



September 8, 2023

Honourable Patty Hajdu  
Minister of Indigenous Services Canada  
10 Wellington Street, 28<sup>th</sup> Floor  
Gatineau, Quebec, K1A 0H4  
Via Email: [Patty.Hajdu@canada.ca](mailto:Patty.Hajdu@canada.ca); [proprepnh2o-cleanfnh2o@sac-isc.gc.ca](mailto:proprepnh2o-cleanfnh2o@sac-isc.gc.ca)

Dear Minister Hajdu,

**Re: Updated consultation draft – Proposal for an Act respecting drinking water, wastewater and related infrastructure on First Nation lands (the “Proposed Legislation”)**

On August 15 and 16, 2023, Chiefs met at a gathering in Edmonton, Alberta to review and discuss Canada’s Proposed Legislation. Over 70 representatives including Chiefs, Councilors and water/wastewater/infrastructure technicians from Nations across the Alberta region attended. Representatives of Indigenous Services Canada (ISC) attended as invited speakers to share information on the Proposed Legislation and related devolution/transfer initiatives, including Associate Regional Director General Dayna Jongejan.

Several First Nation representatives who attended this session voiced significant concerns over Canada’s process with respect to the Proposed Legislation and related transfer and devolution initiatives. ISC representatives speaking at the event agreed openly and directly with many of the Nation's concerns raised at the gathering. This is troubling, and at the very least, should signal that there is a lot to consider and resolve with respect to the Proposed Legislation.

Through our mandate of supporting safe and strong infrastructure needs of communities, our Chief’s Steering Committee has retained legal counsel to explore legal options to ensure the concerns of First Nation governments that we represent and those who support this work are addressed. Our legal counsel attended and presented at the recent gathering and garnered additional support to advance the development of a legal strategy by several Nations in attendance.

Treaty Chiefs are actively pursuing all avenues as needed:

- to protect and preserve vital water resources for future generations;
- to ensure current and future infrastructure is consistently and adequately funded, safe and functional for growth;
- to confirm that any updates to legislation affecting water and water infrastructure considers and incorporates Inherent and treaty rights, including rights to self-determination, water and water resources; and
- to establish a fulsome and adequately resourced implementation plan with strict measures of ongoing federal commitment.



We share this to emphasize the seriousness and significance of this matter to our First Nation governments. On behalf of Treaty Chiefs, we do not accept this current Proposed Legislation or the approach that Canada has taken to date with respect to introducing and advancing this legislation.

Below is a summary of our concerns and comments related to the Proposed Legislation for your review and careful consideration.

#### Concerns with Approach/Timeline

- This process to develop legislation is far too rushed and unrealistic to meaningfully address the significance and complexity of issues surrounding water and water infrastructure affecting First Nations in the Alberta region.
- Despite an acknowledgement of UNDRIP principles, Canada has continued to pre-define the process of how this legislation gets advanced and implemented. This is completely unacceptable to us.
- ISC representatives at the recent gathering we hosted referenced their efforts in sending letters to each Chief and Council over the spring and summer of 2023 seeking comments and feedback on the proposed legislation and referred Nations to information shared on Canada's website. Another representative referenced a survey that Canada had provided, only to confirm later that there was no such survey available. Questions raised by Chiefs on tangible outcomes or expectations of improvements to water and water infrastructure were not answered adequately to provide assurance or confidence regarding this Proposed Legislation meeting its objectives.
- Input on the important topics of water and water infrastructure needs to come through a variety of means, and ideally first through thoughtful dialogue and building trust and understanding (ideally through consensus) on developing a process with the Treaty relationship at the forefront.
- It is wholly unreasonable to expect Nations to provide meaningful input on such an important topic through responding to letters with imposed and rushed deadlines sent from ISC or to review already drafted materials posted online, particularly given the bombardment of correspondence and demands facing First Nation governments daily, many with severely over-strained capacity.
- Chiefs wish to be addressed on this important topic based on their Nation's specific traditional knowledge and experience. Substantial resources should be provided to glean this input and feedback.
- Non rights holding entities such as the Assembly of First Nations do not speak on behalf of individual Treaty Nations without the express and direct permission of Chiefs.
- This above process needs an absolute re-start as it is a clear violation of these commitments and resembles past failed efforts of the Crown to engage meaningfully and honourably with First Nation governments.



### Transfer/Devolution Concerns that do not consider Treaty Rights

- It appears this proposed legislation is in direct alignment with Canada's efforts to devolve and transfer services (described as Priority 1 in the Indigenous Services Canada strategic plan 2020-2025).
- We are very concerned that the proposed legislation does not adequately consider treaty rights, or First Nation inherent jurisdiction regarding lands and resources or right to self-governance and determination.
- References in the proposed legislation give little comfort to how treaty rights or First Nation inherent jurisdiction will tangibly and meaningfully be considered or impact Nations directly.

### Concerns over how proposed Legislation does not address Nation inherent connections to source water and Natural Resources

- We are concerned that the legislation does not address the impact of the 1930 Natural Resources Transfer Act to Nations inherent jurisdiction regarding water and water stewardship.
- Particularly concerning is that there are no references on interactions with the provinces and other levels of government on this significant topic to satisfy the needs and respect the inherent jurisdiction of First Nations governments extending to lands both on and off reserve.
- The reference in the preamble of the proposed legislation and the purpose section encourages collaboration on water protection planning and source water protection between First Nations and other governments but again does not specify details or consequences if this is not followed.
- This legislation and initiative must consider water within Treaty areas and across jurisdictional boundaries and respect these inherent Indigenous connections to source water.
- How can off-reserve water resources be managed, considered and protected to address the jurisdiction of First Nations to steward their lands and resources referenced in UNDRIP?

### Failure to consider the important role of traditional teachings and values in the governance and stewardship of water and other cultural connections to water

- We are concerned that there is not enough consideration on how the proposed legislation can ensure that inherent cultural teachings can be more than merely mentioned in Preamble references and truly incorporated.
- We know for example that women have a strong and important role traditionally in the governance and stewardship of water. This is referenced specifically in the Proposed Legislation preamble language, but there is no further reference to ensure traditional knowledge and values are meaningfully incorporated in the legislation or related processes.
- As an example, we know locally that establishing a women and water oversight committee would guide the discussion in a way that respects the values of Treaty 6, 7 and 8 Nations. How can we have assurance on this moving forward or ensure other specific local traditional values are considered? How can this important work be resourced?



#### Concerns over lack of accurate data

- We are deeply concerned that this proposed legislation is not adequately or accurately considering relevant data and information on the current state of infrastructure and water and wastewater capacity for each First Nation.
- Without accurate information, we are concerned there will not be a viable plan to address the immense gaps that exist to ensure infrastructure is viable, adequate, safe and can be maintained and operated sustainably in the future. This has the potential of serious and detrimental impacts to First Nation governments and the Government of Canada.

#### Concerns over lack of commitments to planning and a fulsome and funded implementation strategy

- We are concerned that the proposed legislation is silent on any federal commitments to adequate planning including an implementation strategy with consistent updates and continued resourcing.
- Planning that directly considers each Nation's overall infrastructure goals and objectives is vital for this initiative to succeed.
- The proposed legislation provides little to no comfort on the following:
  - o Commitments to conservation or other protection or stewardship initiatives.
  - o Capacity building within Nations for conservation, protection, stewardship, water resource management (including health advisories, cultural wellness, future needs estimates, risk management), water supply and quality assurance.
  - o Infrastructure protection and management to assess, maintain and improve the integrity of source wells and waterlines; conduct water audits on source water and wastewater treatment systems; and the evaluation of flood risks or climate change impacts.

#### Concerns over Regulations

- The proposed legislation contains an extensive list of areas where the Governor in Council may make regulations respecting water on First Nations lands but does not provide details on how this considers or incorporates UNDRIP principles of self-determination or obtaining the free, prior and informed consent of First Nations before enacting these regulations. This is highly concerning.

#### Concerns over the First Nations Water Commission

- More details are required on the purpose and intent of this Commission in the proposed legislation.
- There are concerns of this Commission overstepping or speaking on behalf of Nations directly, and a preference is always direct Treaty Nation engagement on specific water and related infrastructure needs and planning/implementation.

We thank you in advance for your thoughtful consideration of the above concerns. The approach to enact any legislation with such deep-rooted impacts and connections to First Nation governments and



next generations needs to be carefully considered from our direct perspectives and led by our priorities and values.

We are deeply concerned and disagree with Canada's current approach in introducing and moving to enact this Proposed Legislation. It is rushed, misguided and represents a violation of our Inherent jurisdiction to water, protected through our Treaty. As we see it, and as was voiced clearly by many Chiefs at our recent gathering in August, Canada has not met its fiduciary obligation to protect and uphold these rights and has not met its duty to consult and engage meaningfully with our Nations directly on this important matter and Proposed Legislation. Canada has not developed a shared process that provides any certainty on a well-funded and managed Treaty based jurisdictional transition, or implementation planning process or agreement. This is urgent and troubling. Clearly we need to discuss and seek resolution on these matters further.

Should you have further questions please be in contact with our CEO, Vaughn Paul [vaughnpaul@tsag.net](mailto:vaughnpaul@tsag.net).

Sincerely,

On behalf of the TSAG Chief's Steering Committee

Grand Chief Leonard Standing on the Road, Treaty No. 6 (Alberta Region)

Chair, TSAG

cc TSAG Chief's Steering Committee – Chief George Arcand Jr., Alexander First Nation; Chief Leonard Standing on the Road, Montana First Nation; Chief Trevor John, Kehewin Cree Nation; Chief Aaron Young, Chiniki First Nation; Chief Clifford Poucette, Wesley First Nation; Chief Rupert Meneen, Tall Cree First Nation.

Minister Gary Anandasangaree, Minister of Crown-Indigenous Relations (CIRNAC) - [gary.anand@parl.gc.ca](mailto:gary.anand@parl.gc.ca)