Opinion

First Nations Clean Water Act continues to fail treaty peoples

Indigenous Services Minister Patty Hajdu tabled Bill C-61 in December 2023, which provides no long-term assurance for funding that will address existing gaps in infrastructure needs, and address new and growing costs to provide services for all First Nations, the Chiefs Steering Committee writes. *The Hill Times photograph by Andrew Meade*

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Bill C-61 is currently at second reading in the House of Commons. Introduced late last year, it is touted by Canada as "the next step to ensure First Nations have clean drinking water for generations to come."The federal government claims C-61 will "recognize and affirm the inherent right of First Nations to self-government, drinking water, wastewater and related infrastructure on, in and under First Nation lands." Furthermore, that it will create "rights-based regulatory pathways to protect water and source water adjacent to First Nation lands, in consultation and co-operation with First Nations, other federal ministers, and provinces and territories, to help protect drinking water sources flowing onto First Nations lands."

Seems and sounds good, right?

In theory, yes. In practice, not a chance.

This legislation needs to be redrafted to bind Canada's commitments to First Nations respecting our inherent Aboriginal and treaty rights to water, ensure overall health and sustainability of water and water infrastructure, and address the immense and glaring disparity in water standards and sub-standard conditions facing more than 600 nations across Turtle Island.

The Government of Canada has a shameful, racist history when it comes to protecting and providing resources for clean water and water/wastewater infrastructure in First Nations. Bill C-61 is a product of the Clean Water Class Action Settlement Agreement between Canada and the plaintiff First Nations in 2021. This class action sought to serve drinking water advisories, and Canada's failure to ensure adequate access to safe drinking water in these communities.

Under the settlement agreement, Canada committed to a minimum of $6-billion in funding, with approximately $400-million annually from 2021 until 2031 towards constructing, upgrading, operating, and maintaining water and wastewater infrastructure for First Nations. For generations, Canada has repeatedly failed to address reserve infrastructure needs, and as treaty leaders, we have little confidence that C-61 will be the solution Canada claims it to be to resolve the immense disparity in water standards and infrastructure.

The promises of the Crown in treaty to respect our inherent rights to our lands, resources, and institutions as part of our mutual understandings to co-exist were intended "for as long as the sun shines, the grass grows, and the waters flow."This is how the Crown and treaty relationship is supposed to be valued, to grow, and evolve. Our inherent and treaty right to access clean, safe water, and protect and preserve water sources needs to be less rhetorical and more concretely represented in Bill C-61 as the foundation upon which the Crown upholds its commitments.

Bill C-61—while referencing the ideals of recognizing our rights—actually represents Canada's intent to offload its legal and fiduciary responsibilities to ensure safe and clean water by leaving First Nations liable and responsible after decades of living with underfunded and outdated water and wastewater systems. In Alberta alone, the gap to simply bring existing First Nation water systems up to current standards is close to $500-million. This amount doesn't consider costs to ensure access to, or health and sustainability of, local water sources. Bill C-61 provides no long-term assurance for funding that will address existing gaps in infrastructure needs, and address new and growing costs to provide services for all First Nations. Although the settlement agreement provides that Canada will at minimum need to spend $400-million annually over the next 10 years, the math doesn't add up to be able to address current deficiencies across the country, let alone address new concerns stemming from impacts of climate change. Further, there are too many loopholes in Bill C-61 for Canada to delay implementation and commitments to funding. This is the perfect out for Canada to present itself as addressing First Nation water and wastewater infrastructure needs while at the same time dumping its responsibilities to address liabilities related to chronic underfunding, and decades of outright neglect directly onto First Nations.

Bill C-61 also purports to ensure water protection zones, which involves First Nations, provincial, municipal, territory, and even county participation for source waters. The intention is that all parties will work together. C-61 falls short here, and doesn't consider situations or consequences when parties aren't collaborating. Recently, the Province of Alberta announced a plan to deal with unprecedented drought and water shortages, and has declared an early start to the wildfire season. This plan does not include us, or provide assurance towards future collaboration and prioritizing water protection zones.

Water is life. Water is sacred. Water is not a commodity to be licensed and manipulated for access. As First Peoples, our access to safe, clean, and lasting water is threatened. And here we are, with the prospect of another federal offload law purporting to give us something that is now in shortest supply after centuries of overuse, misuse, and outright abuse.

Canada needs to reset, re-evaluate, and look to the principles and intentions of our treaty relationship to find a mutually acceptable means to protecting water, our rights, and truly establishing a viable answer to our ongoing water and infrastructure needs. As treaty rights holders, we remind Canada of our expectations for free, prior, and informed consent, guaranteed in Article 19 of the United Nations Declaration on the Rights of Indigenous Peoples. At minimum, we need to redraft Bill C-61 to better address and accommodate our basic needs and bind the Crown to follow through. Failure to do so will result in this bill adding to Canada's long list of failures to ensure and protect First Nation access to healthy, safe, and sustainable water sources, and demonstrate Canada's shameful efforts to offload liabilities and ignore us.

Rupert Meneen is chief of Tallcree First Nation, Treaty 8. This piece is on behalf of the Chiefs Steering Committee, which also includes: Chief Trevor John, Kehewin Cree Nation; Chief Aaron Young, Chiniki First Nation; Chief Clifford Poucette, Wesley First Nation; Chief Wilfred Hooka-Nooza, Dene Tha' First Nation; Chief George Arcand, Alexander First Nation, Treaty 6; Chief Troy Knowlton, Piikani Nation, Treaty 7.

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