultation or the “entry into arrangements with third-party stakeholders”; and harmonize their respective programs). This raises a number of questions, including questions regarding the constitutionality of agreements dealing with delegation and equivalency provisions. Following Bill C-38, the federal government pushed through a second omnibus Bill (Bill C-45), which included further amendments to the *Fisheries Act*, including a redefinition of “Aboriginal fishery” to “mean that fish is harvested by an Aboriginal organization or any of its members for the purpose of using the fish as food, for social or ceremonial purposes or for purposes set out in a land claims agreement entered into with the Aboriginal organization.” All of these amendments were made without any consultation with First Nations.

Also through Bill C-38, the government repealed and replaced entirely the *Canadian Environmental Assessment Act* (CEAA) with a new CEAA 2012. The overriding purposes of replacing the Act was to streamline the environmental assessment process and dramatically reduce the number of federal authorizations required for resource development projects. CEAA 2012 represents a severe erosion of environmental protections and introduces a number of uncertainties in when and how the government proposes assessments be carried out and how First Nations will be meaningfully involved so as to protect their Aboriginal Title and Rights and Treaty Rights. The previous Act, which reflected decades of development of the assessment process in response to legal challenges and evolving environmental issues, will now be replaced with a less comprehensive and rigorous assessment process with shortened timelines and circumscribed public participation. CEAA 2012 means that British Columbia will likely have an increased role in assessments with minimal or no federal oversight. This has serious implications for First Nations in BC who have expressed for years deep concerns with BC’s assessment process and called for an overhaul of the process in collaboration with First Nations.

The federal *Species at Risk Act* (SARA) was developed to prevent wildlife species from becoming extinct. Many of the species identified under SARA are of importance to First Nations for food, social and ceremonial purposes. Supreme Court decisions, such as *R. v. Sparrow* (1990), provide guidance regarding priority access to fisheries in Canada. According to these decisions, Aboriginal people, fishing for sustenance, have priority over the fishery above all other categories, except for conservation measures. When SARA was introduced and implemented by Canada as a conservation measure, it transformed the legal and scientific landscape in ways which had the potential to have significant effects (both positive and negative) on First Nations’ access to fisheries and the lifestyles (traditional and modern) of the people that rely on those fisheries. Through Bill C-38, the federal government made changes to SARA to remove the requirement that permits be limited to a maximum of five years. Now, the permits under the Act will set out the date of their expiry, potentially meaning there may be long-term permits. This amendment removes any guaranteed review to evaluate ongoing impacts to endangered species after five years. This means that potential long-term permits

may continue even where there is a drastic decline in the population of a species affected by the permitted activity.

The *Navigable Waters Protection Act*, one of the oldest federal laws, was also amended through the omnibus Bills. Bill C-45 renames it the *Navigable Waters Act* and reduces the scope of the Act by dramatically limiting the number of waterways that will be protected. The Act only applies to the building of works (i.e. the construction, installation or maintenance of work undertaken across, over, in or under) in relation to any navigable body of water listed in Schedule 2 of the new Act. Lakes or rivers not on this list will no longer be protected by this Act. The list currently excludes some major waterways in BC, including salmon-bearing rivers and there is no rationale or explanation provided for how the list was developed. Focus under the Act is on providing federal protection only for Canada's 'busiest rivers, lakes and ocean' and do away with red tape created by the current Act that requires that docks and culverts need federal approval. Major pipeline and interprovincial power line projects will be exempt from earlier requirements that would have required proponents to prove they wouldn't damage or destroy navigable waterways.

The federal government is also responsible for drinking water and wastewater issues on reserve lands; however, there has never been a legislative framework in place for this purpose. In 2009, the federal government held 13 engagement sessions across Canada to gather First Nation perspectives on developing federal legislation that would call for the incorporation by reference of provincial/territorial regulations relating to potable water and wastewater (these regulations would be suitably modified to meet First Nation needs). Subsequently, the federal government introduced Bill S-11 in June 2010 that provides regulations to govern drinking water and waste water treatment in First Nations communities; regulations could be made on a province-by-province basis to mirror existing regulatory regimes, with adaptations to address the circumstances of First Nations living on those lands. The federal government's view is that this is a health and safety issue, not a rights issue. The Assembly of First Nations (AFN) has set out a number of concerns with the legislation, including a lack of adequate consultation on the draft bill, and the fact that the bill will not be accompanied by funding for infrastructure/facilities, skills, resources, training and support⁵. The bill was subsequently re-introduced in the Senate on February 29, 2012 as Bill S-8. It passed 3rd reading in the Senate, and is currently at 2nd reading in the House of Commons. Although some changes were introduced, the bill retains the same key problems. These include that regulations are created, but not capacity to comply; there is an inadequate non-derogation clause; and that the bill was created unilaterally, without incorporating feedback from First Nations or the Expert Panel study.

Provincial legislation

Although there are a number of provincial statutes which impact upon water, there is no overarching piece of legislation designed to protect water. Instead, the province has attempted to address various environmental issues through a number of separate legislative acts. Consequently, there is a conflict between "industry-specific legislation that grants permission for the use of water, and environmental legislation that attempts to minimize damage caused by resource development".⁶ The *Water Act* is the Province's main piece of legislation governing water resources in BC (however, provincial laws do not apply to Indian Reserves). It sets out how the provincial government makes decisions on

⁵ Assembly of First Nations; "Update on proposed federal legislation on First Nations drinking water"; Bill S-11, an act respecting the safety of drinking water on First Nations land, introduced into Parliament; 22 June 2010

⁶ *Ibid.*

water licensing, water management planning, water allocation planning, and drought management. This legislation was developed in 1909 and is therefore not equipped to deal with the modern context of industrial and agricultural development, habitat and fish stock challenges, and increased population, and new challenges such as climate change and population growth; further, this legislation was developed prior to the enshrinement of Aboriginal title and rights in the Canadian Constitution. British Columbia has developed a *Living Water Smart: British Columbia's Water Plan* which aims to respond to new challenges of managing water. The *Plan* includes commitments, among many others, to modernize the *Water Act*, develop a Water Science Strategy, and encourage more “water smart” solutions. The *Plan* also commits to: work with First Nations to improve drinking water systems in First Nations communities; develop tools to incorporate traditional ecological knowledge into information and decision-making (by 2015); through treaty negotiations and other agreements, support providing clean and safe domestic, agricultural and industrial water supply for First Nations communities; and, work toward preserving First Nations’ social and cultural practices associated with water. The implementation of the *Plan* began in 2010. First Nations have provided submissions and clearly articulated that First Nations must be fully engaged in the decision-making about water resources in their traditional territories. The Province did not incorporate this core message into the policy proposal phase of the *Water Act* Modernization process, where a new *Water Sustainability Act* is proposed. In October 2013, the Province released its *Water Sustainability Act for British Columbia Legislative Proposal (Proposal)*. Copies have been made widely available and submissions and feedback has been requested into this process. The proposal does not reflect nor address Aboriginal Title, Rights and Treaty Rights to water. The Province continues to legislate as though our Rights do not exist and as though it has exclusive Title and jurisdiction over water. It is expected that the new *Water Sustainability Act* will be introduced in the legislature in the spring of 2014.

Other water-related provincial legislation includes the *Environment Management Act* which establishes the Environmental Appeal Board to hear appeals under the *Water Act* and other environmental legislation, as an independent board. The *Water Protection Act* (1995) includes prohibition of bulk export and major inter-basin water transfers in B.C. The *Fish Protection Act* (1997) introduced further mechanisms to strengthen protection of fish and fish habitat from water allocation. The *Water Utility Act*, *Drinking Water Protection Act*, *Oil and Gas Activities Act*, *Forest and Range Practices Act*, *Environmental Assessment Act*, *Dike Maintenance Act*, *Drainage Ditch and Dikes Act*, and *Parks Act* are also key pieces of legislation that potentially impact Aboriginal Title, Rights and jurisdiction over water.

In a ground-breaking decision by BC’s Environmental Appeal Board in November, 2011, the Fort Nelson First Nation won the right under the provincial *Water Act* to appeal a provincial government decision awarding Nexen Inc. rights to withdraw 2 billion litres of water per year out of North Tsea Lakes. The province opposed the Nation’s legal right to do so.

INTERNATIONAL

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

International standards and laws provide important guidance regarding the protection of the rights of Indigenous peoples. The UNDRIP adopted by the UN General Assembly in September 2007, and endorsed by Canada in 2010 sets international minimum standards for the protection of the rights of Indigenous Peoples throughout the world. Two articles from the UNDRIP specifically relate to water rights:

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.

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;
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; and,
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.

The United Nations Environment Programme

In 1988, the United Nations Environment Programme convened an Ad Hoc Working Group of Experts on Biological Diversity to address the threat to species and ecosystem extinction by human activities. In 1991, the Working Group became the Intergovernmental Negotiating Committee, and created the *Convention on Biological Diversity*. Two articles from the Convention specifically relate to water rights:

Article 8

(j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.

Article 10

(c) Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements.

United Nations Sustainable Development (Agenda 21, Chapter 18)

Agenda 21 is an action plan of the United Nations with regard to Sustainable Development. It was developed from the UN Conference on Environment and Development (UNCED) held in Rio De

Janeiro, Brazil in 1992 for the UN, other multilateral organizations and governments worldwide, and can be implemented at the local, national and international levels.

Chapter 18, The Protection of the Quality and Supply of Freshwater Resources: Application of Integrated Approaches to the Development, Management and Use of Water Resources, include the following proposed programme sectors with respect to water use:

- (a) Integrated water resources development and management
 - i. The overall objective is to satisfy the freshwater needs of all countries for their sustainable development.
- (b) Water resources assessment
 - i. The overall objective of ensuring the assessment and forecasting of the quantity and quality of water resources, in order to estimate the total quantity of water resources available and their future supply potential, to determine their current quality status, to predict possible conflicts between supply and demand and to provide a scientific database for rational water resources utilization.
- (c) Protection of water resources, water quality and aquatic ecosystems
 - i. The overall objective is to evaluate the consequences which the various users of water have on the environment, to support measures aimed at controlling water-related diseases, and to protect ecosystems.
- (d) Drinking-water supply and sanitation
 - i. Protection of the environment and safeguarding of health through the integrated management of water resources and liquid and solid wastes;
 - ii. Institutional reforms promoting an integrated approach and including changes in procedures, attitudes and behavior, and the full participation of women at all levels sector institutions;
 - iii. Community management of services, backed by measures to strengthen local institutions in implementing and sustaining water and sanitation programmes; and,
 - iv. Sound financial practices, achieved through better management of existing assets, and widespread use of appropriate technologies.
- (e) Water and sustainable urban development
 - i. The objective of this programme is to support local and central Governments' efforts and capacities to sustain national development and productivity through environmentally sound management of water resources for urban use.
- (f) Water for sustainable food production and rural development
 - i. Water should be regarded as a finite resource having an economic value with significant social and economic implications reflecting the importance of meeting basic needs;
 - ii. Local communities must participate in all phases of water management, ensuring the full involvement of women in view of their crucial role in the practical day-to-day supply, management and use of water;
 - iii. Water resource management must be developed within a comprehensive set of policies for : (i) human health; (ii) food production, preservation and distribution;

- (iii) disaster mitigation plans; (iv) environmental protection and conservation of the natural resource base; and,
 - iv. It is necessary to recognize and actively support the role of rural populations, with particular emphasis on women.
- (g) Impacts of climate change on water resources
- i. To understand and quantify the threat of the impact of climate change on freshwater resources;
 - ii. To facilitate the implementation of effective national countermeasures, as and when the threatening impact is seen as sufficiently confirmed to justify such action; and,
 - iii. To study the potential impacts of climate change on areas prone to droughts and floods.

International human rights law can generally be used to reinforce domestic law arguments, and it is critical that international human rights law affirms that the collective rights of Indigenous peoples are human rights. For example, international law may be used to contest Bill S-8 in domestic courts. The government of Canada claims it is addressing issues, such as safe drinking water, that are included in the UNDRIP. Yet in regard to drinking water in Bill S-8, the government refuses to acknowledge that Indigenous peoples' collective rights are human rights; purports to allow abrogation of and derogation from constitutionally-protected Aboriginal and Treaty rights; subjugates First Nations law-making powers to federal law-making powers; and undermines the full and effective participation of First Nations in ensuring safe drinking water for their people. The real and potential injustices in Bill S-8 are likely to severely affect present and future generations of Indigenous peoples and individuals. Opening up existing Aboriginal and Treaty rights to abrogation and derogation sets a dangerous precedent. Indigenous peoples' right to self-determination, including self-government, is being undermined. Bill S-8 is incompatible with Indigenous peoples' rights and related State obligations in the UNDRIP. Such federal actions perpetuate colonialism and are the antithesis of a human rights-based approach.

On July 28, 2010, the UN General Assembly adopted a resolution declaring clean water and sanitation to be a human right. The United Nations resolution calls on "States and international organizations to provide financial resources, build capacity and transfer technology, particularly to developing countries, in scaling up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all." More than 124 Nations voted in favour of the resolution; however, Canada was one of 41 Nations who abstained from the vote. Since then, Canada recognized the human right to safe drinking water and sanitation at the Rio+20 UN Conference on Sustainable Development in 2012.

On July 8, 2001, Indigenous peoples from around the world gathered in Musqueam Territory and ratified an International Indigenous Declaration on Water (Appendix A), which reflects Indigenous Peoples' laws and traditions respecting water use and management. The Declaration on Water is "a powerful and eloquent statement about the importance of water to Indigenous peoples, combined with a call for action for Indigenous peoples to initiative efforts to protect water".⁷

⁷ Find this from the FNS WAM Submission

POLITICAL CONTEXT

- A number of political resolutions, agreements, declarations and statements exist amongst First Nations, and between First Nations and governments that could inform the development and implementation of a BC First Nations Water Rights Strategy.
- **Leadership Accord** - On March 17, 2005, the political executives of the BCAFN, FNS and UBCIC signed a *Leadership Accord* committing to work together on issues of common concern and to develop strategies and actions to bring about significant and substantive changes to government policy that will benefit First Nations in BC.
- **New Relationship** - In March 2005, the province and First Nations entered into a government-to government *New Relationship* founded on respect, recognition and accommodation of Aboriginal rights and title. Through the *New Relationship*, processes and new institutions for shared decision making about the land and resources and for revenue and benefit sharing will be established, and the Province and First Nations will work together to achieve strong governments, social justice and economic self-sufficiency for First Nations.
- **Transformative Change Accord** - On November 25, 2005, the Accord was signed by the BCAFN, FNS, UBCIC, the Government of Canada, and the Province of British Columbia. The Accord commits the parties to close the socio-economic gap between First Nations and other British Columbians over the next 10 years, reconcile Aboriginal title and rights with Crown title, and establish a new relationship based on mutual respect and recognition. Specific areas of focus under the Accord are: relationships; health; education; housing; and economic opportunities.
- **First Nations – Federal Crown Political Accord** – Signed in May 2005 between the Assembly of First Nations (AFN) and Indian and Northern Affairs Canada (now Aboriginal Affairs and Northern Development Canada) on behalf of Canada. This national agreement between focuses on the reconciliation, collaborative review and development of policies relating to First Nations rights and self-government.
- **Resolutions** – A number of resolutions relating to water have been passed by First Nations in BC, including recently:
 - BCAFN Resolution #11/2010 re. BC’s Water Modernization Discussion Paper re-affirmed that prior and un-extinguished water rights of the First Nations of British Columbia must be addressed and given priority before the Province proceeds with the legislative and policy changes proposed in the *Water Act Modernization* Discussion Paper. The Resolution also calls for a First Nations’ Right to Water Forum, and development of a legal position on water rights and a plan to implement First Nations’ jurisdiction over their waters, and to work towards a national policy in recognition of the UNDRIP and in light of Bill S-11 (now Bill S-8);
 - FNS Resolution #0608.11 re: BC Regional Engagement Sessions on the Elements of a Legislative Framework for Drinking Water and Wastewater in First Nation Communities called for efforts to ensure that consultation processes on the development of a regulatory regime for drinking water and wastewater in First Nations communities meet First Nations’ needs;

- FNS Resolution #0609.03 re: Recognition of First Nations Water Rights affirmed that First Nations' water rights must be recognized in British Columbia, including in treaty negotiations;
- FNS Resolution #0910.04 re. Water Action Plan and Forum directed the FNS to work with the BCAFN and FNS to develop a draft Action Plan to set out collective First Nations' views on water issues, achieve recognition of First Nations' priority and unextinguished water rights, and to challenge the Province and Canada's legislation and legislative policy initiatives regarding water. The resolution also call for a First Nations Right to Water Forum;
- UBCIC Resolution 2010-10 re *British Columbia's Water Act Modernization Discussion Paper* ("WAM") supports all First Nations who take Action to defend and protect the sacred waters of their Territories; states that the prior, superior and unextinguished water rights of the First Nations of British Columbia must be addressed and given priority before the Province proceeds with legislative and policy change; and calls for the development of a BC First Nations Water Action Plan and the holding of a First Nations Water Forum;
- UBCIC Resolution 2010-36 re. Action on Bill S-11 "Safe Drinking Water for First Nations" called for the federal government to abandon or severely amend Bill S-11 by incorporating input from First Nations as well as recommendations from the Expert Panel on Safe Drinking Water and a full impact analysis for each region; and,
- FNS Resolution #0911.04 and UBCIC Resolution 2011-52 provided support in principle for the draft BC Collaborative Watershed Governance Accord.
- UBCIC Resolution 2013-38 and FNS Resolution #0913.12 calls for the Provincial government to address and give priority to BC First Nations un-extinguished water rights and to seek a Memorandum-of-Understanding with the Province to establish a relationship to address First Nations concerns regarding Provincial water initiatives, including the *Proposed Water Sustainability Act*.

THE WAY FORWARD

As set out in the context section above, we are facing numerous challenges with respect to the health and sustainability of water resources.

- Aboriginal title and rights, and treaty rights with respect water resources – including management of the resource – are not recognized by the provincial or federal crown;
- The population of the province of British Columbia is increasing, placing greater pressure on a limited resource; and,
- Climate change is having an effect on rainfall patterns and stream temperatures, leading to risks of wildfires, drought, and to fisheries resources, among others.

The water supply is becoming polluted from urban development, agriculture, and resource development. In First Nations communities across the country, there are currently 113 drinking water advisories, and 73% of communities have medium or high risk water and waste water infrastructure systems. We have continuing Aboriginal legal systems and invaluable traditional knowledge that have enabled us to be effective stewards of the resources since time immemorial, which, applied today, could be the key to addressing these emerging challenges.

In this context, BC First Nations passed resolutions calling upon the BC Assembly of First Nations, First Nations Summit, and Union of British Columbia Indian Chiefs to work together to coordinate the development of a BC First Nations Water Action Plan to set out collective First Nations views on water issues, achieve recognition of First Nations' priority water rights, and to set out an approach to federal and provincial legislation and policy regarding water (BCAFN Resolution #11/2010, FNS Resolution #0609.03, UBCIC Resolution #2010-03, FNS Resolution 0913.12 and UBCIC Resolution #2013-38).

This Strategy outlines the collective vision of First Nations as it relates to water resources, and a set of fundamental principles for management of the resource. The Strategy is organized in accordance with four strategy areas: 1) Political; 2) Legal; 3) Community Support; and, 4) Education. Within each pillar, a number of action items are proposed representing the agreed-upon collective efforts of BC First Nations on water issues at the provincial level.

The BC Assembly of First Nations, First Nations Summit, and Union of British Columbia Indian Chiefs were also directed to seek resources to hold a province-wide First Nations Water Forum to review and provide direction on the draft Water Action Plan, which we have termed "Draft BC First Nations Water Rights Strategy". This strategy has been prepared to facilitate discussion and feedback from Chiefs, technicians, and First Nations communities. It will only be finalized when approved by Chiefs by resolution. This strategy is a tool for collective advocacy and does not in any way affect the self-determination of each First Nation in BC.

WATER ACTION PLAN

VISION

Our ancestors have passed onto us the responsibility of protecting and managing our land, waters and resources for future generations. Our vision is for First Nations of British Columbia to:

- assert our jurisdiction to protect and be stewards of our water resources despite the many challenges;
- achieve water sustainability through balancing spiritual, environmental, social, economic and cultural values; and,
- have water security and access to clean drinking water protected and guaranteed.

PRINCIPLES

- ***Respect and Recognition:*** Aboriginal title and rights arise from prior use and occupation of the land and waters, and include the right to manage water resources. This jurisdiction over our waters must be recognized and respected by governments. We respect the rights and title of other First Nations and support each other to advance those rights.
- ***Stewardship and Sustainability:*** The use of water resources carries with it the responsibility to treat those resources respect and ensure their continued and unimpaired use and enjoyment by future generations. Water resource use should be conducted in an environmentally, socially, and economically sustainable manner. The protection, maintenance, and rehabilitation of water resources take precedence in managing water resources. First Nations agreed upon shared decision making models must be put in place for First Nations to exercise their jurisdiction and manage water resources.
- ***Culture and Traditions:*** We respect the cultural diversity among BC First Nations and the importance of continuing and supporting each other's traditional practices. We have traditional knowledge accumulated and tested over time immemorial and which must play a leading role in the management of water resources. Sufficient quantities of water must always be available to First Nations to exercise their spiritual and cultural practices in good quality water sources.
- ***Innovation:*** We will be open to considering new approaches and technologies in the management of water resources and with the aim of conserving water resources.
- ***Economic Opportunities:*** Aboriginal title and rights include an economic component. First Nations must benefit from sustainable economic opportunities based on water resources.
- ***Accountability:*** We are accountable to First Nations communities in all of our activities. We must take direction from First Nations communities, and report to First Nations regularly on progress, as it relates to the implementation of this Strategy.
- ***Education, Training and Capacity:*** Opportunities to learn will be promoted to build individual, community and governance strength and capacity. Appropriate financial resources are needed to effectively engage in water resource management.

- ***Collaboration, Partnership and Inclusivity:*** Collaborative and inclusive partnerships and dialogue processes which is creative and innovative with new ideas and can build trust are key. We will commit to working with government, educational, and public and private sector groups on shared interests.
- ***Flexibility and Adaptability:*** This Plan, and approaches used to implement this Plan, must adapt with changing circumstances and priorities.

STRATEGIES

This Strategy contains four main strategies, as directed by resolution:

- ***Political Strategy:*** The purpose of the Political Strategy is to identify key areas for First Nations political advocacy related to water and Aboriginal title and water rights.
- ***Legal and Policy Strategy:*** The purpose of the Legal and Policy Strategy is to identify key areas for further legal and policy advocacy, action, analysis and support related to water and Aboriginal title and water rights.
- ***Community Support Strategy:*** The purpose of the Community Support Strategy is to identify tools and resources to support First Nations communities to exercise their jurisdiction over water, and improve and manage water infrastructure and water treatment.
- ***Research and Education Strategy:*** The purpose of the Research and Education Strategy is to identify key areas and partnerships for research and information-sharing relating to water resources, and to identify mechanisms for educating the public, governments, and others about Aboriginal rights to and interests in water.

In the following sections, specific action items are proposed for each strategy.

POLITICAL STRATEGY

Purpose: The purpose of the Political Strategy is to identify key areas for First Nations political advocacy related to water and Aboriginal water rights.

Actions:

- Develop and implement a comprehensive political advocacy strategy for water, to include:
 - Agreed-upon key messages from First Nations, such as:
 - International standards as set out in the UNDRIP on the Rights of Indigenous Peoples must be upheld by governments and industry;
 - Provincial government must uphold the commitments in the New Relationship, including shared decision making, resource revenue and benefit sharing, Land Use Planning, management and tenuring;
 - Governments must uphold their legal and constitutional duties to consult and accommodate consistent with the honour of the Crown;

- Any legislative changes that impact on Aboriginal title and rights and treaty rights must be developed in collaboration with First Nations on a government-to-government basis;
- First Nations traditional knowledge must be respected in decision-making about water;
- Ensure Federal Government fully consults or obtains the consent of First Nations with regard to any laws or policies that may impact the First Nations right to water including environmental legislations;
- Ensure the moratoriums on bulk sales of water continue;
- Develop Marine Use Plans for waters within First Nations territories and where possible, develop jointly with governments to ensure sufficient quantities and quality of water are available; and,
- Work to change Aboriginal Affairs and Northern Development Canada's policies in regards to solutions for water for the community.
- Approaches and mechanisms of political advocacy, such as:
 - Efforts at local, regional, national and international levels;
 - Meetings with key federal and provincial government officials;
 - Meetings with educational institutions, environmental groups, and other strategic allies;
 - Develop a communications strategy for mainstream media, governments, First Nations and the general public inclusive of a social media campaign that will get out the key messages of First Nations positions on water; and,
 - Develop courses/toolkits to ensure that First Nations people can lobby governments effectively.
- Priority issues for political advocacy, such as:
 - Ensure that climate changes impact are understood and part of any plans, legislation and policies, and help develop plans for conservation of water where needed;
 - Unilateral legislative changes without consultation with First Nations;
 - Chronic problems with federal and provincial legislation, such as the "no net loss" policy, Metal Mining Effluent Regulations, Bill S-8 *Safe Drinking Water for First Nations Act*, and environmental assessment processes;
 - The development, implementation and appropriate resourcing of water quality infrastructure for First Nations communities;
 - Any upcoming / contemplated legislative changes with respect to water;
 - Revenue-sharing with respect to water; and,
 - Need for regulations and monitoring of hydraulic fracturing (fracking), to be developed jointly with First Nations.
- Timelines and milestones:
 - Support First Nations to collectively, and/or individually, develop Water Declarations upholding Aboriginal title and rights and

traditional laws to water and to develop Marine Use Plans for the water within their territories;

- Develop partnerships with local governments, other First Nations, to help plan for and design management bodies of governance structures for water that will meet the needs of all parties;
- As appropriate, develop protocols with government and others to improve relationships with respect to water, set out requirements for governments to engage directly with First Nations on policy and legislative change that may impact on Aboriginal title and rights, and create opportunities for increased support and resources for First Nations relating to water;
- Keep regularly engaged with the Assembly of First Nations and other regions in terms of ongoing work on water issues;
- Foster effective partnerships and alliances with Indigenous Peoples worldwide with respect to water issues; and,
- Secure First Nations participation and representation on government, industry, international and regional bodies dealing with water issues.

LEGAL AND POLICY STRATEGY

Purpose: The purpose of the Legal and Policy Strategy is to identify key areas for further legal advocacy, action, analysis and support related to water and Aboriginal title and water rights.

Actions:

- Develop, keep updated, and circulate a plain-language summary of all existing legislation and relevant court decisions relating to water and water resources;
- Conduct a review and analysis of all relevant legislation and policy with respect to water and develop recommendations and options for priority changes to legislation and policy;
- Create and regularly update an overview and timeline of upcoming legislative and policy development processes regarding water and, based on direction from First Nations, develop submissions and legislative and policy proposals;
- Ensure that First Nations perspectives are incorporated into relevant studies and reports on water (including the provincial State of Our Water report that was to be released in 2012 and every 5 years thereafter);
- Assess current data available, and monitoring conducted, on water, and develop recommendations for improvements, including how best to safely incorporate traditional knowledge;
- Undertake research on sustainable economic opportunities relating to water, including revenue-sharing and new technologies, and share that information with First Nations;
- Propose regulations for hydraulic fracturing (fracking) in BC;
- Call for a moratorium on mining in sacred headwaters;
- First Nations agreed upon shared decision making models must be out in place for First Nations to exercise their jurisdiction and manage water resources; and,
- Create a process to support and provide technical expertise to First Nations when governments are proposing new legislation to ensure that First Nations can fully engage in the process. Where agreed, a collective strategy or body may be put forward to efficiently and effectively participate in processes and ensures that First Nations mandate the strategy/body and that the final decision makers are the First Nations.

COMMUNITY SUPPORT STRATEGY:

Purpose: The purpose of the Community Support Strategy is to identify tools and resources to support First Nations communities to exercise their jurisdiction over water, and improve and manage water infrastructure and water treatment.

Actions:

- Provide political support to First Nations communities (upon request) in exercising their rights to water and increasing their presence on waters in their traditional territories;
- Develop information / a toolkit to support First Nations to implement their rights to water, including case studies or best practices for:

- Water guardianship programs (see Haida Nation Guardianship Program);
 - Language recovery programs regarding First Nations connection to water;
 - Traditional laws and governance systems for water;
 - Rediscovery programs to transmit traditional knowledge about water resources;
 - Relationship-building at regional and local levels regarding water management, water servicing, etc.; and,
 - Strategies to address hydraulic fracturing that is occurring in traditional territory without consultation.
- Develop and circulate plain-language information and tips on household water conservation;
 - On a biennial basis, hold a recognition or awards ceremony to recognize First Nations for excellence in water stewardship;
 - Support a First Nations information-sharing network on water issues (through the First Nations of BC web portal, an email list serve, or existing website and Facebook pages for water operators) to enable communities to share information, concerns, and perspectives, and provide mutual support on water issues;
 - Support First Nations to improve stream and water quality in their communities and territories through sharing information about, and advocating for financial resources to support:
 - Stream restoration projects;
 - Design and construction of improved water infrastructure; and,
 - Maintenance of water and wastewater systems (including capacity for water operators).
 - Develop protocols with and among First Nations and Government to improve relationships and to give certainty to First Nations over the protection of water;
 - Find reliable sources of information or research water resources to help First Nations know all sources of water, viability of water in water bodies, streams that are at risk for climate change or that are drying up, develop a water storage strategy for First Nation if in areas of scarcity, research the relationship between ground water and surface water so that First Nations can understand how the taking of ground water effects fisheries and their water supply, and also affect of “polluted” or “tainted groundwater can affect surface water;
 - Work with Waters Branch to ensure that existing water licenses are amended to reflect the needed volume from licensees, old licenses are retired;
 - Develop water systems that could incorporate the creation of energy for the community (eg. West Van and Nanaimo);
 - Become familiar with water desalination processes and utilize this process as necessary for water scarcity or other appropriate use;
 - Find ways to utilize systems for wastewater and use of wastewater when fresh water does not need to be used, also use systems which utilize rain water;and,
 - Water Use Planning is essential among First Nations communities due to competing environmental, social and economic interests such as climate change, mining, agriculture, forestry and infrastructure. First Nations must be involved in the decision-making, policy and legal processes that impact exploration,

jurisdiction and long term sustainability of the rights to use, manage and protect water resources.

EDUCATION STRATEGY

Purpose: The purpose of the Education Strategy is to identify key areas and partnerships for research and information-sharing relating to water resources, and to identify mechanisms for educating the public, governments, and others about Aboriginal rights to and interests in water.

Actions:

- Support and encourage First Nations individual efforts in pursuing education in water-related fields, such as environmental law, biology, agriculture, forestry, engineering, bio-regional planning, and water systems operations and maintenance;
- Support existing efforts, and develop new opportunities as required, for mentoring, “train the trainer”, and capacity-building opportunities for First Nations in all water sectors;
- Hold workshops to share information or build capacity on water issues;
- Develop curriculum materials on water issues, including water conservation, for First Nations schools;
- Develop and implement a public education campaign about Aboriginal title and rights to water, and the sacred connection that First Nations peoples have to water resources, including:
 - Meetings and partnership-building with educational institutes and non-profit organizations;
 - Speaking engagements and lectures;
 - Participation at any public water workshops or conferences;
 - Meetings with relevant and effective environmental groups; and,
 - Cross-cultural awareness and training with government, industry, and others.
- Review the Environmental-Aboriginal Guardianship through Law and Education (EAGLE) materials on Aboriginal Peoples’ Water Rights in British Columbia, and consider how they might be best utilized for education of multiple audiences (internal and external).

IMPLEMENTATION

This strategy has been prepared to facilitate discussion and feedback from Chiefs, technicians, and First Nations communities. It will only be finalized when approved by Chiefs through resolution. This Plan is a tool for collective advocacy and does not in any way affect the self-determination of each First Nation in BC.

Water is a cross-cutting issue, with implications for all sectors. The implementation of this Strategy requires the coordinated attention of: First Nations; First Nations political organizations (BCAFN, FNS and UBCIC); and other sector-specific First Nations organizations (such as the First Nations Fisheries Council, First Nations Energy & Mining Council, First Nations Forestry Council, First Nations Health Council). Each of these organizations has their own respective Action Plans which include many items relating to water, such as water quality for health purposes, environmental assessment

and protection, energy projects, climate change, and habitat restoration and protection, among others.

Once this Strategy is finalized, no new organization will be created to implement this Strategy. Instead, we will rely upon the expertise we have already created. An inter-organization working group will be struck to coordinate the efforts of all parties committed to the effective implementation of this Plan. This working group will be open to all interested participants, and will:

- Develop work plans, including timelines and the division of actions into political and technical streams;
- Report regularly to First Nations through effective communications (i.e. website, newsletters, etc.), and presentations to the assemblies of the BCAFN, FNS and UBCIC and other forums; and,
- Create a process for monitoring, measuring and evaluating progress.

APPENDIX A: INDIGENOUS DECLARATION ON WATER- JULY 8TH, 2001, MUSQUEAM TERRITORY⁸

As Indigenous Peoples, we raise our voices in solidarity to speak for the protection of Water. The Creator placed us on this earth, each in our own sacred and traditional lands, to care for all of creation. We have always governed ourselves as Peoples to ensure the protection and purity of Water. We stand united to follow and implement our knowledge, laws and self-determination to preserve Water, to preserve life. Our message is clear: Protect Water Now!

As Indigenous Peoples, we recognize, honour and respect Water as a sacred and powerful gift from the Creator. Water, the first living spirit on this earth, gives life to all creation. Water, powerful and pristine, is the lifeblood that sustains life for all peoples, lands and creation. We know that by listening to the songs of the Water, all creation will continue to breathe. Our knowledge, laws and ways of life teach us to be responsible at all times in caring for this sacred gift that connects all life. In ceremony and as time comes, the Water sings. Her songs begin in the tiniest of streams, transforms to flowing rivers, travels to majestic oceans, and thundering clouds, and back to the earth, to begin again. When Water is threatened, all living things are threatened. Our hearts cry when we see the ways in which people, through governments and multinational corporations, destroy the Water in their greed. As Water has given us life, we must fight for the life of Water. We must continue to hear her songs and protect this sacred gift from the Creator. We must be prepared.

In this time, we see that our Waters are being polluted with chemicals, pesticides, sewage, disease and nuclear waste. We see our Waters being depleted or converted into destructive uses through the diversion of Water systems to different lands, unsustainable economic, resource and recreational development, the transformation of excessive amounts of Water into energy, and the treatment of Water as a commodity, a property interest, that can be bought, sold and traded in global and domestic economies. We see our Waters governed by imposed foreign, colonial and inhumane laws and practices that disconnect us as Peoples from the ecosystem. These laws do not respect that life is sacred, that Water is sacred.

Throughout Indigenous territories worldwide, we are witnessing the increasing scarcity of fresh Waters and the lack of access that we and other life forms such as the land, forests, animals, plants, marine life, and air have to our Waters. In these times of scarcity, we see governments creating commercial interests in Water that lead to inequities in distribution and prevent our access to the life giving nature of Water. When Water is disrespected, misused and poorly managed, we see the life threatening impacts on all of creation. We know that our Rights to Self-Determination, jurisdiction, knowledge and laws to protect the Water are being disregarded, violated and disrespected. We hear the sad and painful songs of the Water, of the land and our peoples. We hear the Waters call for protection now.

As Indigenous Peoples, we express our power, to protect the Water and call on all others concerned to open your minds and hearts and listen to our protection song, our message and support the calls for actions that follow:

⁸ Available online at: http://www.blueplanetproject.net/documents/Indigenous_Declaration.pdf

- We recognize that Water is a sacred gift from the Creator that gives, sustains and nurtures all life on earth. We recognize the need to share our understanding that Water is sacred and essential for the survival of all life on earth.
- We recognize that as stewards of the lands and waters, and as sovereign peoples who will never sell nor trade their rights to Water, we Indigenous peoples retain inherent rights and responsibilities to protect Water.
- We recognize that our knowledge and sustainable practices are essential links to the protection of Water.
- First Nations rights include the use of pristine waters for our sacred ceremonies with sufficient water flows.
- We recognize Indigenous governments and their jurisdiction to develop laws and treaties to protect Water.
- We support the implementation of Indigenous legal systems in this effort. To retain our connection to our Waters, we must have the right to manage and to make decisions about Waters at all levels.
- We resolve to communicate and express our power, our common interest to protect Water and life, through the building of Water alliances and networks worldwide.
- We support all Indigenous peoples and grass roots movements that organize to protect Water based on their ancestral teachings and laws, and who also respect the role of Indigenous elders, women and youth to protect Water.
- We call for the creation of an international monitoring body to track the trade of Water in relation to Indigenous peoples.
- We resolve to use and develop indigenous, domestic and international mechanisms to hold corporations, domestic governments and international financial institutions such as the World Bank and the International Monetary Fund accountable for their actions that threaten the integrity of Water, our land and our peoples. Systems of restoration and compensation have to be put in place to restore the integrity of water and eco-systems.
- We seek support and solidarity for the opposition to any free trade agreements that purport to privatize Water and trade Water as a commodity, including the North American Free Trade Agreement and the proposed Free Trade Area of the Americas.
- We endorse declarations and treaties that enshrine the goals stated above such as the Cochabamba Declaration and the Treaty Initiative of the Council of Canadians representing genuine efforts by concerned citizens, communities and grass-roots peoples to protect water.

APPENDIX B: SIMPCW WATER DECLARATION (2010)⁹

Relationship to Water

1. We, the Simpcw First Nation, affirm our relationship to Mother Earth and responsibility to future generations to raise our voices to speak for the protection of water. We were placed in a sacred manner on this earth, each in our own sacred and traditional lands and territories to care for all of creation and to care for water.

2. We recognize, honor and respect water as sacred and sustains all life. Our traditional knowledge, laws and ways of life teach us to be responsible in caring for this sacred gift that connects all life.

3. Our relationship with our lands, territories and water is the fundamental physical cultural and spiritual basis for our existence. This relationship to our Mother Earth requires us to conserve our freshwaters and oceans for the survival of present and future generations. We assert our role as caretakers with rights and responsibilities to defend and ensure the protection, availability and purity of water. We stand united to follow and implement our knowledge and traditional laws and exercise our right of self-determination to preserve water, and to preserve life.

Conditions of Our Waters

4. The ecosystems of the world have been compounding in change and in crisis. In our generation we see that our waters are being polluted with chemicals, pesticides, sewage, disease, radioactive contamination and ocean dumping from mining to shipping wastes. We see our waters being depleted or converted into destructive uses through the diversion and damming of water systems, mining and mineral extraction, mining of groundwater and aquifer for industrial and commercial purposes, and unsustainable economic, resource and recreational development, as well as the transformation of excessive amounts of water into energy. In the tropical southern and northern forest regions, deforestation has resulted in soil erosion and thermal contamination of our water. We also see the results of the mountain pine beetle on our forests and the resulting increased run off from dead trees and not holding water within the eco-system.

5. The burning of oil, gas, and coal, known collectively as fossil fuels is the primary source of human-induced climate change. Climate change, if not halted, will result in increased frequency and severity of storms, floods, drought and water shortage. Globally, climate change is worsening desertification. It is polluting and drying up the subterranean and water sources, and is causing the extinction of precious flora and fauna. Many countries in Africa have been suffering from unprecedented droughts. The most vulnerable communities to climate change are Indigenous Peoples and impoverished local communities occupying marginal rural and urban environments. Small island communities are threatened with becoming submerged by rising oceans.

6. We see our waters increasingly governed by imposed economic, foreign and colonial domination, as well as trade agreements and commercial practices that disconnect us as peoples from the ecosystem. Water is being treated as a commodity and as a property interest that can be bought, sold

⁹ Available online at: www.ubcic.bc.ca/files/SIMPCW_WaterDeclaration.doc

and traded in global and domestic market-based systems. These imposed and inhumane practices do not respect that all life is sacred, that water is sacred.

7. When water is disrespected, misused and poorly managed, we see the life threatening impacts on all of creation. We know that our right of self-determination and sovereignty, our traditional knowledge, and practices to protect the water are being disregarded violated and disrespected.

8. Throughout Indigenous territories worldwide, we witness the increasing pollution and scarcity of fresh waters and the lack of access that we and other life forms such as the land, forests, animals, birds, plants, marine life, and air have to our waters, including oceans. In these times of scarcity, we see governments creating commercial interests in water that lead to inequities in distribution and prevent our access to the life giving nature of water.

Right to Water and Self Determination

9. Secwepemc people have the right to self-determination. By virtue of that right we have the right to freely exercise full authority and control of our natural resources including water. We also refer to our right of permanent sovereignty over our natural resources, including water

10. Self-determination for Indigenous Peoples includes the right to control our institutions, territories, resources, social orders, and cultures without external domination or interference..

11. Self-determination includes the practice of our cultural and spiritual relationships with water, and the exercise of authority to govern, use, manage, regulate, recover, conserve, enhance and renew our water sources, without interference.

12. International law recognizes the rights of Indigenous Peoples to:

- Self-determination
- Ownership, control and management of our traditional territories, lands and natural resources
- Exercise our customary law
- Represent ourselves through our own institutions
- Require free prior and informed consent to developments on our land
- Control and share in the benefits of the use of, our traditional knowledge.

13. Member States of the United Nations and international trade organizations, international and regional financial institutions and international agencies of economic cooperation are legally and morally obligated to respect and observe these and other related collective human rights and fundamental freedoms. Despite international and universal recognition of our role as caretakers of Mother Earth, our rights to recover, administer, protect and develop our territories, natural resources and water systems are systematically denied and misrepresented by governmental and international and domestic commercial interests. Our rights to conserve, recreate and transmit the totality of our cultural heritage to future generations, our human right to exist as Peoples is increasingly and alarmingly restricted, unduly impaired or totally denied.

14. Indigenous Peoples interests on water and customary uses must be recognized by governments, ensuring that Indigenous rights are enshrined in national legislation and policy. Such rights cover both water quantity and quality and extend to water as part of a healthy environment and to its

cultural and spiritual values. Indigenous interests and rights must be respected by international agreements on trade and investment, and all plans for new water uses and allocations.

Traditional Knowledge

15. Our traditional practices are dynamically regulated systems. They are based on natural and spiritual laws, ensuring sustainable use through traditional resource conservation. Long-tenured and place-based traditional knowledge of the environment is extremely valuable, and has been proven to be valid and effective. Our traditional knowledge developed over the millennia should not be compromised by an over-reliance on relatively recent and narrowly defined western reductionist scientific methods and standards. We support the implementation of strong measures to allow the full and equal participation of Indigenous Peoples to share our experiences, knowledge and concerns. The indiscriminate and narrow application of modern scientific tools and technologies has contributed to the loss and degradation of water.

Consultation and Accommodation

16. To recover and retain our connection to our waters, we have the right to make decisions about waters at all levels. Governments, corporations and intergovernmental organizations must, under international human rights standards require Indigenous Peoples free prior and informed consent and consultation by cultural appropriate means in all decision-making activities and all matters that may have affect. These consultations must be carried out with deep mutual respect, meaning there must be no fraud, manipulation, and duress nor guarantee that agreement will be reached on the specific project or measure. Consultations include:

- a. To conduct the consultations under the communities own systems and mechanisms;
- b. The financial support of Simpcw First Nation to fully participate in such consultations; and;
- c. Simpcw First Nation peoples exercise of both their local and traditional decision-making processes, including the direct participation of their spiritual and ceremonial authorities, individual members and community authorities as well as traditional practitioners of subsistence and cultural ways in the consultation process and the expression of consent for the particular project or measure.
- d. Respect for the right to say no.
- e. Ethical guidelines for a transparent and specific outcome.

Plan of Action

17. We resolve to sustain our ancestral and historical relationships with and assert our inherent and inalienable rights to our lands and waters.

18. We resolve to maintain, strengthen and support Indigenous Peoples' movements, struggles and campaigns on water and enhance the role of Indigenous elders, women and youth to protect water.

19. We seek to establish a Working Group of Indigenous Peoples on Water, which will facilitate linkages between Indigenous Peoples and provide technical and legal assistance to Indigenous communities who need such support in their struggles for the right to land and water. We will encourage the creation of similar working groups at the local, national and regional levels.

20. We challenge the dominant paradigm, policies, and programs on water development, which includes among others; government ownership of water, construction of large water infrastructures; corporatization; the privatization and commodification of water; the use of water as a tradable commodity; and the liberalization of trade in water services, which do not recognize the rights of Indigenous Peoples to water.

21. We strongly support the recommendations of the World Commission on Dams (WCD) on water and energy development. These include the WCD report's core values, strategic priorities, the "rights and risks framework" and the use of multi-criteria assessment tools for strategic options assessment and project selection. Its rights-based development framework, including the recognition of the rights of Indigenous Peoples in water development is a major contribution to decision-making frameworks for sustainable development.

22. We call on the governments, multilateral organizations, academic institutions and think tanks to stop promoting and subsidizing the institutionalization and implementation of these anti-people and anti-nature policies and programs.

23. We demand a stop to mining, logging, energy and tourism projects that drain and pollute our waters and territories. We are not adverse to sustainable development on *Simcpwulucw*.

24. We demand that the World Bank, the International Monetary Fund (IMF), regional banks like the Asian Development Bank, African Development Bank, Inter-American Development Bank, stop the imposition of water privatization or 'full cost recovery' as a condition for new loans and renewal of loans of developing countries.

25. We ask the European Union to stop championing the liberalization of water services in the General Agreement on Services (GATS) of the World Trade Organization (WTO). This is not consistent with the European Commission's policy on Indigenous Peoples and development. We will not support any policy or proposal coming from the WTO or regional trade agreements like the NAFTA (North American Free Trade Agreement, Free Trade Area of the Americas (FTAA), on water privatization and liberalization and we commit ourselves to fight against such agreements and proposals.

26. We resolve to replicate and transfer our traditional knowledge and practices on the sustainable use of water to our children and the future generations.

27. We encourage the broader society to support and learn from our water management practices for the sake of the conservation of water all over the world.

28. We call on the States to comply with their human rights obligations and commitments to legally binding international instruments to which they are signatories to, including but not limited to, such as the Covenant on Civil and Political Rights, the Covenant on Economic, Cultural and Social Rights, International Convention on the Elimination of all Forms of Racial Discrimination; as well as their obligations to conventions on the environment, such as the Convention on Biological Diversity, Climate Convention, and Convention to Combat Desertification.

29. We insist that the human rights obligations of States must be complied with and respected by their international trade organizations. These legally binding human rights and environmental obligations do not stop at the door of the WTO and other regional and bilateral trade agreements.

30. We resolve to use all political, technical and legal mechanisms on the domestic and international level, so that the States, as well as transnational corporations and international financial institutions will be held accountable for their actions or inactions that threaten the integrity of water, our land and our peoples.

31. We call on the States to respect the spirit of Article 8j of the Convention on Biological Diversity as it relates to the conservation of traditional knowledge on conservation of ecosystems and we demand that the Trade Related Aspects of the Intellectual Property Rights (TRIPS) Agreement be taken out of the World Trade Organization (WTO) Agreements as this violates our right to our traditional knowledge.

32. We call for the end of State financial subsidies to fossil fuel production and processing and for aggressive reduction of greenhouse gas emissions calling attention to the United Nations Intergovernmental Panel on Climate Change (IPCC) that reported an immediate 60% reduction of CO2 is needed to stabilize global warming. We also call on governments to stop the profligate use of water in extracting oil and gas and the reckless use of water in the production of fossil fuels.

33. We will ensure that international and domestic systems of restoration and compensation be put in place to restore the integrity of water and ecosystems.

Signed by Simpcw First Nation Chief and Council