

FIRST NATIONS AND BC'S *WATER SUSTAINABILITY* ACT

**Working Group Recommendations for a New Engagement Framework for Policy
and Regulation Development**

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FIRST NATIONS
FISHERIES COUNCIL

About the

FNFC's *Water for Fish* Freshwater Initiative

Goal:

First Nations in BC are informed, resourced and united to exercise governance and jurisdiction of fresh waters in their traditional territories.

Activities include:

- BC First Nations Water Governance Roundtable
- BC First Nations Water Network
- Information sharing and capacity building



Project Background

- BC Ministry of Environment and Climate Change Strategy provided \$35,000 to provide recommendations on a new Engagement Framework to guide development of remaining *Water Sustainability Act* regulations and policies in accordance with BC reconciliation commitments
- First Nations Working Group
 - 10 leadership and staff from across BC
- FNFC facilitated working group process with MoE supporting agenda development and participate in some meetings
- Recommendations report written by Mandell Pinder and FNFC and finalized in May 2019

Project Timeline

First Nations leadership support
2017 & 2018

Agreement between
FNFC and MoECCS
March 2018

First Nations
Working Group meetings
November 2018 – May 2019

Working Group Recommendations finalized
& supported by First Nations leadership
May & June 2019



Project Rationale

- First Nations have sacred relationships and Rights to water
- First Nations have a strong interest in managing and governing water in their traditional territories*
- *Water Sustainability Act* has high potential for impact on Rights
- Dissatisfaction with process used to engage First Nations throughout Water Act Modernization period
- Broad support from First Nations leadership to develop a new approach to WSA engagement
- Strong BC reconciliation commitments

* See *Indigenous Watershed Initiatives and Co-Governance Arrangements: A BC Systematic Review* (2016).

FIRST NATIONS WORKING GROUP RECOMMENDATIONS

What can regulation and policy development look like in the age of reconciliation?

FIRST NATIONS WORKING GROUP RECOMMENDATIONS

A concrete path to upholding reconciliation commitments in the realm of regulation and policy development specific to protecting fresh water resources across British Columbia



1.

Reset the Relationship on Proper Foundations of Recognition and Respect

- BC should commit to reviewing and reforming the Act and priority regulations currently in force
- A collaborative process of review and reform would uphold BC's commitment to "collaborate with Indigenous peoples on changes to provincial laws, policies and practices" (*BC Draft Principles*)

2.

UNDRIP is the minimum standard moving forward

- A number of key articles in UNDRIP are relevant to law and policy reform initiatives
- WSA Engagement Framework based on these Recommendations is a tangible opportunity for BC to put reconciliation commitments into practice

3.

Enable harmonious First Nations-Crown Water Governance and Management Processes

- Collaboration requires that each party participates on equal footing
- First Nations should be supported to revitalize and articulate their own laws, policies, processes and strategies related to fresh water which can stand alongside Crown laws, policies, processes etc.

4.

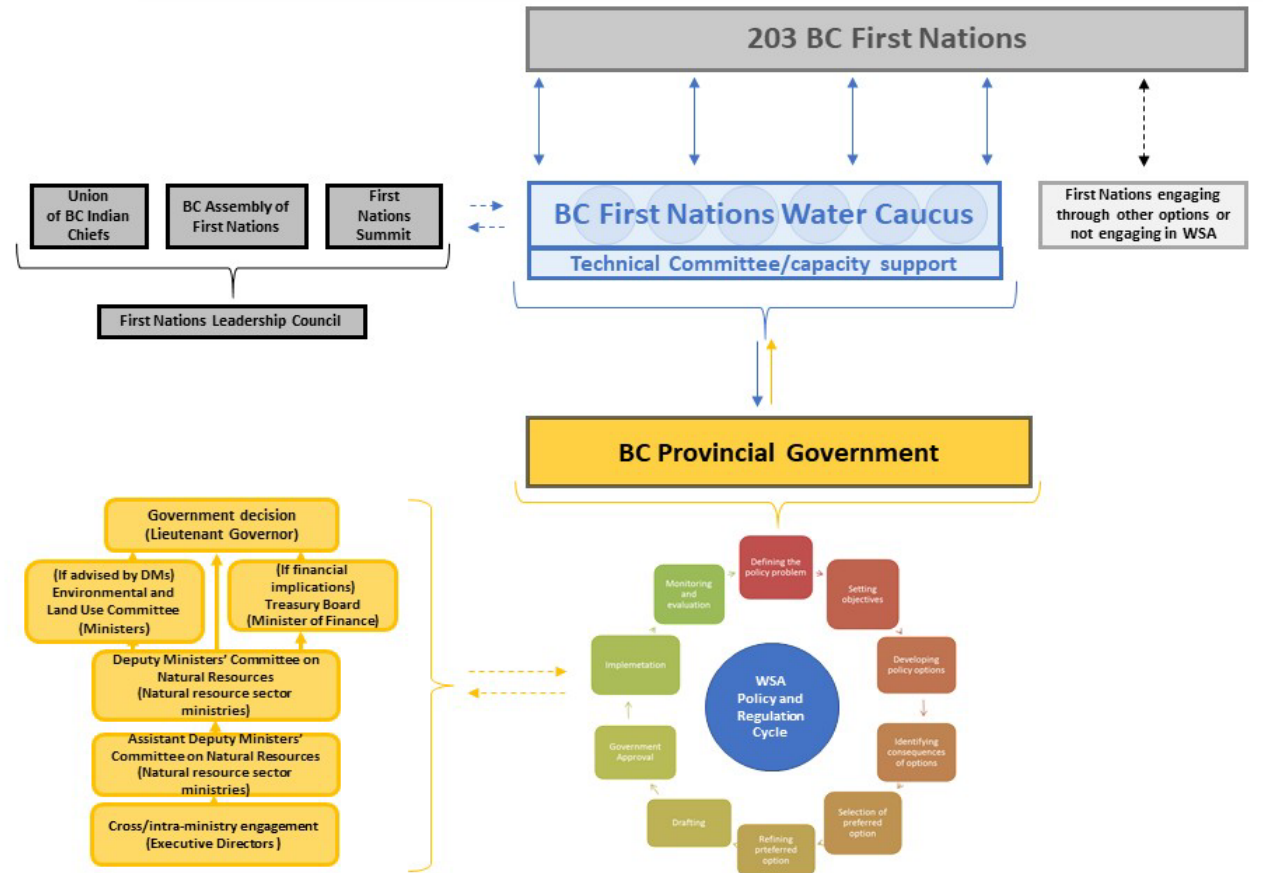
Enable diverse, flexible and dynamic options for collaborative development

Four options:

1. Existing/emerging First Nation-Crown processes (e.g. G2G tables)
 2. First Nations Water Caucus
 3. Regional advisory workshops
 4. First Nations written submissions
- Engagement Framework should seek to enable participation to the extent First Nations wish to participate (if at all)

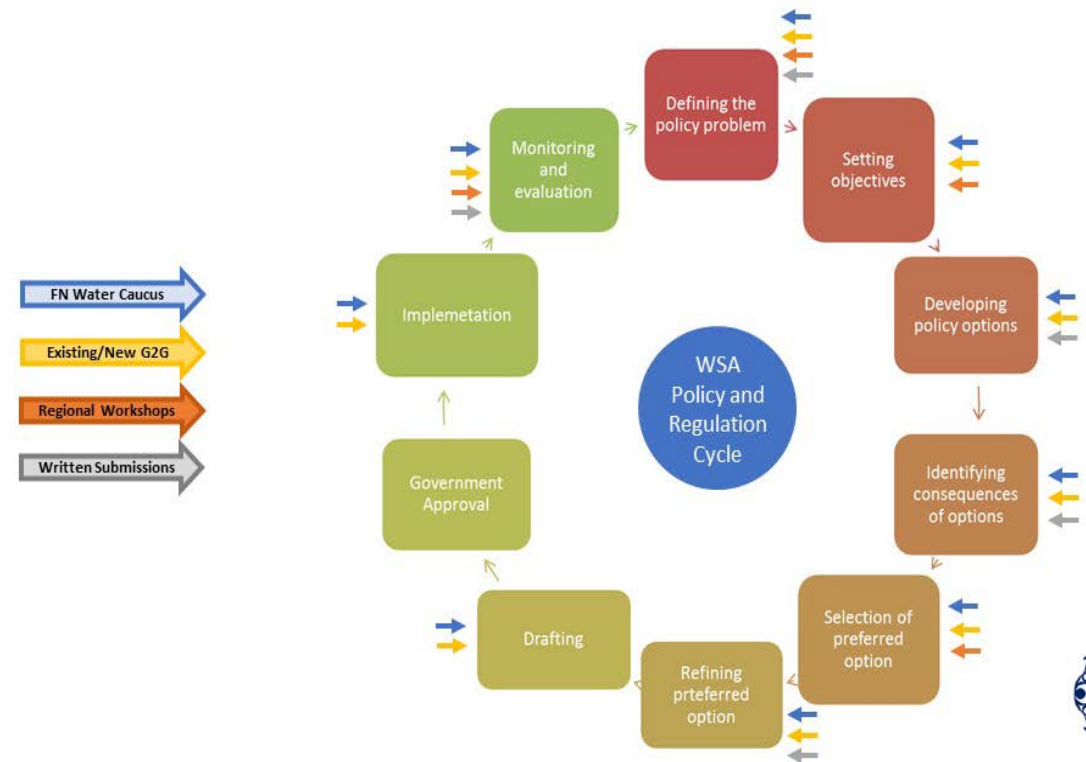
BC First Nations Water Caucus

Proposed collaborative forum for WSA development between First Nations and BC



- Involvement of First Nations beginning at problem definition stage

5. Enable early and sustained participation



6.

Improve transparency in decision making

- Recognition that regulations and policies are ultimately subject to provincial Cabinet or Ministerial approval processes
- BUT where First Nations comments/proposals are not accepted, BC should detail how they were considered

7.

Provide sufficient, stable and predictable resources

- Resourcing is critical to enabling meaningful engagement of First Nations
 - BC should avoid “cannibalizing” its own engagement budgets
- Should also include support for First Nations to articulate their own water laws, policies, and strategies toward self-determination

Statement of Requirements for Water Governance in BC According to Crown Commitments to Reconciliation

Developed by the BC First Nations Water
Governance Roundtable in November 2018

- 16 principles
- Provides direction on what is required by BC to fulfill reconciliation commitments and support implementation of First Nations fresh water jurisdiction
- Available at www.fnfisheriescouncil.ca

Support for Recommendations

To date

- Feedback on draft Recommendations invited from First Nations leadership at UBCIC, FNS, and BCAFN Chiefs-in-Assembly meetings in February & March 2019
- Endorsed by First Nations leadership in BC through resolution at UBCIC, FNS and BCAFN Chiefs-in-Assembly in June & September 2019
- BC Water Leaders

Next Steps

Working Group Recommendations
Towards Implementation

1. BC commit to prioritizing WSA alignment with Declaration on the Rights of Indigenous Peoples Act (Bill 41)
2. BC and FNFC to establish joint workplan to implement Recommendations
3. BC identify inventory of all First Nations engagement structures, processes, practices in BC in natural resource management sector to maximize efficiencies
4. Identify fiscal and human resources required to implement Recommendations, including:
 - New funding program to support capacity of First Nations to articulate their own water laws, policies and strategies to support self-determination
 - New funding program to support First Nations who wish to prepare written submissions or participate in regional advisory workshops re: new WSA regulation or policy areas



DISCUSSION
