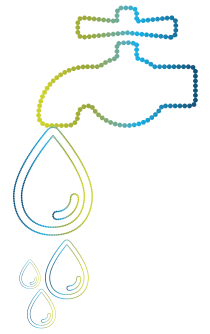




# AUGUST 2023 | UPDATE ON AN ACT RESPECTING DRINKING WATER, WASTEWATER & RELATED INFRASTRUCTURE ON FIRST NATIONS



## “FOR AS LONG AS...THE WATER FLOWS”

To Treaty Peoples, water is sacred. It is the basis of life and when seen relationally water is to be protected. Treaty Peoples consider water to be a relation to steward and this was understood under the true spirit and intent of Treaty.

First Nations in the Alberta Region are consistently frustrated by the inability to shape and scale the level of development in their lands.

First Nations' needs for potable, safe drinking water is a major pressure on First Nations that has not been adequately addressed for the past 30 years.



## BACKGROUND

Canada has long promised to address the third world water conditions in many First Nations and has been criticized internationally for its lack of action to address Indigenous concerns for more than a decade. First Nations rejected the Safe Drinking Water for First Nations Act as being wholly inadequate and limited in scope. Nearly 10 years later the Safe Drinking Water for First Nations Act was repealed on June 23, 2022.

The Government of Canada is now working to co-develop a new First Nations drinking water and wastewater legislation, in consultation with the Assembly of First Nations (AFN); A legislative proposal called ***An Act respecting drinking water, wastewater and related infrastructure on First Nations***. The original deadline for the new Water law was December 31, 2022, now passed, Canada intends to introduce the new federal law in fall 2023.

The new water legislation is aligned with the Safe Drinking Water Class Action Settlement Agreement, which announced the following:

- \$1.5 billion in compensation for individuals deprived of clean drinking water;
- The creation of a \$400 million First Nation Economic and Cultural Restoration Fund;
- A renewed commitment to Canada's Action Plan for the lifting of all long-term drinking water advisories;
- The creation of a First Nations Advisory Committee on Safe Drinking Water;
- Support for First Nations to develop their own safe drinking water by-laws and initiatives;
- A commitment of at least \$6 billion to support reliable access to safe drinking water on reserve;
- Modernization of Canada's First Nations drinking water legislation.

The Settlement Agreement requires immediate change aimed at addressing and preventing First Nations water infrastructure “gaps” and building a sustainable foundation for future generations.



## THE PATH FORWARD

### No Recognition of Treaty Rights

Nowhere in the current legislative documents produced by ISC is there specific reference to the special and unique rights that First Nations have with regard to Water; this in particular includes treaty rights references. ISC is working closely with willing First Nations and First Nations organizations (via co-development with the AFN) to develop and introduce new proposed water and wastewater legislation.

Throughout ISC's ongoing engagements, First Nations consistently highlight the following key priorities:



Recognition of Inherent and Treaty Rights



Protection and Stewardship of Source Water



Adequate and Sustainable Funding for Drinking Water and Wastewater Services



Ongoing Engagement on Water Issues that Affect First Nations

ISC intends to accelerate and complete engagement and introduce legislation. The expectation is that the new Act will be sent before the House of Commons and Senate for review and readings processes, in the fall of 2023.

### Proposed Litigation Strategy

In June 2023, TSAG's CEO, Vaughn Paul, presented a proposed strategy regarding the Federal water legislation to the Confederacy of Treaty Six First Nations of Alberta. The strategy involves litigation along with negotiations settled soundly on a Treaty oriented/Treaty based foundation that is currently being developed with the support of First Peoples Law. The approach was supported by Treaty 6 and Treaty 8 Chiefs in the Alberta Region<sup>1</sup>.



## CRITICAL ISSUES FOR CONSIDERATION

1. The water legislation and wastewater initiative are in direct alignment with the Canada's two-pronged approach at services transfer, large scale per the ISC mandate in 2019.. Canada is doubling down on its efforts and working through early adopters, and those willing to build capacity towards economic development and jobs creation. The Inherent and Treaty rights concerns are secondary or in some cases non-existent in these discussions.
2. The impact of the 1930 Natural Resources Transfer Act (NRTA) remains an outstanding legal barrier in the assertion of natural resources jurisdiction related to First Nations water stewardship, which to date has largely focused on oil, gas and mineral extraction. The NRTA has not been tested legally by First Nations relative to the assertion of breaches of treaty including water.

1. The SDW Class Action Settlement compensation application time frame was extended to March 7, 2024.

3. Recognizing the role of women in the governance and stewardship of water. Establishing a women and water oversight committee could guide the discussion in way that is in keeping with the worldview of the peoples in Treaty 6, 7 and 8.
4. Clear evidence and data should be gathered that demonstrate a strong infrastructure mitigation plan for Treaty Nations. This plan ought to be established by the infrastructure managers within each Nation with support from TSAG to build a business case for infrastructure, water and wastewater capacity mitigation. Without this, any discussion about services transfer without a clear plan to address the costs of years of out-dated water and related infrastructure is unconscionable and could have detrimental impacts.
5. TSAG's Chief's Steering Committee has taken the lead on exploring the legal and political impacts of the water legislation and wastewater initiative in the Alberta Region; they are also addressing the transfer objectives under the *Department of Indigenous Services Act 2019* and impacts to First Nations in Alberta and the Infrastructure Gap 2030. They have hosted information sessions and continue to do so, all information can be accessed on their website [www.tsag.net/transferservices](http://www.tsag.net/transferservices).
6. Treaty Nations must secure a water/security/sovereignty/stewardship plan that is in alignment with each Nation's overall infrastructure goals/objectives. A strong strategy would include:
  - Safe Drinking Water and access to sufficient water sources that are in alignment with the jurisdictional application of the Inherent Right and Treaty Rights of each Nation.
  - Treaty oriented water law/by-law with jurisdictional mechanisms that enable control in keeping with the Indigenous worldview of self-sufficiency, as well as influence relative to water within the treaty area and across all boundaries (provincial/international lines).
  - Implementation of conservation and protection and stewardship initiatives informed and guided by an Indigenous led support mechanism.
  - Support for capacity building within Treaty Nations for conservation, protection, stewardship, management, water supply and quality assurance.
  - Water resource management capacity to address current health matters (boil water advisories and related cultural wellness), estimate future needs and impact from Nation growth on resources (risk management plans).
  - An infrastructure strategy to assess, maintain and improve the integrity of source wells and water lines, audit the water and wastewater treatment systems, and evaluate flood risks where applicable.



## HOW TO GET INVOLVED

TSAG, an organization that was created by Treaty 6, 7 and 8 Chiefs has taken the lead on exploring the legal and political impacts of the Water legislation and wastewater initiative in the Alberta Region. [\*\*A 2-day meeting is being planned in mid-summer, August 15-16, 2023.\*\*](#) This session will also address the *Department of Indigenous Services Act 2019* and impacts to First Nations in Alberta and the Infrastructure Gap.

