



**Presentation to Treaty 6, 7, and 8 Leadership  
Sovereign Water Rights and Services Transfer on Infrastructure**

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# Background/Introductions

- We are honoured to support and discuss strategy with Treaty Chiefs today.
  
- Our role specifically is to support the building of strategy regarding:
  - the federal initiatives regarding water/wastewater infrastructure transfer to First Nations;
  - proposed new water/wastewater legislation stemming from the Safe Drinking for First Nations Class Action Settlement Agreement (the proposed “First Nations Drinking Water and Wastewater Act”); and,
  - broadening the dialogue beyond water/wastewater to require a Treaty-rights framework as the foundation and minimum expectation for any devolution.

# Litigation Strategy Elements

- Developing a claim/launching litigation against Canada respecting their rushed and flawed process of enacting new legislation (the proposed “First Nations Drinking Water and Wastewater Act”).
- Chief Rupert Meneen of Tall Cree First Nation, Treaty 8 will lead the charge and be the named plaintiff in the proposed litigation.
- Met with Treaty 6 and 8 leadership seeking support as this work progresses and continuing to build consensus and alliances where possible.

# Overall Strategy Elements

Support is being sought to:

1. Reject the proposed *First Nations Drinking Water and Wastewater Act* legislation and any ongoing and unilateral effort of the Government of Canada to further transfer large scale programs and services including capital and infrastructure;
2. Demand a First Minister's meeting with Treaty Chiefs in the Alberta Region to be meaningfully consulted and to seek consent on the outstanding issues related to the development of legislation related to water and related infrastructure in Alberta; and,
3. Support the advancement of a strong legal strategy to reclaim First Nations jurisdiction as Treaty and inherent rights holders related to water and related infrastructure and as delegated with continued assistance and support of the Technical Services Advisory Group (TSAG) and designated representative(s) of each Nation.

# Reality Check

- We know the reality of the Crown living up to its legal obligations has failed.
- Particularly, when we look at Crown impacts to Treaty rights and jurisdiction regarding water, we see the following:
  - Breach of fiduciary duties
  - Failure to uphold the honour of the Crown
  - Discrimination in violation of s. 15 of the Charter (guaranteeing right to equal benefit of the law without discrimination)

# Reality Check

- Interference with security of person and violation of s. 7 of the Charter (guaranteeing life, liberty and security of person)
- Failure to uphold UNDRIP principles (Articles 18 – rights to participate in decision making institutions; Article 19 – free, prior and informed consent; and others)
- Colonial impacts and breach of treaty obligations to prevent the exercise of full jurisdictions
- Water pollution, degradation of systems, impacts to water flow and levels
- Substandard drinking water
- Substandard infrastructure for both drinking water and wastewater
- Inadequate, piece-meal funding and sustained policy implementation affecting and adding to the current poor state of infrastructure for First Nations.

# Devolution/Transfer Priorities of Canada

- Devolution and the transfer of services is a confirmed priority of Canada. Examples include: health services transfers; child/family services delegation; initiatives of the Financial Management Board (Financial Administrative Law development and 10 year ISC block funding); housing and infrastructure devolution initiatives; education funding transfers, land management initiatives, etc.
- Indigenous Services Canada describes Priority 1 in their strategic plan for 2020-2025 as follows: **Transfer control of services to Indigenous Partners**. They describe this as the “best way to improve services”. See: [Indigenous Services Canada: Strategic Plan 2020 to 2025 \(sac-isc.gc.ca\)](https://www.sac-isc.gc.ca)
- From a Treaty perspective, based on history and lived experience, this raises significant questions over true intentions and trust.

# Devolution/Transfer

- Any dialogue regarding delegation or transfer of services needs to begin from a place of trust, respect and understanding.
- This is the foundation to build from, based on inherent and treaty-based principles of relationship and Nation building.



# Intent of Treaty Language

- Through the relationships established and understood at the time of Treaty-making, treaties were intended to be a way of defining future nation to nation relationships.
- They included the promise of mutual respect for ways of living and wellness and intended to support and uphold indigenous rights and jurisdictions.

# Crown Obligations

- Devolution or transfer discussions can not simply be a task or a check box on a Crown workplan.
- Dialogue needs to be well planned, funded and part of an express Treaty recognition framework. The Crown must always act honourably.
- There has not been a significant plan, investment or strong enough results to support devolution.
- Both federal and provincial Crown governments must continue to act as a fiduciary and in the best interests of Treaty Nations.

# Canada's UNDRIP Action Plan

- Absent from Canada's dialogue to date is treaty recognition and principles of sovereignty, respect and trust.
- To date, there has been no true commitment to indigenous issues and principles of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) expressed and outlined in its most recent Action Plan (2023-28 - released on June 21, 2023).
- With Treaty as the starting point, a leveraging of UNDRIP ought to be included in the framework for any discussion about devolution and transfer of services.

# Canada's UNDRIP Action Plan

- We include the following slides to take home to your membership to inform them that in this Action Plan, Canada has set out the priority of supporting self-determination, self-government and recognition of treaties ([Chapter 1: Shared priorities \(justice.gc.ca\)](#) re: Articles 3, 4, 37) through the following goals:
  - Indigenous peoples exercising and having full enjoyment of their rights to self-determination and self-government, including developing, maintaining and implementing their own jurisdiction, laws, governing bodies, institutions and political, economic and social structures related to Indigenous communities.

# Canada's UNDRIP Action Plan

- Treaties, agreements and other constructive arrangements with Indigenous peoples are affirmed and fully implemented.
- Colonial laws, policies and practices that have interfered with Indigenous peoples' self-government are repealed or amended.
- Recognizing and reflecting indigenous legal orders and having this recognition as the starting point of discussions aimed at interactions between federal, provincial, territorial and Indigenous jurisdictions and laws.
- Ensuring Indigenous governments have access to ongoing, long-term and stable fiscal mechanisms and revenues to fulfil their roles and responsibilities as governments and ensure their citizen's well being and ability to thrive.

# Canada's UNDRIP Action Plan

- A specific action related to transfer/devolution identified by Canada (noted “**in consultation and cooperation with Indigenous peoples**”) includes:

27. *Engage with partners on the co-development of a Service Transfer Policy Framework. The purpose of the Framework would be to jointly advance the transfer of responsibility for the design, delivery and management of services from Indigenous Services Canada to Indigenous partners.*

# Canada's UNDRIP Action Plan

➤ Further actions of relevance includes:

*24. Remove and address jointly identified barriers to settlement, and co-develop approaches for the implementation of the right to self-determination through treaties, agreements and other constructive arrangements, as well as through new policies and legislative mechanisms.*

# Canada's UNDRIP Action Plan

➤ And:

*31. Building on ongoing policy and program renewal, the Government of Canada will work in collaboration with Indigenous partners to identify opportunities to reform and strengthen the foundational elements that support rights-based negotiations and approaches. This collaborative work may include a review of program administration, capacity support, funding and delivery models, including the management of the process for determination of section 35 rights.*

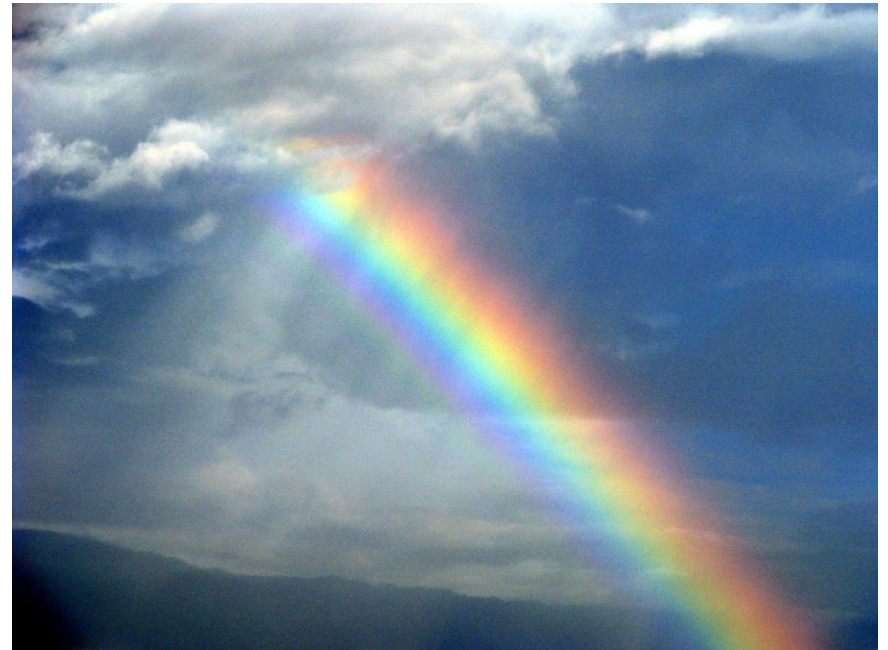


# Canada's UNDRIP Action Plan

- With respect to the UNDRIP Articles regarding Indigenous participation in decision-making and Indigenous institutions (Articles 5, 18, 19, 34), Canada has set forth the following action:

*67. Work with Indigenous partners to ensure co-development of legislation, policies, programs, regulations and services furthers the right of Indigenous peoples to self-determination, led by priorities and strategies determined and developed by Indigenous peoples and that co-development processes result in initiatives that comply with Indigenous rights and advance Indigenous priorities.*

# Leverage of “Sunshine and Rainbows”



# Building a Framework based on Treaty relations

- We have heard from leadership and technical experts that the status quo is not acceptable.
- The way forward is to ensure the work with Canada is not about a transactional devolution process, but about building the Treaty framework that reaffirms inherent rights and jurisdiction over water and related infrastructure. Indeed, across all sectors.
- Canada must pause its devolution process and make space for the Treaty position and implement such a change.

# Traditions/Values

- These processes need to consider ways to strengthen Treaty Nation's inherent jurisdiction and to stop the continued interference and infringement of this jurisdiction by other governments.
- Treaty 6, 7, and 8 Nations have always held longstanding connections and inherent rights to waters within their territories. This includes the inherent jurisdiction over water **grounded in traditional laws and teachings.**
- Traditional connections to water and its protection must be there for next generations.

# Visioning

Key messaging might be that jurisdiction over waters should not be transferred until:

- 1) Nations are better supported and fully ready to exercise jurisdiction; and
- 2) All are informed and the process rests on a foundation of Treaty principles and the respect of Indigenous knowledge and understandings.

# Visioning

- Jurisdiction must include sufficient infrastructure and capacity including adequate transfer payments to ensure sustainability and longevity.
- Long-term, sustainable funding commitments to ensure safe drinking water and wastewater systems with the necessary infrastructure and technical capacity to service and ensure the wellness of Treaty Nation citizens on and off reserve

***What else should the vision include? Key objectives from leadership must guide and inform the vision.***

# Recommended Approach

We have recommended a three-pronged approach to build the proposed vision expressed above and that considers the following:

1. Preparation of litigation strategies against the Crown to demonstrate the clear risk of their continued inaction or status quo.
2. Gathering and Documenting past, current and future impacts and harms to water, water resources within Treaty Nations territory.

# Recommended Approach

3. Proceeding, through a careful, multi-phased approach to rebuild the necessary capacity and infrastructure to ensure a full exercise of Treaty Nation jurisdiction over water, including protection and long-term sustainability.\*

\*This approach (consisting of at least 8-10 phases) would include:

- compiling an inventory of water issues/infrastructure;
- accessing and gathering of Traditional Knowledge;
- a full evaluation of the state of infrastructure and current and future required mitigation/sustainability/growth plans;
- **confirming a fulsome implementation plan and agreements;**
- creating a framework government to government agreement, confirming transfer payments and continued viability/sustainability and ensuring this framework is different from any co-developed and/or self-government objectives that are currently not working.



# Our Deliverables

- Key Documents include the following:
  - Summary of information from TSAG and other reports on failures of water related infrastructure, and failures to protect waters.
  - Summary of recent First Nations Drinking Water Settlement (Class Action lawsuit)
  - Review to ensure collaboration with recent rights related litigation in Alberta (i.e. Beaver Lake litigation (cumulative impacts))

# Our Deliverables

- Development of legal claims related to the Crown's impacts to Treaty rights and jurisdiction regarding water (see our “Reality Check” slide in presentation for list of potential breaches)
- Preparation of draft phased approach to reclaiming Treaty Nation jurisdiction over water and water infrastructure, based on visioning and direction of Chiefs and leadership.

# Proposed Next Steps

- Hearing, Listening and Learning more as we proceed towards a multi-phased approach to an inherent rights and jurisdiction-based framework with Canada.
- Continue to prepare potential litigation strategies/claims

# Proposed Next Steps

- Continue to gather evidence – including traditional knowledge
- Use a leadership table and Treaty principles to guide work (litigation and negotiation) related to water protection, input and consent to any legislative initiatives, and fulfillment of jurisdiction with funding and capacity.

# Seeking Direction/Feedback

➤ Questions? Feedback/Comments?

**Thank you!**