



Assembly of First Nations

Submission to the Standing Committee on Indigenous and Northern Affairs (INAN)

RE: Bill C-61 – An Act respecting water, source water, drinking water, wastewater, and related infrastructure on First Nation lands

October 3, 2024

CONTEXT AND INTRODUCTION

Water is life. Water and sanitation, as well as a clean, healthy, and sustainable environment, are internationally recognized human rights. The human right to water is “indispensable for leading a life in human dignity,” and “a prerequisite for the realization of other human rights.”¹ Canada still denies First Nations these rights and this dignity.

Currently, without legislation in place, there are no standards or regulations relating to safe drinking water and wastewater that are legally enforceable in First Nations across Canada. There is no recognition of First Nation rights to govern waters on First Nation lands, and there is no sustainable long-term funding mechanism that ensures safe and sustainable water and wastewater management. This legislative and regulatory void creates systemic problems, including jurisdictional concerns and chronic underfunding, that put First Nations people’s health and wellbeing at risk every day. In the context of the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration) and Canada’s UN Declaration Act (UNDA), this is incredibly problematic and unacceptable.

Compared to other Canadians, First Nations individuals living on reserve are 90 times more likely to have no access to running water. At any given moment over the past three decades, there have been at least 100 long-term and short-term water advisories in place in First Nations communities. Even now, 30 long-term advisories remain in place. First Nations communities do not experience the same level of water and wastewater services as the general Canadian population experiences. Bill C-61 presents a significant opportunity to address and rectify this long-standing injustice.

¹ Committee on Economic, Social and Cultural Rights, General Comment No. 15, 2002.

RECOMMENDED IMPROVEMENTS TO BILL C-61

To address the longstanding injustice of First Nations water crises and advance Reconciliation in this country, Parliament must ensure this legislation is as strong as it can possibly be. To that end, the AFN calls on the INAN Committee and Parliament to address outstanding concerns of First Nations that were not addressed in the co-development process by making the following recommended improvements to Bill C-61:

1. Better articulate the First Nation jurisdiction recognized and affirmed in the Bill, define protection zones, and provide a mechanism for the exercise of First Nation jurisdiction and the coordination and application of laws in protection zones.
2. Strengthen language and close loopholes that could prevent the Bill from achieving its purposes and perpetuate First Nations water crises, including replacing “best efforts” with firm commitments and protecting First Nations from liability (excluding criminal negligence) where Canada fails to fully fund First Nation water services.
3. Better scope the protections for water quality and quantity on First Nation lands and in protection zones to meet the needs of First Nations for uses beyond drinking water, including economic purposes and the exercise of Aboriginal rights.
4. Strengthen the commitment to ensuring substantive equality and free, prior and informed consent in accordance with Canadian human rights principles and the UN Declaration on the Rights of Indigenous Peoples.
5. Close the regulatory gap as soon as possible by bringing the Act into force immediately upon receiving Royal Assent.

PROPOSED AMENDMENTS TO BILL C-61

To achieve the above recommended improvements and the intended purposes of the proposed legislation, the AFN proposes the following amendments to Bill C-61. We have provided here the complete, clean amended text for each section or subsection that we are proposing to amend, except where entirely new sections or subsections are proposed—these are provided in red font. A copy of all proposed amendments with the changes highlighted is also available upon request.

A. Better articulate the recognized and affirmed First Nation jurisdiction

Amendments are required to fully and consistently articulate the jurisdiction of First Nations that the Bill recognizes and affirms and to use the defined term “water services” consistently throughout the Bill.

Amended text:

Preamble

Whereas Parliament recognizes the inherent right of self-government as an existing right under section 35 of the *Constitution Act, 1982*, which includes, for First Nations, jurisdiction in relation to water, source water, and water services on First Nation lands, and in relation to water and source water in protection zones;

Whereas Parliament is committed to supporting the implementation of that right, in particular through affirming that First Nations have authority to make and enforce laws in relation to water, source water, and water services;

Purpose

4 (b) affirm the inherent right of First Nations to self-government, which includes jurisdiction in relation to water, source water and water services on First Nation lands and in relation to water and source water in protection zones;

4 (c) ensure that laws in relation to water, source water and water services on First Nation lands and in relation to water and source water in protection zones, and policies and practices implementing those laws, are consistent with section 35 of the *Constitution Act, 1982* and the United Nations Declaration on the Rights of Indigenous Peoples;

4 (d) establish principles applicable to decision making regarding water, source water and water services on First Nation lands and water and source water in protection zones, minimum national standards for the provision of water services on First Nation lands, and a federal regulatory regime respecting those services;

Affirmation

6 (1) (a) water, source water, and water services on First Nation lands; and

6 (1) (b) water and source water, including surface and groundwater, in a protection zone.

B. Define Protection Zones without Requiring Adjacency

The legislation must define “protection zone” to ensure the recognition of First Nation rights and jurisdiction to protect source water. Any further definition of the term through regulation, as well as regulations for the protection of source water in protection zones, must be co-developed with First Nations for the same purpose.

Amended text:

Definitions

2 The following definitions apply in the Act.

Protection zone means a geographical area, such as a watershed or a body of water, to or from which water or source water, including surface or groundwater, flows to or from the First Nation lands of a First Nation; includes the Treaty territory and traditional territory of the First Nation; and may have further meaning assigned by regulations made under subsection 21(1).

Minister — protection zone

21 (1) The Minister may make regulations further defining “protection zone” only through co-development with First Nations, and the Minister must make regulations providing for the protection of waters and source waters in protection zones for the purposes of this Act through co-development with First Nations.

Minister – enforcement

22 (1) If requested to do so by a First Nation governing body, the Minister may make regulations respecting the administration and enforcement of the First Nation laws of that First Nation that apply in a protection zone, including regulations respecting the designation of officials for the administration and enforcement of those laws, the creation of offences that are punishable by indictment or on summary conviction and the imposition of penalties.

Consultation

22 (2) The Minister must consult and cooperate with a First Nation governing body of the First Nation and with the government of the province(s) or territory(ies) in which the protection zone is located before making regulations under subsection (1).

C. Provide a Mechanism for the Exercise of First Nation Jurisdiction and the Coordination and Application of Laws in Protection Zones

See **Annex** for proposed new language to provide a mechanism for the exercise of First Nation jurisdiction and the coordination and application of laws in protection zones. This is adapted from sections 20-26 of *An Act respecting First Nations, Inuit and Métis children, youth and families*.

D. Strengthen Funding and Access Commitments

Canada's commitments in the Bill must be strengthened to ensure that the Minister is legally required to actually provide First Nations access to clean and safe drinking water and sanitation, not just to make "best efforts" to do so. Likewise, the funding commitments in the Bill must be strengthened to ensure that the Government of Canada is legally required to actually provide First Nations the needs-based funding required for their communities to have such access. "Best efforts" commitments provide loopholes for Canada to continue denying First Nations their fundamental human right to safe and clean drinking water and sanitation.

Amended text:

The AFN proposes that the words "make best efforts to" be removed from the following sections and subsections: 26, 30, 31, 32, 18(2), 20(2), 27(5), and 39(4).

Reliable access to water services

5 (1) (c) (iv) Sustainable needs-based funding for water services;

Access – water and water services

26 The Minister, in consultation and cooperation with a First Nation governing body, must ensure that

- (a)** access to water of a minimum quantity determined in accordance with section 15 is available on the First Nation lands of the First Nation;
- (b)** access to clean and safe drinking water of a minimum quality determined in accordance with section 14, whether from a public or private water system, is provided to all residents, occupants and users of buildings located on the First Nation lands of the First Nation; and
- (c)** access to wastewater effluent treatment of a standard determined in accordance with section 16 is provided to all residents, occupants and users of buildings located on the First Nation lands of the First Nation.

Framework

27 (2) The Minister's consultations and cooperation in respect of the framework for assessing needs must involve, among other things, the following matters:

- (b)** operations and maintenance, including repair and replacement;

Making of funding allocation decisions

27 (3) The Minister's consultations and cooperation with respect to the making of funding allocation decisions are to be in accordance with requirements that the funding for First Nations water services must

Support

28 The Minister must provide support and needs-based funding to First Nation governing bodies with respect to the entering into of the agreements referred to in sections 23 to 25.

Funding — comparable services

31 The Government of Canada must provide funding that is adequate, predictable, stable, sustainable and needs-based and that meets actual costs for water services on First Nation lands so that, in accordance with the principle of substantive equality, First Nation persons are able to receive water services comparable to those received by persons in non-Indigenous communities.

E. Establish Firm Timelines in the Act

Amended text:

Time limit

18 (2) The Minister must begin the consultation and cooperation required by subsection (1) no later than the 90th day after the day on which this section comes into force and must determine which standards will apply to the First Nation lands of the First Nation as required by subsection (1) no later than the 90th day after the day on which the consultation and cooperation with the First Nation governing body begins.

Minister — protection zone

21 (1) The Minister may make regulations further defining "protection zone" only through co-development with First Nations, and the Minister must, within six months of this Act coming into force, make regulations providing for the protection of waters and source waters in protection zones for the purposes of this Act through co-development with First Nations.

Time limit

27 (5) The Minister must begin the consultations and cooperation required by subsection (1) no later than the last day of the sixth month after the month in which this section comes into force and must complete the framework required by subsection (1) no later than two years after the consultation and cooperation with each First Nation begins.

Time limit

39 (4) The Minister must begin the consultations and cooperation required by subsection (1) no later than the last day of the sixth month after the month in which this section comes into force and must complete the Terms of Reference referred to in subsection (1) no later than two years after the day on which this Act comes into force.

F. Protect First Nations from Liability where Underfunded

Amended and additional text:

Governor in Council

19 (1) (k) the insurance required to be maintained by First Nations or by the Minister on behalf of a First Nation in the event that the First Nation cannot reasonably obtain by ordinary means private insurance in respect of water services and water services operators; and

Framework

27 (2) The Minister's consultations and cooperation in respect of the framework for assessing needs must involve, among other things, the following matters:

(j) insurance requirements; and

First Nation

37 (3) No action or other proceedings for damages lies or may be instituted against a First Nation or First Nation governing body for anything done or omitted to be done by it or by any of its employees or any persons hired by it in the provision of water services on the First Nation lands of the First Nation where the funding provided by the Government of Canada does not meet the needs assessed in the framework referred to in subsection 27 or is not adequate, predictable, stable, sustainable and needs-based and meets actual costs for water services on First Nation lands so that First Nation persons are able to receive water services comparable to those received by persons in non-Indigenous communities.

G. Strengthen Commitments to Substantive Equality and Free, Prior and Informed Consent

Amended text:

Reliable access to water services

5 (1) (c) (iii) the recruitment, training, certification and retention of water services operators, and

Substantive equality

5 (2) The making of decisions under this Act is to be in accordance with the principle of substantive equality in relation to water services, as reflected in the following concepts:

Free, prior and informed consent

5 (3) The making of any decision under this Act is to be in accordance with the requirement of free, prior and informed consent referred to in the United Nations Declaration on the Rights of Indigenous Peoples and the requirements of the *United Nations Declaration on the Rights of Indigenous Peoples Act*.

Governor in Council

19 (1) (d) the recruitment, training, certification and retention of water services operators;

Different locations

19 (3) Regulations made under paragraph (1)(l) may provide for different minimum standards applicable to different locations within the First Nation lands of a First Nation to address local circumstances only if all minimum standards provided are in accordance with sections 14, 15 and 16.

Participation

25 (2) If a First Nation, including its water, source water or water services, or the administration and enforcement of regulations made under subsection 19(1), could be affected by an agreement under subsection (1) between the Minister and a provincial, territorial or municipal government,

the First Nation must be a party to the agreement or the Minister must secure the free, prior and informed consent of the First Nation governing body prior to entering into the agreement.

Framework

27 (2) The Minister's consultations and cooperation in respect of the framework for assessing needs must involve, among other things, the following matters:

(k) remoteness costs, including the increased costs associated with providing water services in remote communities.

H. Better Scope Water Quality and Quantity Protections

Proposed new language:

Water and source water quality

X The quality of water and source water available on the First Nation lands of a First Nation and in a protection zone under the jurisdiction of a First Nation must at least meet the needs of the First Nation for purposes including but not limited to exercising the Aboriginal and Treaty rights of the First Nation.

Water quantity

15 (1) The quantity of water available on the First Nation lands of a First Nation must at least meet the current and projected needs of the First Nation for purposes including but not limited to

- (a)** residential purposes, including drinking, cooking, sanitation and hygiene;
- (b)** social purposes, including service provision and cultural practices;
- (c)** economic purposes, including agriculture and irrigation and commercial and industrial development;
- (d)** safety purposes, including fire protection and emergency management; and
- (e)** purposes of exercising the Aboriginal and Treaty rights of the First Nation.

15 (2) The quantity of water and source water available in a protection zone under the jurisdiction of a First Nation must at least meet the current and projected water usage needs of the First Nation for purposes including but not limited to the exercise of the Aboriginal and Treaty rights of the First Nation.

Governor in Council

19 (1) (l) minimum standards in respect of water services, including the quality and the quantity of drinking water as described under sections 14 and 15 and the treatment and disposal of wastewater as described under section 16; and

19 (1) (m) minimum standards in respect of water and source water, including the quality and the quantity of available water and source water as described under sections X and 15.

I. Bring Bill C-61 into Force Immediately Upon Royal Assent

Amended text:

Order in council

44 The provisions of this Act come into force on the day on which this Act receives Royal Assent.

J. Miscellaneous Amendments

Amended text:

Preamble

Whereas clean and safe water is an essential service and the health, safety and well-being of First Nations must be the primary consideration in every aspect of the provision of water services;

Whereas it is desirable that First Nations' knowledge of water stewardship meaningfully and directly influence federal laws and policies regarding water, source water and water services on First Nation lands and in protection zones;

Whereas Parliament recognizes that regulatory gaps, policy gaps and underfunding have resulted in inadequate infrastructure for the provision of drinking water and wastewater treatment and disposal on First Nation lands and that those gaps and that underfunding have contributed to social and health conditions that are not equal to those of other people in Canada and to short and long-term drinking water advisories on First Nation lands, and have left First Nations in vulnerable circumstances that must be addressed;

Definitions

2 The following definitions apply in this Act.

First Nation lands means lands of a First Nation that are or will be referred to in Class 24 of section 91 of the *Constitution Act, 1867*, including lands set aside for that purpose, and includes water and source water on, in and under those lands. They do not include lands over which Aboriginal title is claimed by a First Nation or has been confirmed by a court.

Environmental protection

29 (1) If a First Nation or the Minister seeks to avoid conflicts between environmental protections set out in a First Nation law and a federal law, either may request to consult and cooperate with the other to remedy the conflict.

(2) If the First Nation and the Minister agree on modifications that address the conflict in the laws under discussion, the First Nation and/or the Minister must ensure the agreed modifications are submitted for implementation in the relevant legislative amendment process.

(3) Failure to agree on modifications will not limit the scope or implementation of the laws to which they are proposed.

Clarification

38 Subject to the exercise by a First Nation of its jurisdiction affirmed under section 6, and subject to any agreements entered into under subsection 25(1)(a), nothing in any regulation made under section 19(1) is to be construed as preventing or limiting any federal minister, other than the Minister, from exercising any powers or performing any duties or functions that they have under any Act of Parliament.

Terms of reference

39 (3) (a) supporting and coordinating the monitoring by First Nations of water, source water, and water services on First Nation lands, and water and source water in protection zones;

39 (3) (b) Providing advice to First Nations in relation to in relation to, water, source water and water services on First Nation lands and water and source water in protection zones, including by obtaining legal advice and coordinating its provision to First Nations;

39 (3) (d) making recommendations to the Government of Canada, provincial, territorial and municipal governments and First Nations in relation water, source water and water services on First Nation lands, and water and source water in protection zones, including recommendations relating to laws, regulations, policies, guidelines and the drafting of model laws, agreements and plans; and

39 (3) (e) providing other services in relation to planning, coordination and reporting with respect to water, source water and water services on First Nation lands and water and source water in protection zones.

JUSTIFICATION FOR PROPOSED AMENDMENTS

Justification for A: Better articulate the recognized and affirmed First Nation jurisdiction

The protection of source water is essential to ensuring that First Nations have reliable access to a sufficient, adequate and safe quantity and quality of drinking water. To achieve that purpose, it is imperative that “water and source water,” both on First Nation lands and in protection zones, be included in the purpose of the legislation. It is also imperative that “water and source water” explicitly includes surface and groundwater, both of which are important water sources for First Nations. For clarity, “water services” should also be used consistently throughout the legislation in accordance with its definition.

Justification for B: Define Protection Zones without Requiring Adjacency

Bill C-61 does not currently provide a meaningful definition of “protection zone,” but instead leaves the term open to definition (and re-definition) by the Minister through regulation rather than legislation. Leaving the term to be defined by the Minister itself denies and undermines First Nation jurisdiction in relation to source water.

The lack of a definition of the term in the legislation also provides a loophole that could lead to a definition of “protection zone” that denies and undermines First Nation jurisdiction. That loophole does not ensure that laws in relation to water and source water are consistent with section 35 of the *Constitution Act, 1982* and the UN Declaration, undermining the legislative purposes of Bill C-61. Leaving the definition and regulation of protection zones to the discretion of the Minister could prevent First Nations from ensuring their source water is protected.

Further, protection zones do not need to be adjacent to First Nation lands to impact a First Nation’s water or source water and/or its inherent and Treaty rights, and thereby come under its inherent jurisdiction. The requirement in Bill C-61 that protection zones must be “adjacent to the First Nation lands” of a First Nation, particularly without defining “adjacent” for that purpose, does not reflect the reality that water flows, above and below ground, and crosses jurisdictional boundaries. Lands and bodies of water often provide the source water of lands to which they are not necessarily “adjacent”. The adjacency requirement prevents First Nations from ensuring their source water is protected.

The proposed amendments are to provide clarity in defining protection zones, ensure the Bill affirms First Nation jurisdiction, and ensure Bill C-61 fulfills its intended purposes.

Justification for C: Provide a Mechanism for the Exercise of First Nation Jurisdiction and the Coordination and Application of Laws in Protection Zones

As written, the provisions of Bill C-61 allow the protection of source water only as a discretionary matter that requires a tripartite agreement between the First Nation, the federal government, and the provincial or territorial government. This mechanism is not sufficient for First Nations to protect their source water. Rather, First Nations exercising their jurisdiction over, and inherent right to protect, source water is made contingent on reaching tripartite agreements. In accordance with a mechanism for coordinating the application of laws where jurisdiction overlaps, which has already been tested and endorsed by the Supreme Court of Canada, First Nation laws must be given the force of federal law and paramountcy where tripartite coordination agreements are not reached.

First Nation jurisdiction in relation to water and source water is inherent, as part of the inherent right of self-government granted to First Nations by the Creator. It exists independent of Crown jurisdiction and is not contingent or conditional on First Nations making agreements with Crown governments. Furthermore, Reconciliation and the Honour of the Crown require Crown governments to recognize and affirm First Nation jurisdiction in its true, full, and complete form. Anything less is an injustice.

Justification for D: Strengthen Funding and Access

While the lack of adequate financial resources has been one of the key contributing factors to the longstanding crises in drinking water and wastewater on First Nation lands, the principle of anti-discrimination is highly relevant to the implementation of Bill C-61 at the national level and to ensuring associated funding is adequate.

If it receives Royal Assent, Bill C-61 will anchor ISC's funding submissions to Treasury Board and impact how resources are allocated to provide water services on First Nation lands. However, no funding formula or approach is set out in the proposed legislation, apart from the requirement that the Minister must consult and cooperate with First Nation governing bodies in respect of a framework for assessing needs and making funding allocation decisions.

In short, the funding provisions in the proposed legislation do not guarantee sufficient funding to First Nations. Under section 26 of the proposed legislation, the Minister is only required to make "best efforts" to ensure First Nations have access to clean and safe drinking water. Under sections 30 and 31 of the proposed legislation, the Government of Canada is only required to make "best efforts" to provide adequate and sustainable funding that meets the assessed needs of First Nations and the actual costs for water services on First Nation lands.

Resulting funding may not be adequate to meet the actual costs required to meet the assessed needs of First Nations for their communities to receive water services comparable to those received by non-Indigenous communities. The requirement only to use "best efforts" does not ensure First Nations will have access to clean and safe drinking water, water of a sufficient quantity for their uses, or wastewater effluent of a suitable standard, risking failure to achieve the purposes referred to in section 4.

To prevent Bill C-61 from failing to achieve its legislative purposes and perpetuating the longstanding status quo of First Nation water crises, the "best efforts" loopholes must be closed

to require the Government of Canada to fully fund First Nation water services. At some point, the rubber must actually hit the road for us to get anywhere. History clearly demonstrates that First Nations cannot rely on the “best efforts” of federal governments.

Justification for E: Establish Firm Timelines in the Act

The lack of timelines in the Bill for completing certain activities required under the proposed legislation provides a loophole that would allow the federal government to fail to deliver on its legislative commitments, fail to achieve the purposes of Bill C-61, and perpetuate First Nation water crises.

Justification for F: Protect First Nations from Liability where Underfunded

The exercise of jurisdiction in relation to First Nation water services comes with risks and liabilities against which insurance is required. For various reasons, a First Nation may not be able to reasonably obtain private insurance against such risks and liabilities by ordinary means. In such a circumstance, the Minister must maintain such insurance on behalf of the First Nation to allow the First Nation to exercise its jurisdiction. Further, First Nations must not be held liable for the failings of water services that Canada underfunds.

Justification for G: Strengthen Commitments to Substantive Equality and Free, Prior and Informed Consent

The proposed legislation does not fully comply with Article 19 of the UN Declaration . Bill C-61 currently lacks any provision that explicitly recognizes the importance of obtaining free, prior and informed consent from First Nations regarding the application of the proposed legislation to them. While section 5(3) requires that decisions made under the proposed legislation be “guided by the principle of free, prior and informed consent,” this is not a requirement on decision makers to actually obtain such consent and therefore must be amended to comply with Article 19 of the UN Declaration.

Sections 14 and 16 of the proposed legislation guarantee minimum standards for drinking water quality and wastewater effluent treatment. However, section 19(3) allows the Governor in Council to make regulations that “may provide for different minimum standards for different locations to address local circumstances.” While this clause was intended to allow First Nations to apply standards that are better suited to their particular environment or circumstances, this provision may provide a loophole for Canada to prescribe standards to First Nations communities that do not meet the minimum guidelines or standards for non-First Nation lands, contrary to the purposes of the Act. It may also give Canada a loophole to prescribe weaker standards to First Nations communities in certain locations, such as remote or isolated communities or First Nations downstream from industrial projects. This would undermine the purposes of the Bill and violate the principle of substantive equality. Therefore, section 19(3) must be amended to close those loopholes.

The principles of substantive equality and free, prior and informed consent must be supported by legislative provisions requiring their application and implementation to have meaning for First Nations. To achieve the purposes of Bill C-61, decisions made under the legislation must actually be in accordance with those principles and not just “guided” by them. Substantive equality is a principle of human rights law in Canada, which requires provision for the unique needs and

circumstances of remote First Nation communities, including funding to account for their unique needs and circumstances.

Justification for H: Better Scope Water Quality and Quantity Protections

As written, section 15 of the Bill excludes the need to have a sufficient water supply for economic purposes, such as for agriculture, irrigation, and commercial development. Further, it excludes the need for sufficient water supply for the exercise of Aboriginal and Treaty rights and cultural practices tied to water. Without the recognition of a right to a sufficient water supply for these purposes, First Nations will continue to face challenges supporting economic development and exercising their Aboriginal and Treaty rights and cultural practices that rely on water.

The proposed amendments would broaden the scope of First Nation needs that water quality and quantity available on First Nation lands and in protection zones must meet to include identified needs that are not currently protected. The proposed amendments would also ensure that provisions are not read as exhaustive in terms of the needs and uses of First Nations that water quality and quantity must meet.

Justification for I: Bring Bill C-61 into Force Immediately Upon Royal Assent

To close as soon as possible the regulatory gap in respect to water, source water and water services for First Nations, the entirety of the Act must be brought into force immediately upon receiving Royal Assent, in accordance with AFN Resolution 43/2024.

Justification for J: Miscellaneous Amendments

The proposed miscellaneous amendments address minor revisions to the Preamble and the definition of First Nation lands, ensure consistency of language with respect to “water, source water and water services,” make consequential amendments with respect to protection zone provisions, and revise the approach to addressing conflicts between environmental protections in First Nation laws and federal laws to better affirm First Nation jurisdiction. These amendments serve to strengthen the Bill in various important ways.

CONCLUSION

Thank you for considering these recommendations to strengthen Bill C-61 by addressing outstanding concerns of First Nations. It has been two years since Parliament repealed the 2013 Act. At the time, all parties agreed the legislation should be replaced with a co-developed Bill. Since then, First Nations have gone without minimum water standards. We must not let another year go by without bringing the replacement legislation into effect. We encourage the committee to consider and adopt our recommended improvements and proposed amendments into Bill C-61 as soon as possible.

ANNEX

Proposed language to provide a mechanism for the exercise of First Nation jurisdiction and the coordination and application of laws in protection zones (adapted from sections 20-26 of *An Act respecting First Nations, Inuit and Métis children, youth and families*):

First Nation Laws

Coordination and Application

Notice

X (1) If a First Nation intends to exercise its legislative authority in relation to water or source water in a protection zone, a First Nation governing body acting on behalf of the First Nation may give notice of that intention to the Minister and the government of the province or territory in which the protection zone is located.

Coordination Agreement

(2) The First Nation governing body may also request that the Minister and the government of the province or territory in which the protection zone is located enter into a coordination agreement with the First Nation governing body in relation to the exercise of the legislative authority of the First Nation over water or source water in a protection zone.

Application – sections Y and Z

(3) Sections Y and Z apply only in respect of a First Nation on whose behalf a First Nation governing body

- (a) entered into a coordination agreement; or
- (b) has not entered into a coordination agreement, although it made reasonable efforts to do so during the period of one year after the day on which the request to enter into a coordination agreement was made.

Clarification

(4) For the purposes of X (3)(b), sections Y and Z apply beginning on the day after the day on which the period referred to in that paragraph ends.

Dispute Resolution

(5) If the First Nation governing body, the Minister and the government of the province in which the protection zone is located make reasonable efforts to enter into a coordination agreement but do not enter into a coordination agreement, a dispute resolution mechanism provided for by the regulations made under section XX may be used to promote entering into a coordination agreement.

New Request

(6) If sections Y and Z do not apply in respect of a First Nation, nothing prevents the First Nation governing body that has already made a request under subsection X (2) on behalf of the First Nation from making a new request.

(7) For greater certainty, even if sections Y and Z apply in respect of a First Nation on behalf of which a First Nation governing body has not entered into a coordination agreement, nothing prevents the First Nation governing body from entering into a coordination agreement after the end of the period referred to in paragraph (3)(b).

Force of law

Y (1) A law, as amended from time to time, of a First Nation referred to in subsection X(3) also has, during the period that the law is in force, the force of law as federal law.

Interpretation

(2) No federal law, other than this Act, affects the interpretation of a law referred to in subsection (1) by reason only that subsection (1) gives the law the force of law as federal law.

Application of federal laws

(3) No federal law, other than this Act and the *Canadian Human Rights Act*, applies in relation to a law referred to in subsection (1) by reason only that subsection (1) gives the law the force of law as federal law.

Conflict — federal laws

Z (1) If there is a conflict or inconsistency between a provision respecting water or source water in a protection zone that is in a law of a First Nation and a provision respecting water or source water in a protection zone — other than any of sections XX to XX of this Act and the provisions of the *Canadian Human Rights Act* — that is in a federal Act or regulation, the provision that is in the law of the First Nation prevails to the extent of the conflict or inconsistency.

Clarification

(2) The reference to a “federal Act or regulation” in subsection (1) does not include a reference to a law that has the force of law under subsection Y(1).

Conflict — provincial laws

(3) For greater certainty, if there is a conflict or inconsistency between a provision respecting water or source water in a protection zone that is in a law of a First Nation and a provision respecting water or source water in a protection zone that is in a provincial Act or regulation, the provision that is in the law of the First Nation prevails to the extent of the conflict or inconsistency.

Conflict — stronger ties

AA (1) If there is a conflict or inconsistency between a provision respecting water or source water in a protection zone that is in a law of a First Nation and a provision respecting water or source water in the same protection zone that is in a law of another First Nation, the provision that is in the law of the First Nation with stronger ties to the protection zone — taking into consideration geographical and hydrological proximity, giving due weight to the reliance of the First Nations on the water or source water in the protection zone, unless they cannot be ascertained, and the views and preferences of the First Nations — prevails to the extent of the conflict or inconsistency.

References to laws

(2) Subsection (1) also applies in respect of the provisions of a law that has the force of law under subsection Y (1).

Publication and Accessibility

Publication

BB The Minister must

- (a) as soon as feasible after receiving a notice under subsection X(1), or a request under subsection X(2), post on a website the name of the First Nation on whose behalf a First Nation governing body has given the notice or made the request, as the case may be, and the date on which the notice or request was received;
- (b) as soon as feasible after a coordination agreement is entered into, post on a website the name of the First Nation on whose behalf a First Nation governing body has entered into the coordination agreement and the date on which it was entered into; and
- (c) as soon as feasible after receiving notice that a law made on behalf of a First Nation contains a provision respecting water or source water in a protection zone, post on a website the name of that First Nation and the date on which the law comes into force.

Accessibility

CC After receiving a copy of a law that contains a provision respecting water or source water in a protection zone made on behalf of a First Nation referred to in subsection X(3), the Minister is to ensure that the law is made accessible to the public in any manner that the Minister considers appropriate, and to that end may publish the law, as amended from time to time, in the *Canada Gazette*.