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Bill C-61: First Nations Clean Water Act (short title), or an Act respecting water, source water, drinking water, wastewater and related infrastructure on First Nation lands

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Backgrounder

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Bill C-61, the proposed *First Nations Clean Water Act*, is the next step to ensure First Nations have clean drinking water for generations to come.

It is the result of extensive consultation. In 2013, the *Safe Drinking Water for First Nations Act* came into effect, but First Nations were already calling for its repeal and replacement. Engagement has been ongoing, and in 2018, the Assembly of First Nations, with support from Canada, led an engagement to review the Act. First Nations shared several concerns.

Bill C-61, introduced in Parliament today, is the result of our commitment to introduce legislation that addresses key priorities and concerns raised by First Nations. Bill C-61 would recognize and affirm the inherent right of First Nations to self-government in relation to water, source water, drinking water, wastewater and related infrastructure on, in and under First Nation lands.

It would also establish rights-based regulatory pathways to protect water and source water adjacent to First Nation lands, in consultation and cooperation with First Nations, other federal Ministers, and provinces and territories, to help protect drinking water sources flowing onto First Nation lands.

Bill C-61 would also support the closing of drinking water and wastewater service gaps between First Nations and non-First Nations communities, and operate independently of the *Indian Act*.

It would also commit the federal government to make best efforts to provide adequate and sustainable funding for water services on First Nation lands. That funding would be required to meet, as a minimum, the commitment expenditures set out in the Settlement Agreement.

Key elements of the Bill include:

- recognition and affirmation of the inherent right of First Nations to self-government, including jurisdiction over water, source water, drinking water, wastewater and related infrastructure on, in and under First Nation lands;
- rights-based regulatory pathways to protect water and source water adjacent to First Nation lands, in consultation and cooperation with First Nations, other federal Ministers, and provinces and territories, to help protect drinking water sources flowing onto First Nation lands;
- minimum national standards for the delivery of drinking water and wastewater services on First Nation lands, based on First Nation choice;
- a federal commitment to make best efforts to provide adequate and sustainable funding for water services on First Nation lands comparable to services received in non-First Nations communities;
- a requirement to provide funding that, as a minimum, meets the commitment expenditures set out in section 9.02(2) of the Settlement Agreement;

- a requirement for all decisions made under the proposed Act to be guided by the principle of free, prior and informed consent; and
- a commitment for Canada to support the creation of a First Nations Water Commission that would support First Nations in exercising greater control over drinking water and wastewater services on First Nation lands.

Bill C-61 is aligned with the United Nations Declaration on the Rights of Indigenous Peoples through federal requirements to consult and cooperate with First Nations on matters in the Bill. In addition, it requires decisions to be guided by the principle of free, prior and informed consent.

The proposed legislation was developed through comprehensive engagement that put First Nation voices at the forefront. Canada worked directly with First Nation rights-holders, including Modern Treaty and Self-Governing First Nations, through their own representative institutions and First Nation organizations, including the Assembly of First Nations and the First Nations Advisory Committee on Safe Drinking Water, to help ensure the Bill is reflective of First Nations needs and priorities.

In addition to the Government of Canada's commitment to implement the United Nations Declaration on the Rights of Indigenous Peoples, the Bill would further require Canada to work with First Nation partners when:

- making and implementing federal funding allocation decisions to support sufficient, predictable, stable, sustainable and needs-based funding for water services on First Nation lands;
- developing federal regulations under the proposed Act;
- supporting the establishment of a First Nations Water Commission;
- supporting First Nation choice in the application of minimum national standards; and
- making best efforts to ensure access to clean and safe drinking water for all located on First Nation lands.

Timeline of key events:

July 2023

In July 2023, Canada publicly shared an updated consultation draft of a legislative proposal with First Nation rights-holders, First Nation organizations, provinces and territories, and posted the updated draft online for further feedback by September 2023. This ongoing dialogue continued until mid-September 2023.

February 2023

In February 2023, Canada shared an initial consultation draft of a legislative proposal with First Nation rights-holders, First Nation organizations, provinces and territories, and posted the initial draft online for review and feedback by April 2023. This period was the first of two consultation periods on the consultation draft.

Summer 2022

Canada increased engagement and information sharing with First Nation rights-holders, including Modern Treaty and Self-Governing First Nations, through their own representative institutions and First Nation organizations to support the development of new proposed First Nations drinking water and wastewater legislation.

June 2022

The official repeal of the 2013 *Safe Drinking Water for First Nations Act* through the *Budget Implementation Act, 2022, No. 1* received Royal Assent on June 23, 2022.

March 2022

Canada engaged key First Nation rights-holders and First Nation organizations on the proposed repeal of the 2013 *Safe Drinking Water for First Nations Act* through virtual engagement sessions. All participants supported the proposed repeal.

2021

The Safe Drinking Water for First Nations Class Action Settlement Agreement was approved by the Federal Court and the Manitoba Court of Queen's Bench (now the Manitoba Court of King's Bench) on December 22, 2021. Through the Settlement Agreement, Canada is committed to making all reasonable efforts to:

- introduce repeal of the 2013 *Safe Drinking Water for First Nations Act* by March 31, 2022; and
- develop and introduce proposed replacement legislation, in consultation with First Nations, by December 31, 2022.

2019

Legal action began against Canada in a proposed class action on behalf of all First Nations members both on and off reserves with a drinking water advisory for at least one year since 1995.

2018

The Assembly of First Nations, with support from Canada, led an engagement to review the 2013 *Safe Drinking Water for First Nations Act*. First Nations shared several concerns, including:

- lack of adequate, predictable and sustainable funding;
- lack of recognition of Aboriginal rights
- potential infringement of Aboriginal and treaty rights;
- lack of protection of source water; and
- insufficient engagement on water issues that directly affect First Nations.

2015

Engagement on regulations came to a stop as First Nations called for the repeal and replacement of the 2013 *Safe Drinking Water for First Nations Act*.

2013

The *Safe Drinking Water for First Nations Act* came into effect to support Canada in developing federal regulations to ensure access to safe, clean and reliable drinking water and the effective treatment of wastewater on First Nation lands.

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