



FIRST NATIONS FISHERIES COUNCIL

320-1200 West 73rd Ave., Vancouver BC V6P 6G5

TEL: 778.379.6470 • FAX: 778.379.6469

info@fnfisheriescouncil.ca • www.fnfisheriescouncil.ca

July 3rd, 2019

Ms. Lynn Kriwoken
Executive Director, Water Protection & Sustainability
BC Ministry of Environment and Climate Change Strategy

Via email: Lynn.Kriwoken@gov.bc.ca

RE: First Nations Recommendations for a New *Water Sustainability Act* Engagement Framework

Dear Lynn,

With this letter, I am pleased to share with you the final report, *“Towards a Water Sustainability Act First Nations Engagement Framework: Working Group Recommendations for Collaborative Development of Regulations and Policies.”*

This report has been prepared through a working group process led by the First Nations Fisheries Council of British Columbia (FNFC) between October 2018 and May 2019, and involving a small number of leadership and staff from a diversity of First Nations and First Nations organizations from across BC. The purpose of this process was to provide recommendations towards the establishment of a new First Nations engagement framework that is informed by BC’s reconciliation commitments to First Nations and that will guide the development of remaining regulations and policies related to the *Water Sustainability Act* (WSA). As you know, the BC Ministry of Environment and Climate Change Strategy - Water Sustainability and Protection Branch provided funding support and engaged with the FNFC and the working group at key intervals throughout the process.

The seven Recommendations outlined in the final report are far-reaching, tangible, and together are intended to provide the basis of a new approach for BC to engage First Nations in regulation and policy development in accordance with BC reconciliation commitments. The Recommendations include:

- 1. Reset the Relationship Based on Recognition and Respect.**
- 2. Adhere to UNDRIP Moving Forward.**
- 3. Enable Harmonious First Nations-Crown Governance and Management Processes.**



4. **Enable Diverse, Flexible and Dynamic Options for Collaborative Development of Policies and Regulations.**
5. **Enable Early and Sustained Participation.**
6. **Improve Transparency in Decision-Making.**
7. **Provide Sufficient, Stable and Predictable Resources.**


The report also references the [Statement of Requirements for Water Governance in British Columbia According to Crown Commitments to Reconciliation](#). This document was finalized in Winter 2018 by the BC First Nations Water Governance Roundtable, a process comprising 55 First Nations active in freshwater planning and governance. The *Statement of Requirements* articulates 16 principles which together are intended to provide direction on the transformative measures required by the BC Government to fulfill reconciliation commitments and support the implementation of First Nations fresh water jurisdiction. The *Statement* is attached to this letter and is available on our website at www.fnfisheriescouncil.ca.

The Recommendations contained in this final report have the support of First Nations leadership in BC through resolution at both the Union of BC Indian Chiefs and First Nations Summit Chiefs-in-Assembly gatherings in June 2019. The FNFC will seek support for the Recommendations through resolution at the next BC Assembly of First Nations Chiefs-in-Assembly gathering in September 2019. The FNFC also invited feedback on the draft Recommendations from First Nations leadership at each of the UBCIC, FNS, and BCAFN Chiefs-in-Assembly meetings in February and March 2019.

It is critical that these recommendations are supported by your Ministry, are fully implemented and are adequately resourced. As you know, your government has made strong commitments to reconciliation with Indigenous Peoples, including through the development of laws, regulations, and policies that have the potential to impact Aboriginal and Treaty Rights. These Recommendations offer a concrete path forward to upholding these commitments in the realm of regulation and policy development specific to protecting fresh water resources across British Columbia. The FNFC looks forward to continuing to work with your team to support the full implementation of the recommendations over the coming months.

We look forward to your response.

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Jordan Point
Executive Director
First Nations Fisheries Council of BC

CC:

Honourable George Heyman, BC Minister of Environment and Climate Change Strategy,
ENV.Minister@gov.bc.ca

Honourable Scott Fraser, BC Minister of Indigenous Relations and Reconciliation,
ABR.Minister@gov.bc.ca

Honourable Doug Donaldson, BC Minister of Forests, Lands, Natural Resource Operations and Rural Development, FLNR.Minister@gov.bc.ca

Mark Zacharias, Deputy Minister of Environment and Climate Change Strategy, DM.ENV@gov.bc.ca

Doug Caul, Deputy Minister of Indigenous Relations and Reconciliation, DM.ABR@gov.bc.ca

John Allan, Deputy Minister of Forests, Lands, Natural Resource Operations and Rural Development,
DM.FLNR@gov.bc.ca

Union of BC Indian Chiefs

BC Assembly of First Nations

First Nations Summit

ATTACHMENTS:

1. Towards a Water Sustainability Act First Nations Engagement Framework: Working Group Recommendations for Collaborative Development of Regulations and Policies (May 2019).
2. Statement of Requirements for Water Governance in British Columbia According to Crown Commitments to Reconciliation (November 2018).

**TOWARDS A WATER SUSTAINABILITY ACT
FIRST NATIONS
ENGAGEMENT FRAMEWORK**

**WORKING GROUP RECOMMENDATIONS
FOR COLLABORATIVE DEVELOPMENT
OF REGULATIONS AND POLICIES**

PREPARED BY THE FIRST NATIONS FISHERIES COUNCIL OF BRITISH COLUMBIA
MAY 2019

EXECUTIVE SUMMARY

The imperative of reconciliation requires the relationship between First Nations and the Province of British Columbia (“BC”) to be fundamentally transformed based on the recognition and respect for inherent Indigenous title and rights and Treaty rights. To this end, BC has made a number of important commitments that have the potential to significantly contribute to moving beyond the status quo of First Nations-Crown Relations if implemented in collaboration with First Nations.

This report has been prepared through participation in a working group process led by the First Nations Fisheries Council of British Columbia (“FNFC”), and involving leadership and staff from a diversity of First Nations and First Nations organizations from across BC, for the purposes of providing recommendations towards the establishment of a new First Nations engagement framework (the “Engagement Framework”) that is informed by BC’s commitments to First Nations and that will guide the development of regulations and policies related to the *Water Sustainability Act*, SBC 2014, c 1 (“Act”). The BC Ministry of Environment and Climate Change Strategy, Water Sustainability and Protection Branch (the “Ministry”) provided funding support and engaged with the First Nations Fisheries Council and the working group at key intervals in the process.

Section 2 of this report details the following key recommendations of the Working Group to guide the development of the Engagement Framework:

- 1. Reset the Relationship Based on Recognition and Respect.** The existing Act and priority regulations must be reviewed and reformed on the proper foundations.
- 2. Adhere to UNDRIP Moving Forward.** The relevant minimum human rights standards for ensuring the survival, dignity and well-being of Indigenous peoples must be complied with at all times.
- 3. Enable Harmonious First Nations-Crown Governance and Management Processes.** First Nations must be supported in developing and implementing their own laws and policies related to the governance and management of fresh water in their territories, and the Act should enable First Nations’ own laws and policies to be exercised in a more harmonious manner and afforded due respect alongside BC laws and policies.
- 4. Enable Diverse, Flexible and Dynamic Options for Collaborative Development of Policies and Regulations.** BC must enable and facilitate the participation of First Nations to the extent that they wish to participate and through processes and mechanisms of their choosing with no one option limiting a First Nation’s ability to engage with the Crown through any means the First Nation may deem appropriate. Four options are recommended: (a) participation through existing or emerging First Nation-Crown Processes; (b) participation through a First Nations water caucus; (c) participation through regional advisory workshops; and (d) participation through a process of First Nations submissions.

5. **Enable Early and Sustained Participation.** Collaboration with First Nations is enabled at the very beginning of any regulation or policy development process and sustained throughout each stage of regulation and policy development under the Act.
6. **Improve Transparency in Decision-Making.** First Nations must be able to understand how their collaborative efforts are demonstrably and substantively considered and addressed by BC throughout the process.
7. **Provide Sufficient, Stable and Predictable Resources.** First Nations must have sufficient, stable and predictable fiscal and human resources to meaningfully participate in the collaborative development of the regulations and policies under the Act, and to develop and implement their own water laws and policies.

Section 3 of this report details the following key steps that will support the early and sustainable success in the implementation of its recommendations for the Engagement Framework:

1. **Demonstrate *UNDRIP* Standards.** BC should immediately demonstrate that the minimum human rights standards in *UNDRIP* will guide the development and implementation of all BC laws, regulations and policies including the Act and its existing and future regulations and policies.
2. **Commit to Alignment with Future Provincial Reconciliation Legislation.** The Ministry should prioritize bringing the Act in alignment with future provincial reconciliation legislation within the next 12 months, in consultation and good faith cooperation with First Nations.
3. **Endorsement of Collaborative Development Process.** BC should provide high level and formal endorsement for collaboratively developing and drafting the regulations and policies under the Act in order to demonstrate acceptance of the spirit and intent of these recommendations.
4. **Conduct Environmental Scan.** BC should conduct an environmental scan to identify all concurrent structures, processes and practices in order to identify and maximize any existing efficiencies where they exist and to avoid First Nations engagement fatigue.
5. **Identify Fiscal and Human Resources.** BC should identify and make available fiscal and human resources that are required to support the shift to the collaborative development of BC laws and policies as recommended in this report.

TABLE OF CONTENTS

1. Background.....	1
1.1 FIRST NATIONS' RELATIONSHIP TO WATER	
1.2 WATER SUSTAINABILITY ACT ENGAGEMENT: PAST AND PRESENT	
1.3 POTENTIAL FOR SIGNIFICANT IMPACTS TO INDIGENOUS RIGHTS	
1.4 WORKING GROUP PROCESS	
1.5 PROVINCE OF BRITISH COLUMBIA COMMITMENTS TO FIRST NATIONS	
2. Recommendations.....	5
2.1 RESET THE RELATIONSHIP ON PROPER FOUNDATIONS OF RECOGNITION AND RESPECT	
2.2 UNDRIP IS THE MINIMUM STANDARD MOVING FORWARD	
2.3 ENABLE HARMONIOUS FIRST NATIONS-CROWN WATER GOVERNANCE AND MANAGEMENT PROCESSES IN BC	
2.4 ENABLE DIVERSE, FLEXIBLE AND DYNAMIC OPTIONS FOR COLLABORATIVE DEVELOPMENT	
a) EXISTING AND EMERGING FIRST NATION-CROWN PROCESSES AND MECHANISMS	
b) FIRST NATIONS WATER CAUCUS	
c) REGIONAL ADVISORY WORKSHOPS	
d) FIRST NATIONS COMMENT SUBMISSION	
2.5 ENABLE EARLY AND SUSTAINED PARTICIPATION	
2.6 IMPROVE TRANSPARENCY IN DECISION-MAKING	
2.7 PROVIDE SUFFICIENT, STABLE AND PREDICTABLE RESOURCES	
3. Next Steps Toward Implementation.....	15

BACKGROUND

1.1 FIRST NATIONS' RELATIONSHIP TO WATER

First Nations in BC have sacred relationships to the waters in their territories that include the exercise of inherent First Nations' jurisdictions, laws, title, rights and knowledge systems. 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; culture, customs and traditions; sustenance; and, economic opportunities. Our relationship with our lands, territories and waters is fundamental to our physical, cultural and spiritual survival.

We have rights and sacred responsibilities to protect water for our present and future generations. Our rights include the use of water for drinking, irrigation, commercial purposes, transportation, cultural ceremonies, and access for fishing, hunting, trapping and other harvesting and gathering activities. These rights include the right to protect water and the aquatic habitat that supports plants, trees and other life forms with whom First Nations share their territories with and depend upon. 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. As recently expressed by the British Columbia First Nations Water Governance Roundtable:

“Our ancestors taught us that water in all its forms is the most fundamental and sacred aspect of life. Our spiritual relationship to water is linked to our inherent right to healthy water and ecological integrity. Water is integral to our peoples' heart, spirit, body and mind. The Creator's natural law gives us sacred unalterable water responsibilities to all generations of all life. This responsibility must be fulfilled through all of our decisions. All processes must be structured to ensure we are able to fulfill these responsibilities.

[...]

All First Nations hold inherent rights, Title, and jurisdiction over the lands, waters and resources within their traditional territories and have a duty to protect these sacred water resources. First Nations Peoples have inherent jurisdictions and responsibilities to water which must be recognized by Crown governments. The BC government has jurisdictions and responsibilities based on the Constitution of Canada. Our respective jurisdictions form the basis of life, and our respective laws and authorities and must always be the foundation of our interaction with each other.”¹

Despite this, in many ways First Nations have been largely alienated from access to water resources and uses, and First Nation's jurisdictions, laws, title, rights and knowledge systems have not been recognized or respected. Moving forward, the management of fresh water in BC, including long-term engagement in Crown processes to develop relevant BC laws and policies,

must be carried out in a manner that implements the commitments of BC to First Nations which require a First Nations-Crown relationship that is established and maintained through collaboration and consent-based decision-making. This approach will ensure the sacred relationships that First Nations have to water are honoured, upheld and protected for the benefit of present and future generations.

1.2 WATER SUSTAINABILITY ACT ENGAGEMENT: PAST AND PRESENT

The Act was introduced and enacted by BC in 2014 with the objective of modernizing the provincial regulatory framework for the management of fresh waters. BC has indicated it is taking a phased approach to implementing the Act. The first set of priority regulations under the Act came into force on February 29, 2016 and BC is expected to continue to develop remaining regulations and policies under the Act over the next 3 to 4 years.

First Nations in BC generally share the goal of improving the governance and management of fresh water through the Act, support principles that advance sustainability and protection of fresh water resources, and recognize the urgent need to keep fresh water systems healthy for present and future generations. Many First Nations in BC have also expressed concern with the process that BC has used to-date to engage them in the development of the Act and of priority regulations.²

1.3 POTENTIAL FOR SIGNIFICANT IMPACTS TO INDIGENOUS RIGHTS

A high potential for significant and direct impacts on Indigenous rights exists in a number of recently introduced key regulation and policy areas of the Act, including:

- The introduction of groundwater regulations for the first time including a new licensing scheme, which continues to rely on a “first in time, first in right” allocation system. Approximately 20,000 large licences are expected to be issued under this regulation, and BC has estimated that 5,000 of these large licences could impact First Nations. First Nations have reported that they have begun to receive referrals regarding groundwater licenses.
- Provisions for an updated environmental flow needs (EFN) regime, while generally viewed as a positive development brought in by the Act, have the potential to impact Indigenous rights related to water in specific circumstances, including a right to use water from a specific water source for domestic purposes, a right to water from a specific source for bathing or ceremonial purposes, and a right to water as a necessary part of an Aboriginal right to harvest fish.

Regulation areas that have yet to be developed and that similarly have high potential for significant and direct impacts Indigenous rights include:

- Water Objectives (S. 43, regulations that require decision makers that grant licences and other permissions for land to consider the impact of those decisions on water).

- Area Based Regulations (S.124, will enable the implementation of additional restrictions on water allocation and use in areas where there are particular concerns).
- Water Sustainability Plans (S.64-85, allows for collaborative watershed planning and decision-making agreements between First Nations, BC, and stakeholders in a watershed).

1.4 WORKING GROUP PROCESS

Between June 2017 and March 2018 the UBCIC Chiefs Council, First Nations Summit and the BC Assembly of First Nations each passed a resolution on recommendation from the FNFC where the three organizations agreed to work together as the First Nations Leadership Council to call on BC to co-develop a framework for First Nations to engage in the development of regulations pertaining to the Act which have potential for significant and direct impacts on Indigenous rights.³

In March 2018, the Ministry provided the FNFC with \$20,000 in grant funding to advise BC on an Engagement Framework to guide the development of the remaining regulations and policies under the Act in accordance with BC's commitments to First Nations. In February 2019, an additional \$15,000 was provided by the Ministry to the FNFC to support the completion of this report.

To assist in identifying recommendations for an Engagement Framework, the FNFC organized and hosted a series of meetings of a small working group comprised of approximately 10 leadership and staff from a diversity of First Nations and First Nations organizations from across BC that hold relevant expertise, experience and knowledge related to fresh water governance and management in BC (the "Working Group").

The Working Group meetings included a Tier 2 component (First Nations and Ministry staff). Throughout the Working Group process, the FNFC worked with three Ministry staff (a policy advisor, manager and executive director). The FNFC invited input from the Union of BC Indian Chiefs, BC Assembly of First Nations, and First Nations Summit at their respective Chiefs-in-Assembly meetings in February and March 2019. This report sets out the recommendations arising from the Working Group through this process.

1.5 PROVINCE OF BRITISH COLUMBIA COMMITMENTS TO FIRST NATIONS

BC has made a number of commitments to First Nations that must inform a new First Nations-Crown relationship, including the manner in how First Nations participate as partners in the development of provincial legislative or administrative measures that may affect them such as the Act, its regulations and policies.

(a) Ministerial Mandate Letters

In July 2017, BC Premier John Horgan issued new mandate letters to each of his cabinet members, including the honourable George Heyman of the Ministry, which affirmed BC's whole-of-

government commitment to fully adopt and implement the *United Nations Declaration on the Rights of Indigenous Peoples*⁴ (“*UNDRIP*”) and the calls to action issued by the Truth and Reconciliation Commission (“*TRC*”) in its final report.⁵ The mandate letters issued by Premier Horgan specifically directed each Minister with “moving forward on the calls to action and reviewing policies, programs, and legislation to determine how to bring the principles of the declaration into action in British Columbia.”⁶

(b) BC’s Draft Principles

In May 2018, BC released its *Draft Principles that Guide the Province of British Columbia’s Relationship with Indigenous Peoples* (“*Draft Principles*”) which are intended to provide high-level guidance on how provincial representatives engage with Indigenous peoples.⁷ It is very significant that the *Draft Principles* commit BC to renewing its relationship with First Nations on the fundamental premise that “all relations with Indigenous peoples need to be based on the recognition and implementation of their right to self-determination, including the inherent right of self-government.”

Through the *Draft Principles* BC committed to “jointly design, construct and implement principled, pragmatic and organized approaches informed by [*UNDRIP* and the calls to action of the *TRC*].”⁸ To this end the *Draft Principles* commit BC to “build processes and approaches aimed at securing consent, as well as creative and innovative mechanisms that will help build deeper collaboration, consensus, and new ways of working together” as well as to “collaborate with Indigenous peoples on changes to provincial laws, policies and practices.”

(c) BC’s *UNDRIP* Legislation

In November 2018, BC and the First Nations Leadership Council, comprised of the BC Assembly of First Nations, First Nations Summit and Union of BC Indian Chiefs, announced their intention to co-develop new legislation for introduction in 2019 to support the implementation of *UNDRIP* in BC. Such legislation must at a minimum enable a collaborative process to comprehensively review existing provincial laws, policies, programs and operational practices for the purpose of bringing those provincial instruments into conformity with *UNDRIP*.

(d) Existing First Nations-Crown Processes and Mechanisms

Several First Nations in BC have entered into formal arrangements with BC that support and facilitate their participation in decision-making and management processes over various subject matters that affect them. These formal arrangements often set out agreed upon processes between the parties which must be honoured and upheld, and enabled to evolve over time as may be necessary to align with emerging Crown commitments.

The commitments made by BC to First Nations at the provincial level parallel similar commitments being implemented federally. At the federal level, various implementation efforts include co-developing laws and policies that affect Indigenous peoples.⁹ This shift at the federal level demonstrates that the status quo around Crown engagement practices is being abandoned

in favour of an increasingly normalized approach of collaboration and shared decision-making, including in the development of Crown laws and policies.

2 RECOMMENDATIONS

The Working Group provides the following recommendations as essential to realizing meaningful First Nations-Crown relationships and the effective governance and management of fresh water in BC through the implementation of the Act in a manner that honours and upholds BC's commitments to First Nations summarized in section 1 of this report.

2.1 RESET THE RELATIONSHIP ON PROPER FOUNDATIONS OF RECOGNITION AND RESPECT

“The history of legislative and policy development in Canada has primarily been one of Crown governments unilaterally developing and drafting legislation and policy that has an impact on Indigenous peoples and their rights, and imposing it... Such a practice violates the basic standards of the UN Declaration.”¹⁰

While the Act and initial priority regulations made certain improvements to fresh water governance and management in BC, the First Nations engagement process undertaken by BC in their development was fundamentally flawed and resulted in the enactment of laws that do not reflect a relationship based on recognition and respect for inherent Indigenous title and rights and Treaty rights. Given that all pending regulations and policies must ultimately be consistent with the provisions of the Act, as a first step BC must commit to reviewing and reforming the Act and priority regulations currently in force, in order to ensure the entire statutory framework exists on proper foundations of recognition and respect. This commitment includes that the Ministry prioritize bringing the Act in alignment with future provincial reconciliation legislation within the next 12 months, in consultation and good faith cooperation with First Nations.

Without resetting the relationship on proper foundations of recognition and respect First Nations in BC may be hesitant to devote limited time and financial and human resources towards participation in the implementation of an Engagement Framework while their legitimate concerns and objections to the existing Act and priority regulations are not meaningfully considered and addressed. Such a commitment to comprehensive law and policy review and reform is consistent with the TRC's call for provincial governments “to repudiate concepts used to justify European sovereignty over Indigenous peoples and lands, such as the Doctrine of Discovery and *terra nullius*, and to reform those laws, government policies, and litigation strategies that continue to rely on such concepts.”¹¹ A collaborative process of review and reform of the Act and the priority regulations would honour and uphold BC's commitment under the *Draft Principles* to “collaborate with Indigenous peoples on changes to provincial laws, policies and practices” and should otherwise be prompted by the anticipated enactment of BC's proposed *UNDRIP* legislation.

2.2 *UNDRIP* IS THE MINIMUM STANDARD MOVING FORWARD

“The implementation of the UN Declaration is pivotal to the future of Canada and British Columbia and has the potential to greatly accelerate the work of reconciliation by providing internationally adopted, transparent, clear and effective standards, as well as a common language and set of understandings that all Canadians can embrace.”¹²

UNDRIP sets out “the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.”¹³ The TRC has accordingly called upon provincial governments to “fully adopt and implement [*UNDRIP*] as the framework for reconciliation.”¹⁴ The meaningful implementation of *UNDRIP* is a central political and public policy imperative that “will involve a diverse and dynamic set of legislative and policy shifts by government; action by Indigenous Nations to rebuild and revitalize their governments, structures and legal systems; and changes in processes and patterns of relations, negotiations and treaty and agreement-making, including a shift from consultation to consent-based decision-making.”¹⁵

While it is important that the provisions of *UNDRIP* are read together and understood in their entire context, a number of key articles are especially relevant to law and policy reform initiatives such as the Engagement Framework:

- Article 3 of *UNDRIP* affirms the overarching right of Indigenous peoples “to self-determination.”
- Article 18 of *UNDRIP* affirms the right of Indigenous peoples “to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.”
- Article 19 of *UNDRIP* affirms the obligation for the Crown to “consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”
- Article 25 of *UNDRIP* affirms the right of Indigenous peoples “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 26 of *UNDRIP* affirms the right of Indigenous peoples “to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use” and a corresponding Crown obligation “to give legal recognition and protection to these lands, territories

and resources... with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.”

- Article 32 of *UNDRIP* affirms the right of Indigenous peoples “to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.”
- Article 38 affirms the Crown obligation to “take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.”
- Article 39 affirms the right of Indigenous peoples “to have access to financial and technical assistance... for the enjoyment of the rights contained in this Declaration.”

With respect to free, prior and informed consent as the minimum standard for engagement required under *UNDRIP*, the United Nations Expert Mechanism on the Rights of Indigenous Peoples’ has advised in the *Final report of the study on indigenous peoples and the right to participate in decision-making*, 17 August 2001 (A/HRC/18/42, annex):

- “Consultation procedures need to allow for the full expression of indigenous peoples’ views, in a timely manner and based on their full understanding of the issues involved, so that they may be able to affect the outcome and consensus may be achieved” [at p 23].
- “[C]onsultations should be undertaken in good faith and in a form appropriate to the relevant context. This requires that consultations be carried out in a climate of mutual trust and transparency. Indigenous peoples must be given sufficient time to engage in their own decision-making process, and participate in decisions taken in a manner consistent with their cultural and social practices. Finally, the objective of consultations should be to achieve agreement or consensus” [at p 24].
- “[T]he right to free, prior and informed consent is embedded in the right to self-determination. The procedural requirements for consultations and free, prior and informed consent respectively are similar. Nevertheless, the right of free, prior and informed consent needs to be understood in the context of indigenous peoples’ right to self-determination because it is an integral element of that right” [at p 26].
- “The duty of the State to obtain indigenous peoples’ free, prior and informed consent entitles indigenous peoples to effectively determine the outcome of decision-making that affects them, not merely a right to be involved in such processes. Consent is a significant element of the decision-making process obtained through genuine consultation and participation. Hence, the duty to obtain the free, prior and informed consent of indigenous peoples is not only a procedural process but a substantive mechanism to ensure the respect of indigenous peoples’ rights” [at p 26].

- “[*UNDRIP*] requires that the free, prior and informed consent of indigenous peoples be obtained in matters of fundamental importance for their rights, survival, dignity and well-being. In assessing whether a matter is of importance to the indigenous peoples concerned, relevant factors include the perspective and priorities of the indigenous peoples concerned, the nature of the matter or proposed activity and its potential impact on the indigenous peoples concerned” [at p 26].
- “The State’s duty to obtain free, prior and informed consent affirms the prerogative of indigenous peoples to withhold consent and to establish terms and conditions for their consent [...] The element of ‘free’ implies no coercion, intimidation or manipulation; ‘prior’ implies that consent is obtained in advance of the activity associated with the decision being made, and includes the time necessary to allow indigenous peoples to undertake their own decision-making processes; ‘informed’ implies that indigenous peoples have been provided all information relating to the activity and that that information is objective, accurate and presented in a manner and form understandable to indigenous peoples; ‘consent’ implies that indigenous peoples have agreed to the activity that is the subject of the relevant decision, which may also be subject to conditions” [at p 27].

The implementation of the minimum standards enshrined in *UNDRIP* therefore clearly have transformational implications for how the Crown develops laws and policies. To this end the *Draft Principles* commit BC to “build processes and approaches aimed at securing consent, as well as creative and innovative mechanisms that will help build deeper collaboration, consensus, and new ways of working together.” The Engagement Framework provides a tangible opportunity for First Nations and BC to put these commitments into practice.

2.3 ENABLE HARMONIOUS FIRST NATIONS-CROWN WATER GOVERNANCE AND MANAGEMENT PROCESSES IN BC

The Engagement Framework is one of many tools available to support the implementation of *UNDRIP*. In this regard the Engagement Framework must aspire to create an overarching enabling model of collaboration in the governance and management of fresh water in BC. Instead of a continuation of the status quo characterized by the treatment of First Nations as mere stakeholders within a Crown process seeking to address Crown priorities and interests, the Engagement Framework must contribute to a fundamental reorientation of First Nations-Crown relationships in BC by creating a framework through which First Nations are supported in honouring, upholding and protecting their sacred relationships to waters within the governance and management of fresh water.

This means creating the space and giving due respect to the exercise of the right to self-determination including First Nations’ inherent jurisdictions, laws, title, rights, processes and knowledge systems related to the governance and management of fresh water in their territories. This also means ensuring adequate mechanisms are in place to incorporate Indigenous laws and knowledge systems into decision-making under the Act. Many First Nations already have existing laws and policies to guide the governance and management of water within

their territories that can be beneficial to BC and help to inform and strengthen BC laws and policies.

First Nations have differing circumstances affecting their ability to address fresh water management and governance.¹⁶ In order to adhere to the minimum standards enshrined in *UNDRIP*, the Engagement Framework must also recognize that collaboration requires that each party participates on an equal footing. It is therefore critical that the Engagement Framework enables and supports First Nations' capacity and resources to revitalize and articulate their own laws, policies, processes and strategies related to fresh water governance and management as a basis for engaging and seeking harmony with BC and its provincial laws, policies, and strategies. The Engagement Framework must also recognize that some First Nations may choose to focus their efforts exclusively towards their jurisdictions, laws, title, rights and knowledge systems related to the governance and management of fresh water and outside of Crown processes altogether (e.g. enforcing their own water policy on third party users).

2.4 ENABLE DIVERSE, FLEXIBLE AND DYNAMIC OPTIONS FOR COLLABORATIVE DEVELOPMENT

“[T]he implementation of the UN Declaration is grounded in Indigenous peoples' right to self-determination and the recognition of Indigenous legal systems. Implementation will look different in different places. The efforts of governments or other actors cannot, in any way, prescribe, define or determine Indigenous peoples' own priorities. Crown governments must create the space that ensures they can be appropriately responsive to paths determined by Indigenous peoples.”¹⁷

The meaningful implementation of *UNDRIP* requires the establishment of an Engagement Framework that enables and facilitates the participation of First Nations in the collaborative development and drafting of the remaining regulations and policies under the Act in a manner that centres the right to self-determination and meets the minimum standards enshrined in *UNDRIP*. It must be stressed that that there is no single approach or model that can achieve this objective.¹⁸

Given the diversity among First Nations in BC and their preferred pathways to self-determination, it is critically important that the Engagement Framework enables and facilitates the participation of First Nations to the extent that they wish to participate (if at all) and through processes and mechanisms of their choosing. Accordingly, the Working Group has identified the following four recommended options for First Nations' participation in the collaborative development and drafting of the remaining regulations and policies under the Act: (a) participation through existing or emerging First Nation-Crown Processes; (b) participation through a First Nations water caucus; (c) participation through regional advisory workshops; and (d) participation through a process of First Nations submissions.

The Engagement Framework must be designed to interface with this suite of recommended options with no one option limiting or excluding a First Nation to engage with the Crown by any and all means the First Nation may deem appropriate.

(a) Existing and Emerging First Nation-Crown Processes and Mechanisms

“It is the mutual responsibility of all governments to shift their relationships and arrangements with Indigenous peoples so that they are based on recognition and respect for the right to self-determination, including the inherent right of self-government for Indigenous nations. This responsibility includes changes in the operating practices and processes of the provincial government. For Indigenous peoples, this responsibility includes how they define and govern themselves as nations and governments and the parameters of their relationships with other orders of government.”¹⁹

As stated above, the Engagement Framework is one of the tools available to support the implementation of *UNDRIP* and accordingly must aspire to facilitate and support all First Nations in BC in realizing the fullest expressions of their inherent right to self-determination in which their own jurisdictions, laws, title, rights and knowledge systems related to the governance and management of fresh water are given due respect.

It is acknowledged that First Nations throughout BC have a diversity of circumstances in their pathway to self-determination. In many circumstances First Nations have established (or are in the process of establishing) formal processes and mechanisms that define the parameters of their relationship with BC in relation to particular subject matters (e.g. decision-making processes defined under a Reconciliation Agreement with BC). In these circumstances First Nations should be enabled to participate in the development of the regulations and policies under the Act through these existing or emerging processes and mechanisms. This approach will allow First Nations to more directly participate through their own representative institutions and in accordance with decision-making procedures agreed to with BC.

For example, in 2016 the Yinka Dene ‘Uza’hne from Nadleh Whut’en and Stelat’en enacted a governance and management regime for the regulation of the surface waters throughout their territories. This regime currently comprises the *Yinka Dene ‘Uza’hne Surface Water Management Policy* and *Yinka Dene ‘Uza’hne Guide to Surface Water Quality Standards* while identifying other areas for policy development including regulation of environmental flows.²⁰ Nadleh Whut’en and Stelat’en are also parties to various agreements with BC which have established processes and mechanisms for collaboration on a range of subject matter. Under this recommended option, BC should explore with Nadleh Whut’en and Stelat’en whether they have an interest in participating in the development of remaining regulations and policies under the Act through these agreed upon processes and mechanisms in order to ensure that those provincial regulations and policies are harmonious with the implementation of the *Yinka Dene ‘Uza’hne Surface Water Management Policy* and *Yinka Dene ‘Uza’hne Guide to Surface Water Quality Standards*.

Another example is the Gitanyow Water Quality and Quantity Policy currently under development, *Gan da dilxw* (“Essential for All Life”). Gitanyow has informed BC of the development of this policy and invited participation and collaboration to ensure potential alignment with Act regulations for sensitive streams, minimum flow requirements, and area-based regulations. For Nations such as Gitanyow, direct engagement through their government-

to-government agreement with BC is preferable to ensure Gitanyow policy on water is respected and upheld.

Prioritizing the establishment and maintenance of existing and emerging First Nation-Crown processes and mechanisms through the Engagement Framework will assist in the long-term work of transforming the patterns of First Nations-Crown relationships that is necessary for self-determination of First Nations to be realized more fully throughout BC.

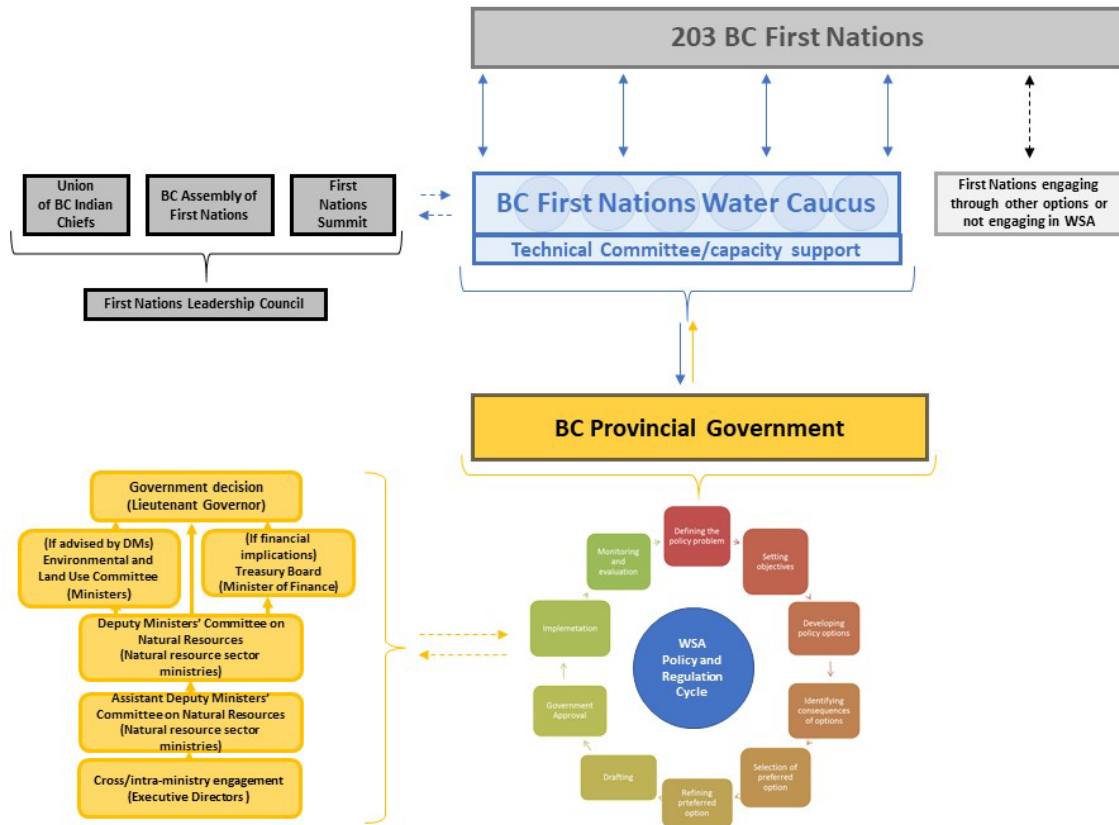
(b) First Nations Water Caucus

The technical nature of the subject matter to be dealt with in the governance and management of fresh waters, as well as the process for developing and drafting any laws and policies to address those subject matters, highlights the need for the Engagement Framework to enable a process comprised of delegates participating on behalf of First Nations and BC who hold the relevant authorities, mandates, experience, expertise and knowledge that are required to jointly develop and draft the regulations and policies under the Act. The Working Group discussed the potential for a province-wide caucus with a regional delegate structure that could act as a collaborative hub for First Nations to work with BC throughout every stage of the development and drafting of regulations and policies under the Act. Under a First Nations water caucus such as this, joint working groups could be formed to support, inform and advance the collaborative work of the caucus on a technical level. The proposal for this recommended option can be submitted through the resolution processes of the First Nation Leadership Council in order to obtain the necessary support and mandates from their member First Nations.

While a First Nations water caucus would not serve to fulfill or replace BC's duty to consult and accommodate First Nations in BC or existing First Nation-Crown processes and mechanisms, it provides a tangible model for deep and broad levels of First Nations' participation in the collaborative development and drafting of the remaining regulations and policies under the Act. This model for First Nations' participation in law and policy development is being successfully implemented by other jurisdictions in Canada.²¹ Its success in the Engagement Framework could be leveraged in other law and policy review and reform initiatives required to bring BC's laws and policies into conformity with *UNDRIP*.

The First Nations water caucus option will require further work between the FNFC and the Ministry to define and formalize its structure, to determine how it would interact with BC on policy and regulation development, and to identify sufficient resources required to support its meaningful implementation. It must again be stressed that not all First Nations may choose to participate through a regional delegate in the First Nations water caucus and it must not limit or diminish the ability of First Nations to engage with BC regarding the regulations and policies under the Act by other means, including the other options for participation recommended in this report.

Figure: Proposed First Nations Water Caucus Interface with First Nations Leadership and BC Provincial Government



(c) Regional Advisory Workshops

The Engagement Framework should enable First Nations participation in the development and drafting of regulations and policies under the Act through focused regional workshops on key policy issues and themes. This would allow for First Nations’ subject matter experts, knowledge keepers and advisors sharing common regional circumstances and experiences to deliberate and provide detailed input and guidance to BC on the regulations and policies throughout the stages of their development and drafting. The objective of regional advisory workshops is consistent with the objective of all other options for participation recommended in this report. Specifically, regional advisory workshops are not intended to be merely an exercise of seeking and documenting First Nations’ views on policy issues pre-determined by BC but an opportunity for deep collaboration and consensus building where First Nations input is demonstrably and substantively addressed and incorporated into regulations and policies. In order to be successful, regional advisory workshops must be properly resourced with sufficient notice, including providing any information on the proposed subject matter to be discussed well in advance.

(d) First Nations Comment Submission

BC's current engagement practices in relation to law and policy development have largely consisted of referral letters to individual First Nations seeking written comments in relation to proposed laws and policies. Generally, this process is initiated only at later stages of the policy development process. While this option enables broad participation it has generally lacked adequate transparency and accountability with respect to how First Nations' comments have been demonstrably and substantively addressed. The referrals practice has also failed to be effective in facilitating the standard of First Nations' participation that is required by *UNDRIP*. Nonetheless, the Engagement Framework should not limit the ability of First Nations to directly submit written comments to BC throughout the development and drafting of the regulations and policies.

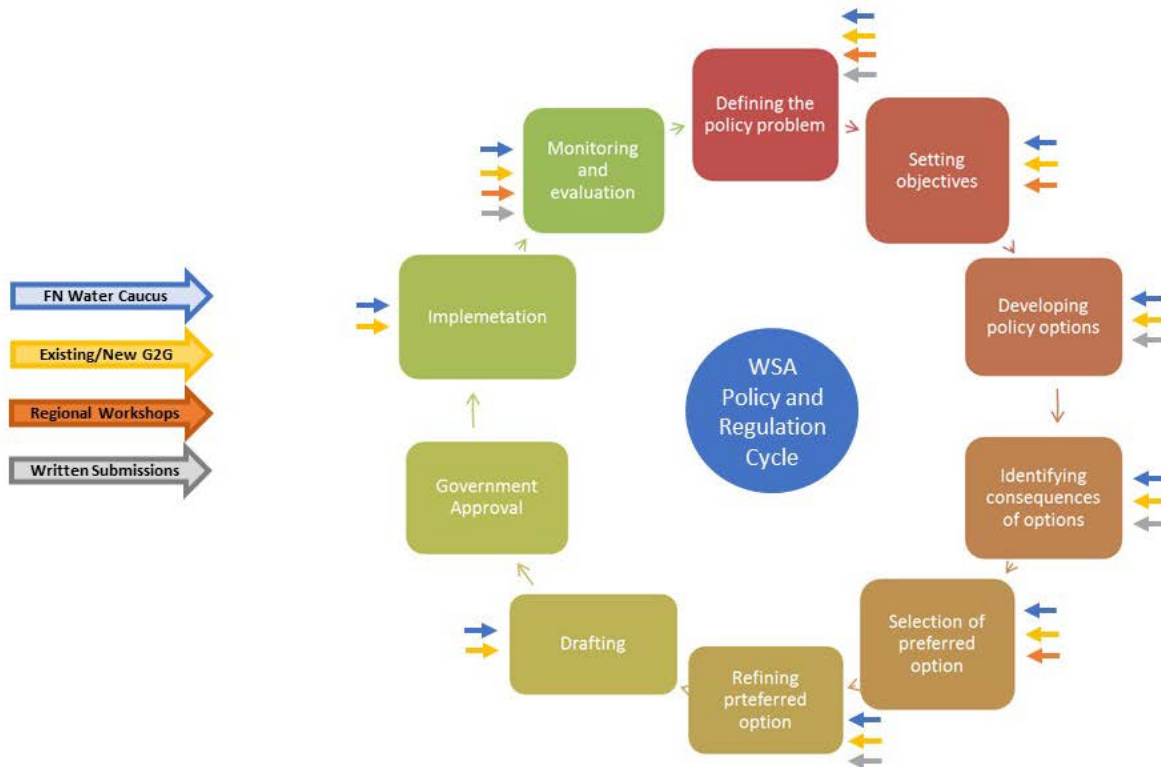
BC could increase the effectiveness of this practice by setting up a portal so that comments can be easily submitted and made publicly available. Such a tool could also enable tracking of BC's responses, including reasons where appropriate, to First Nations' comments. The identification of common or prevalent First Nations comments submitted to BC could be referred to the First Nations water caucus recommended above for further discussion and consideration. All opportunities for comment submission should be accompanied by a funding program that First Nations can access to support their capacity to review proposals and prepare a response, as is currently being provided federally as part of the review of the *Fisheries Act*, for example.

2.5 ENABLE EARLY AND SUSTAINED PARTICIPATION

"A 'co-development' process cannot ask for input from Indigenous peoples after a law or policy has already been drafted. Indigenous peoples cannot be treated as an afterthought or an extra step in the legislative process; a true Nation-to-Nation relationship views Indigenous peoples and governments as full partners in shaping laws and policies that have an impact on them and their rights. Formalized processes and structures should be established to ensure that laws and policies are developed in partnership, with measures that ensure that rights are recognized and respected before laws and policies are enacted."²²

The Engagement Framework must ensure that collaboration with First Nations is enabled at the very beginning of any regulation or policy development process regardless of the means by which a First Nation may choose to participate. The early involvement of First Nations as partners is critical to ensuring that priorities and approaches are inclusive from the onset. This collaborative development must also be sustained throughout each stage of regulation and policy development under the Act. To facilitate early and sustained First Nations participation it is recommended that the Engagement Framework adopt the following regulation and policy development cycle:

Figure: WSA Policy and Regulation Cycle and Proposed First Nations Engagement Points



2.6 IMPROVE TRANSPARENCY IN DECISION-MAKING

“Engagement of the honour of the Crown does not predispose a certain outcome, but promotes reconciliation by imposing obligations on the manner and approach of. Written reasons foster reconciliation by showing affected Indigenous peoples that their rights were considered and addressed. Reasons are ‘a sign of respect [which] displays the requisite comity and courtesy becoming the Crown as Sovereign toward a prior occupying nation’. Written reasons also promote better decision making.”²³

It is acknowledged that the outcomes of First Nations’ participation in the collaborative development and drafting of regulations and policies under the Act will ultimately be subject to provincial Cabinet or Ministerial approval processes. The Engagement Framework must therefore include measures that ensure there is greater transparency and accountability to First Nations in regards to any decisions or actions taken by BC throughout the process. Specifically, where First Nation comments or proposals are not accepted by BC or have not been demonstrably and substantively addressed, BC must be forthright and reasons should be provided that outline in detail how First Nations comments and proposals were considered. Formalizing new practices of transparency will help build and maintain trust in the First Nation-Crown relationship and should be done at the outset so all partners have a clear understanding of how the information they share throughout the process will be considered in a manner that will foster consensus building.

2.7 PROVIDE SUFFICIENT, STABLE AND PREDICTABLE RESOURCES

“Implementation requires sufficient resources to ensure First Nations governments have the capacity (skilled people, realistic time deadlines, strong institutions, accessible information, etc.) to implement our inherent jurisdictions, particularly when we engage in collaborative processes that we co-design with other governments. Provision of these resources is fundamental for improved community outcomes and successful implementation.”²⁴

In order to be successfully implemented it is critical that the Engagement Framework is supported by sufficient, stable and predictable resources to enable meaningful First Nations participation throughout each of the options for collaborative development of regulations and policies recommended above. A failure to make the financial and human resources available necessary to support the participation of with First Nations in a manner that upholds the minimum standards enshrined in *UNDRIP* would undermine the potential of the Engagement Framework. BC should begin to identify sufficient resources to support the increased costs that can be expected to arise with deeper collaboration with First Nations in decision-making on legislative and administrative measures that may affect their rights. This resourcing should not be exclusively for engagement on BC’s regulations and policies under the Act but instead must include support for First Nations to develop and articulate their own water laws, policies and strategies.

3 NEXT STEPS TOWARDS IMPLEMENTATION

The Working Group has identified the following key steps that will support the meaningful implementation of its recommendations for the Engagement Framework. It should be noted that these implementation steps are not intended to be comprehensive or overly prescriptive but rather are provided to the Ministry for the purpose of identifying benchmarks for early and sustainable success:

1. **Demonstrate *UNDRIP* Standards.** BC should immediately demonstrate that the minimum human rights standards in *UNDRIP* will guide the development and implementation of all BC laws, regulations and policies including the Act and its existing and future regulations and policies.
2. **Commit to Alignment with Future Provincial Reconciliation Legislation.** The Ministry should prioritize bringing the Act in alignment with future provincial reconciliation legislation within the next 12 months, in consultation and good faith cooperation with First Nations.
3. **Endorsement of Collaborative Development Process.** BC should provide high level and formal endorsement for collaboratively developing and drafting the regulations and policies under the Act in order to demonstrate that the spirit and intent of these recommendations are taken seriously by BC and not only First Nations. This endorsement

should include a measure of incremental resources and greater clarity on BC's commitment to the process and these recommendations more broadly.

4. **Conduct Environmental Scan.** BC should conduct an environmental scan in order to identify all concurrent structures, processes and practices BC is currently utilizing to advance reconciliation in the natural resource management sector. This exercise should help to identify and maximize any existing efficiencies where they exist and to avoid First Nations being subject to engagement fatigue through participation in overlapping, duplicative or competing structures, process and practices.
5. **Identify Fiscal and Human Resources.** BC should identify and make available fiscal and human resources that are required to support the shift to the collaborative development of BC laws and policies as recommended in this report. This exercise should be a whole-of-government exercise that includes the Ministry as well as other key ministers (e.g. MIRR, FLNRORD). The fiscal and human resources should include:
 - (a) A new funding program to support capacity of First Nations to develop and articulate their own water laws, policies and strategies in order to support self determination.
 - (b) A new funding program to First Nations who wish to prepare written submissions or participate in regional advisory workshops as part of new policy and regulation areas that have high potential to significantly impact Indigenous rights, including water objectives, area-based regulations and water sustainability plans.
 - (c) Utilise "Working Together on Water" funding obtained through the BC Ministry of Indigenous Relations and Reconciliation Indigenous Funding Envelope in 2018 to implement the recommendations of this report, specifically the establishment of a First Nations Water Caucus within the next 6 months and to support participation of Caucus delegates in at least two Working Together on Water Forum events within the next 12 months.

¹ British Columbia First Nations Water Governance Roundtable, Statement of Requirements on Water Governance in BC According to Crown Commitments to Reconciliation (November 2018) [unpublished] [*Statement of Requirements*]. The BC First Nations Water Governance Roundtable was established in June 2017 to advance First Nations engagement in planning, management, and governance of fresh water. Roundtable participants include 15 staff and leadership comprising 55 Nations across BC that are actively developing and implementing strategies and plans to achieve their goals with respect to water.

² Nadia Joe, Karen Bakker & Leila Harris, *Perspectives on the BC Water Sustainability Act: First Nations Respond to Water Governance Reform in British Columbia* (31 March 2017), online: *University of British Columbia Program on Water Governance* <<http://hdl.handle.net/2429/61689>>.

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- ³ Chiefs-in-Assembly, Assembly of First Nations (British Columbia Region), *Res No 03(f)/2018: Water Sustainability Act Consultation Framework* (8 March 2018), online (PDF): <https://bcafn.ca/wp-content/uploads/2018/03/2018_BCAFN_SCA_FINALResolutions_Combined-2.pdf>; Chiefs-in-Assembly, First Nations Summit, *Res No 1017.04* (October 2017); Chiefs-in-Assembly, Union of BC Indian Chiefs, *Res No 2017-24* (29 June 2017), online: <https://d3n8a8pro7vhmx.cloudfront.net/ubcic/pages/132/attachments/original/1501604763/UBCIC_CC06-28_FinalResolutions.pdf?1501604763>.
- ⁴ *United Nations Declaration on the Rights of Indigenous Peoples*, UNGAOR, 61st Sess, Supp No 49, UN Doc A/RES/61/295 (2 October 2007) [*UNDRIP*].
- ⁵ Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: The Final Report of the Truth and Reconciliation Commission of Canada, Volume 6: Reconciliation*, (Montreal: McGill University Press, 2015) [*TRC Final Report*].
- ⁶ British Columbia, *Mandate letter from the Honourable John Horgan, Premier, addressed to the Honourable George Heyman, Minister of Environment and Climate Change Strategy* (18 July 2017) at 2, online (PDF): *Government of British Columbia* <<https://www2.gov.bc.ca/assets/gov/government/ministries-organizations/premier-cabinet-mlas/minister-letter/heyman-mandate.pdf>>.
- ⁷ British Columbia, *Draft Principles that Guide the Province of British Columbia's Relationship with Indigenous Peoples* (22 May 2018), online: *Government of British Columbia* <https://www2.gov.bc.ca/assets/gov/careers/about-the-bc-public-service/diversity-inclusion-respect/draft_principles.pdf> [*Principles*].
- ⁸ *Ibid* at 1.
- ⁹ See Chiefs-in-Assembly, Assembly of First Nations, *Resolution No 88/2017* (7 December 2017).
- ¹⁰ Canadian Centre for Policy Alternatives & Union of British Columbia Indian Chiefs, *True, Lasting Reconciliation: Implementing the United Nations Declaration on the Rights of Indigenous Peoples in British Columbia law, policy and practices* (November 2018) at 21, online: *Canadian Centre for Policy Alternatives* <<https://www.policyalternatives.ca/UNDRIP-BC>> [*True, Lasting Reconciliation*].
- ¹¹ *TRC Final Report*, *supra* note 5 at 231.
- ¹² *True, Lasting Reconciliation*, *supra* note 10 at 15.
- ¹³ *UNDRIP*, *supra* note 4 at Art 43.
- ¹⁴ *TRC Final Report*, *supra* note 5 at 229.
- ¹⁵ *True, Lasting Reconciliation*, *supra* note 10 at 6.
- ¹⁶ Centre for Indigenous Environmental Resources & First Nations Fisheries Council of British Columbia. *Indigenous Watershed Initiatives and Co-Governance Arrangements: A Systematic Review* (September 2016), online (PDF): <https://www.fnfisheriescouncil.ca/wp-content/uploads/2015/09/BC-Systematic-Review-Project-Report_Sept-15-2016.pdf>.
- ¹⁷ *True, Lasting Reconciliation*, *supra* note 10 at 6.
- ¹⁸ *True, Lasting Reconciliation*, *supra* note 10 at 15.
- ¹⁹ *Draft Principles*, *supra* note 7 at 2.

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- ²⁰ Nadleh Whut'en and Stelat'en. *Yinka Dene 'Uza'hné Surface Water Management Policy and Yinka Dene 'Uza'hné Guide to Surface Water Quality Standards* (March 30, 2016), online: <<http://www.carriersekani.ca/news/yinke-dene-uzahne-guide-to-surface-water-quality-standards>>.
- ²¹ See Northwest Territories, *Strengthening Relations with Indigenous Governments: Intergovernmental Council*, online: *Government of Northwest Territories*, online: <<https://www.eia.gov.nt.ca/en/priorities/strengthening-relations-aboriginal-governments/intergovernmental-council>>. The Intergovernmental Council was established in 2014 and is mandated to review and develop any proposed changes to the land and resources management systems of the Northwest Territories including changes to legislation, and through this mandated has collaborated with Indigenous peoples on the development of territorial legislation; Canada, Ministry of Crown-Indigenous Relations and Northern Affairs Canada, *2017-18 Departmental Results Report*, online: *Government of Canada*, online: <https://www.rcaanc-cirnac.gc.ca/DAM/DAM-CIRNAC-RCAANC/DAM-CORP/STAGING/texte-text/dept_results_2017-2018_main_report_1540746529832_eng.pdf>. As described at 4: "In May 2016, the Department agreed to a collaborative fiscal policy development process with 25 Self-Governing Indigenous Governments. A number of working groups have been set up to advance this joint policy work. As of March 31, 2018, the group held 20 policy steering committee meetings and more than 80 technical working group meetings. This collaboration resulted in a co-developed draft Self-Government Fiscal Policy framework produced in December 2017, for which Canada committed to seeking further instructions on in early 2018." The draft Self-Government Fiscal Policy framework was subsequently approved by the Federal cabinet in 2018.
- ²² *True, Lasting Reconciliation*, *supra* note 10 at 21.
- ²³ *Clyde River (Hamlet) v Petroleum Geo-Services Inc*, 2017 SCC 40 at para 41 [citations omitted].
- ²⁴ *Statement of Expectations*, *supra* note 1.

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

Drafted by the BC First Nations Water Governance Roundtable
November 20 & 21, 2018

The following 16 principles provide direction to the British Columbia provincial government from the BC First Nations Water Governance Roundtable¹ on implementing the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), Truth and Reconciliation Calls to Action (TRC), and the *Draft Principles that Guide the Province of British Columbia's Relationship with Indigenous Peoples* (BCDP) in relation to the use, stewardship, and protection of all fresh waters.

1. Sacred Responsibility to Water

Our ancestors taught us that water in all its forms is the most fundamental and sacred aspect of life. Our spiritual relationship to water is linked to our inherent right to healthy water and ecological integrity. Water is integral to our peoples' heart, spirit, body and mind. The Creator's natural law gives us sacred unalterable water responsibilities to all generations of all life. This responsibility must be fulfilled through all of our decisions. All processes must be structured to ensure we are able to fulfill these responsibilities.

2. Recognition of Inherent Water Jurisdictions, Authorities, Laws and Traditional Knowledge Systems

The British Columbia provincial government must recognize and respect First Nations traditional governance structures, traditional knowledge, Elders and knowledge keepers.

First Nations Peoples have inherent jurisdictions and responsibilities to water which must be recognized by Crown governments. The BC government has jurisdictions and responsibilities based on the Constitution of Canada. Our respective jurisdictions form the basis of life, and our respective laws and authorities and must always be the foundation of our interaction with each other. Reciprocity is a fundamental part of what respect looks like: the more we are using lands/waters, the more we have to give back to the land/waters.

¹ The BC First Nations Water Governance Roundtable was established in June 2017 to advance First Nations engagement in planning, management, and governance of fresh water. Roundtable participants include approximately 15 staff and leadership comprising 55 First Nations across British Columbia that are actively developing and implementing strategies and plans to achieve their goals with respect to water. The Roundtable provides a unique structured space for collaboration, information sharing, strategy development, and capacity building at a province-wide scale.

3. Nothing about Us without Us

Any action that might directly or indirectly affect our waters must not occur without the full collaboration of First Nations governments in processes that we have designed together and that are aimed at achieving our mutual consent.

TRC 92; UNDRIP 3, 4, 25, 18, 19, 27, 32; BCDP 1, 4, 5, 6, 9.

4. First Nation and Government Processes

First Nations Peoples are comprised of communities within Nations and governments. Many Indigenous structures of governance are in the process of rebuilding after hundreds of years of continued impacts of colonization, and governance happens at multiple levels and in diverse ways. It is essential that each First Nations government can define its own means and approaches to implementing UNDRIP and TRC Calls to Action.

First Nations Institutions

First Nations have the right to choose their institutions and work through those institutions, as does the BC government. The Province must be respectful and uphold First Nations institutions and decisions. As the BC government structure is siloed, implementation of reconciliation commitments must include de-siloing in our collaborative institutions.

TRC 43; UNDRIP 3, 4, 18, 19, 27, 32; BCDP 1, 4, 5, 6, 10.

5. Resourcing

Implementation of reconciliation commitments requires sufficient resources to ensure First Nations governments have the capacity (skilled people, realistic timelines, strong institutions, accessible information, etc.) to implement our inherent jurisdictions related to fresh water, particularly when we engage in collaborative processes that we co-design with other governments. Provision of these resources is fundamental for improved community and ecological outcomes and successful implementation.

TRC 44; UNDRIP 20.2, 28, 29, 32; BCDP 3, 6, 8.

6. Water and Traditional Knowledge

Our inherent jurisdictions are foundational to our lives and interactions with each other. These encompass water in all of its forms (water, permafrost, ice, fog, snow), locations (surface [rivers, lakes, wetlands, springs], ground [aquifers] and the interactions between them), scales (sub-watersheds through to basins) and all living and non-living beings dependent on, connected to, or affecting water.

TRC 43, 47, 52; UNDRIP 25, 26; BCDP 1, 2, 4, 5.

7. All Generations of All

It is a sacred water responsibility to ensure the ecological and spiritual integrity of all parts of the aquatic ecosystem for current and future generations.

UNDRIP 25, 26, 28, 29, 32; BCDP 1, 4, 6.

8. Reflecting Our Water Values

First Nations and Crown legal systems protect differing fundamental values regarding water. Crown legal systems must shift so that they include, respect, and uphold Indigenous values regarding water. Implementation means we will make better decisions that reflect our rights and values on the use, stewardship and protection of water. It also means that our collaborations with each other regarding all stages and aspects of water decision-making will be ongoing and continuous.

TRC 44, 47; UNDRIP 3, 4, 18, 26, 27, 32; BCDP 1, 2, 3, 4, 5, 6, 7, 9.

9. Building Collaborative Institutions, Processes and Approaches

We must co-design and build new collaborative institutions, processes and approaches through which our governments engage with one another in our ongoing decision-making regarding water. Through these processes and institutions, we clarify how Indigenous and Crown jurisdictions, authorities, and laws work together and how these systems become more transparent and accessible to one another over time. Through these approaches, we co-design and use tools that help us make better decisions that result in improved community and ecological outcomes.

TRC 43, 44, 47; UNDRIP 3, 4, 18, 26, 27, 32; BCDP 1, 2, 3, 4, 5, 6, 7, 9.

10. Taking a Precautionary Approach

We have the humility to recognize that humans will never fully understand the complexity of the natural world and so we are always cautious, and we avoid making decisions that might harm ecosystems. When information is uncertain, unreliable or inadequate, we take action to avoid harm to aquatic ecosystems rather than taking a "wait and see" approach. Given that full implementation of reconciliation commitments will take some time, the precautionary approach must be used to ensure that we do not make decisions contrary to UNDRIP and TRC.

TRC 44; UNDRIP 25, 26, 28, 29, 32; BCDP 1, 4, 6.

11. Prioritizing Conservation and Restoration

Due to the dominance of Western values in past and ongoing decision-making of lands and waters, many ecosystems and waters are unhealthy and continue to be impacted. We must take a proactive

approach to ensure no further damage to all waters. Restoring critical waters to their previous health is the highest priority for the governance and management of water.

TRC 44; UNDRIP 25, 26, 28, 29, 32; BCDP 1, 4, 6.

12. Ecosystem-Based Approach

Implementation must proceed according to ecosystem-based management that considers all relevant elements of scale (from local through to watersheds and territory wide considerations). The impacts of previous decisions on ecosystems (cumulative effects) must be integrated into current decision-making. Instead of looking at activities/impacts in the near future, the BC government must be open to adopting a long-term multi-generational view (at least seven generations or 150 years) when evaluating impacts of our decisions on ecosystems.

TRC 44; UNDRIP 25, 26, 28, 29, 32; BCDP 1, 4, 6.

13. Water at the Centre of Land-Use Decision-Making

Everything is connected. Water must be at the center of all other land use planning and decisions. Water will be the lens through which upstream and downstream land use decisions are made in/at watersheds.

TRC 44; UNDRIP 25, 26, 28, 29, 32; BCDP 1, 4, 6.

14. Transparency and Information-Sharing

Co-creation of sufficient information and the systems that create them is necessary for implementation. We engage in joint analysis, interpretation, and knowledge creation so that we can build a cumulative and common understanding of information for decision making. We are open with each other as governments about the information and the reasoning behind discretionary decisions.

TRC 44; UNDRIP 27, 32; BCDP 1, 3, 7.

15. Communications and Education

There is still a need to teach others that First Nations are part of government. This Statement of Requirements must be communicated to non-First Nation governments and stakeholders. We as First Nations must also educate across our Nations, including youth and children.

TRC 44, 57, 92; BCDP 9.

16. Stakeholders

We recognize that the involvement of stakeholders at certain points in our decision-making processes is a responsibility of First Nations and Crown governments and can result in more durable outcomes. We will mutually agree upon the appropriate time and scope of discussions with stakeholders. There must be precursor recognition and agreement that stakeholders are not equal parties in government-to-government processes and decisions.

TRC 44; UNDRIP 3, 4, 18, 19, 27, 32; BCDP 1, 4, 5, 6, 9.