
Assembly of First Nations

55 Metcalfe Street, Suite 1600
Ottawa, Ontario K1P 6L5
Telephone: 613-241-6789 Fax: 613-241-5808
www.afn.ca



Assemblée des Premières Nations

55, rue Metcalfe, Suite 1600
Ottawa (Ontario) K1P 6L5
Téléphone: 613-241-6789 Télécopieur: 613-241-5808
www.afn.ca

**ANNUAL GENERAL ASSEMBLY
JULY 11, 12, & 13, 2023; HALIFAX, NS**

Resolution no. 47/2023

TITLE: Proposed Federal First Nations Drinking Water and Wastewater Legislation

SUBJECT: Drinking Water

MOVED BY: Chief Byron Louis, Okanagan Indian Band, BC

SECONDED BY: Judy Wilson, proxy, Osoyoos Indian Band, BC

DECISION Carried by Consensus

WHEREAS:

- A. The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) states:
- i. Article 18: Indigenous peoples have the right 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.
 - ii. Article 19: States shall 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.
- B. First Nations-in-Assembly provided extensive direction to the Assembly of First Nations (AFN) through resolutions addressing drinking water and wastewater issues faced by First Nations, including Resolution 26/2018, *Support for a First Nations Safe Drinking Water Legislation – Preliminary Concepts*, Resolution 01/2018, *First Nations led Process to Develop New Federal Safe Drinking Water Legislation*, and Resolution 77/2018, *First Nations led Engagement Process for Safe Drinking Water Legislation*.

Certified copy of a resolution adopted on the 13th day of July 2023 in Halifax, Nova Scotia

JOANNA BERNARD, INTERIM NATIONAL CHIEF

47 – 2023
Page 1 of 3

- C. AFN Resolution 23/2022, *Re-Commitment to Co-Development of Replacement Legislation for Safe Drinking Water for First Nations*, directs the AFN to call on Canada to recommit to meaningful co-development of legislation that at a minimum:
- i. Recognizes First Nations rights and jurisdiction over lands and waters;
 - ii. Includes mandatory requirements for Canada to provide water and wastewater treatment that meets minimum national standards (or where requested, the more stringent of the federal requirements or provincial standards governing residential water quality);
 - iii. Commits Canada to provide adequate and sustained funding (including at a minimum capital, operations and maintenance, and inspections) to address water and wastewater;
 - iv. Includes mechanisms to address transboundary waters;
 - v. Liability protection for owners and operators; and
 - vi. Governance structures that ensure First Nations are decision-makers in the provision of water and wastewater services.
- D. The Government of Canada has committed to introducing new legislation following the repeal of the 2013 *Safe Drinking Water for First Nations Act* and the legal obligations required by the 2021 Safe Drinking Water for First Nations Class Action Settlement.
- E. Canada's consultative draft legislation, *An Act respecting drinking water, wastewater and related infrastructure on First Nation lands*, which was shared with the AFN and First Nations, does not meet First Nations requirements that were identified through AFN Resolution 23/2022, mandates provided by First Nations over the last ten years, and responses from engagements held in March and April 2023.
- F. Based on these concerns, the Minister of Indigenous Services Canada delayed the introduction of the proposed legislation to the House of Commons to Fall 2023 to secure the proper mandate to address the critical requirements identified to the AFN by First Nations.
- G. Should First Nations requirements not be meaningfully incorporated into the proposed legislation, First Nations may file a statement of claim.

THEREFORE BE IT RESOLVED that the First Nations-in-Assembly:

1. Reject the consultative draft legislation titled, *An Act respecting drinking water, wastewater and related infrastructure*, on First Nation lands in its current form and support the Minister in delaying the introduction of the legislation to address the critical requirements identified by First Nations including:

Certified copy of a resolution adopted on the 13th day of July 2023 in Halifax, Nova Scotia



JOANNA BERNARD, INTERIM NATIONAL CHIEF

- a. Recognition of First Nations rights and jurisdiction over lands and waters;
 - b. Mandatory requirements for Canada to provide water and wastewater treatment that meets minimum national standards (or where requested, the more stringent of the federal requirements or provincial standards governing residential water quality);
 - c. Adequate and sustained funding (including at a minimum capital, operations and maintenance, and inspections) to address water and wastewater;
 - d. Mechanisms to address transboundary waters;
 - e. Liability protection for owners and operators, and
 - f. Recognition of rights over source water, minimum binding national standards, commitment to funding, liability protection for First Nations governments, water governance structures. led by First Nations, and mechanisms to address management of transboundary source water.
2. Direct the Assembly of First Nations (AFN) and Canada to co-develop regulatory instruments and policies that support or are made under the replacement legislation, *An Act respecting drinking water, wastewater and related infrastructure on First Nation lands*.
 3. Call on the AFN and Canada to co-develop a funding formula for adequate and sustained funding, including but not limited to capital, operations and maintenance, inspections, liability protection for First Nations governments, management mechanisms of transboundary source water and the establishment of First Nations-led water governance structures.
 4. Call on Canada to fund and support First Nations-led engagement, including with inherent and Treaty rights-holders, on the critical requirements identified for the proposed drinking and wastewater legislation in each region through the summer and fall of 2023.
 5. Call on the Minister of Indigenous Service Canada to work with the AFN, with the guidance of the AFN Chiefs' Committee on Housing and Infrastructure and the Advisory Committee on Climate Action and the Environment, to co-develop regulatory instruments, and policies that support or are made under the replacement legislation *An Act respecting drinking water, wastewater and related infrastructure on First Nation lands*, and to bring back the draft legislation for approval at a future Assembly.

Certified copy of a resolution adopted on the 13th day of July 2023 in Halifax, Nova Scotia



JOANNA BERNARD, INTERIM NATIONAL CHIEF

47 – 2023
Page 3 of 3