SPECIAL CHIEFS ASSEMBLY
DECEMBER 8, 9 & 10, 2009, OTTAWA, ON

Resolution no. 42/2009

TITLE:	Government of Canada's Proposed *First Nations Safe Drinking Water Act*
SUBJECT:	Jurisdiction/ Water
MOVED BY:	Chief Carolyn Buffalo, Montana First Nation, Alberta
SECONDED BY:	Larron Northwest, Proxy, Samson Cree First Nation, Alberta
DECISION:	Carried by Consensus

WHEREAS:

A. The original Peoples of Turtle Island were given specific instructions on how to care for the waters and as such women have instructions to care for the waters through life-giving ceremonies and the men have instructions to protect the life-giving ceremonies;

B. The Chiefs and Councils of First Nations across Canada derive their authority from the Creator and are mandated by the citizens of their respective Nations.

C. It is the responsibility and duty of the Chiefs to guard against infringements of the rights of our peoples, .

D. First Nations possess Treaty and Aboriginal rights to the waters, both on and of reserve, arising from Aboriginal title and rights, the Treaties, including pre-confederation and modern, and reserve lands set aside pursuant to the Treaties and by way of undertakings of the Crown.

E. First Nations across Canada have repeatedly and consistently communicated to Canada that we possess Treaty and Aboriginal water rights, including a right of self-government with respect to water that must be accommodated in the development of any new water legislation for First Nations.

F. The *United Nations Declaration of the Rights of Indigenous Peoples* affirms the rights of First Nations to manage the waters of our lands.

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G. The Supreme Court of Canada has confirmed that the Crown has a constitutional duty to consult with and accommodate First Nations when proposed Crown action has the potential to impact/infringe established and/or asserted Treaty and Aboriginal rights.

H. The Government of Canada proposes to introduce the *First Nations Safe Drinking Water Act* but has failed to discharge its constitutional duty to consult with and accommodate the rights and concerns of First Nations in relation to the proposed *First Nations Safe Drinking Water Act*.

I. In 2008, the Chiefs-in-Assembly called on the Government of Canada to take immediate steps to ensure that it satisfies its constitutional duty to consult with and accommodate all First Nations regarding Canada's proposed new drinking water legislation, including meaningful discussion of the potential impacts of Canada's proposed legislation on Treaty and Aboriginal water rights and First Nations' rights to use and benefit from reserve lands (Resolution 49/2008 SCA).

J. Resolution no. 12/2009, which was passed provisionally by the AFN Executive Committee on 09/10/09, noted the inadequacy of federal legislation that will make reference to provincial and territorial regulations which will not work for First Nations because they are not the appropriate standards nationally for First Nations to adapt to a FN Water Regulatory Regime. This resolution directed the AFN to seek resources for legal advice on ways to politically intervene on the proposed Water and Wastewater legislation and to take appropriate legal action if deemed necessary.

THEREFORE BE IT RESOLVED that the Chiefs-in-Assembly:

1. Affirm that ensuring the safety the waters can be achieved without abrogating or derogating from our constitutionally protected rights.

2. Oppose any federal water legislation that infringes Treaty and Aboriginal rights, particularly rights relating to the waters and the right of First Nations to manage the waters in our communities and on our traditional territories including the proposed *First Nations Safe Drinking Water Act*.

3. Reject the Minister of Indian Affair's rationale that the proposed *First Nations Safe Drinking Water Act* is a "health and safety measure" thereby somehow excusing Canada's infringement of our Aboriginal and Treaty rights.

4. Direct the National Chief to call on the Government of Canada to put First Nations on a level playing field before enacting legislation by taking immediate steps to remedy the resource gap regarding the inadequate operations and maintenance funding, eliminate the unacceptable numbers and duration of drinking water advisories, reduce to zero the high and medium risk water and wastewater treatment systems, and ensure every water and wastewater treatment plant has licensed primary and backup operators.

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5. Direct the National Chief to call on the Government of Canada to take immediate steps to remedy Canada's failure to meaningfully consult with and accommodate First Nations regarding the development of the proposed *First Nations Safe Drinking Water Act.*

6. Support all such further actions considered necessary to maintain and protect our Treaty and Aboriginal water rights, in the event that the Government of Canada does not uphold the honour of the Crown by failing to respect our Treaty and Aboriginal rights and title, and meet its constitutional duty to consult with and accommodate First Nations in relation to the *First Nations Safe Drinking Water Act* or any other federal water legislation.

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