

POLICY REPORT

# **WATER OPPORTUNITIES FOR FIRST NATIONS**

Opportunities for First Nations Arising  
from the Proposed Ontario Water Opportunities  
and Water Conservation Act

Theresa McClenaghan and Farshad Salehzadeh,  
Canadian Environmental Law Association



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Ontario Water Conservation Alliance  
c/o Rideau Institute  
63 Sparks, Suite 608  
Ottawa, ON K1P 5A6  
tel. 613 565-9449  
e. [info@conserveourwater.ca](mailto:info@conserveourwater.ca)  
[www.conserveourwater.ca](http://www.conserveourwater.ca)

### **About the Water Conservation Alliance**

The Ontario Water Conservation Alliance is a coalition of citizens, non-governmental organizations, businesses, municipalities and labour groups who believe an environmentally sustainable and economically secure province requires a comprehensive water conservation and efficiency strategy. The Alliance is therefore advocating for a Water Conservation and Opportunities Act for Ontario.

For more information please visit [www.conserveourwater.ca](http://www.conserveourwater.ca)

# WATER OPPORTUNITIES FOR FIRST NATIONS

## Opportunities for First Nations Arising from the Proposed Ontario Water Opportunities and Water Conservation Act

This paper addresses the question of how the proposed Ontario Water Opportunities and Water Conservation Act would provide opportunities for First Nations communities and their members.

There is likely to be significant potential for opportunities for First Nations arising from the currently proposed Ontario Water Opportunities and Water Conservation Act *if a concerted effort is made to ensure that those opportunities are created and pursued.*

First Nations communities in Ontario are geographically diverse, ranging from locations in large urban southern Ontario areas to small far north areas without year-round road access. Many systems remain at risk and there is a range of unresolved issues regarding resources, standards and governance. As of 2009, there were still 48 First Nations communities whose systems remain classified as high risk. However, this number has steadily declined from 218 in 2003.<sup>1</sup> As of April 30, 2010, there were 116 First Nations communities across Canada under a Drinking Water Advisory with a mean average duration of 343 days. Despite the policy outlined in the 2006 *Protocol for Safe Drinking Water for First Nations Communities*, 36 per cent of these communities still do not have any level of certification for water systems operators. These issues are further described in the attached Background.

As a result, opportunities specific and unique to First Nations communities arise for research, technology development, and implementation of drinking water treatment, delivery and supply options. Training and green jobs opportunities in the water sector arising from innovative solutions that apply in small, remote and far north communities should be pursued. The proposed Ontario Water Opportunities and Water Conservation Act should explicitly encourage and enable those opportunities for First Nations communities and their members.

Examples of specific First Nations-related opportunities and needs which could be expedited by the Technology Acceleration Project proposed in the act include the following:

- Development of tool kits to operate and manage multiple systems, centralized and decentralized.
- Preparation of Guidelines for Source Water Protection.
- Preparation of Water and Wastewater Systems plant operators training manuals.
- Development of local management models specifically designed for both centralized and decentralized systems.
- Preparation of Standard Operational Procedures (SOPs) for water and wastewater treatment devices and packaging plants.
- Development of tool kits to select Certified Water and Wastewater treatment devices for point-of use, point of entry and decentralized small systems.
- Development of risk assessment tools.
- Preparation of educational and promotional materials which are user-friendly.
- Water treatment solutions for many First Nations communities must be effective for remote northern communities with small populations, climate extremes over the course of the year, and in the geology of the near and far north. In many cases this requires new or expanded research to apply or modify water technologies that were developed in more populated or southern communities with different geological realities. This may include exploring technologies from a point-of-use or small system perspective rather than from a large central system perspective. In some cases, there are very specific contaminants of concern to the First Nations community and their drinking

water, but research is needed to obtain solutions which can be readily implemented. (It should be noted that such research will also benefit non-First Nations communities with similar challenges to obtaining safe drinking water.)

- Related relevant research opportunities include water sampling and on-site testing approaches that work for communities at a distance from regular labs, and other monitoring issues relevant to the communities.
- In addition to envisaging and designing research projects which are responsive to these existing and practical needs of communities, there is the opportunity to ensure that these projects are designed so as to provide additional research and training opportunities directly to First Nations youth and young professionals.
- Similarly, water conservation solutions will be of interest to many First Nations communities, just as they are elsewhere, in that it may be very expensive, both in financial and energy consumption terms, to treat and distribute water. Water conservation assists in reducing these demands on the community. Furthermore, the types of green infrastructure solutions that the Water Conservation Alliance advocates generally will also be of interest to First Nations communities, who may wish to explore, pilot, demonstrate and install these innovative water conservation solutions. Examples which have been mentioned elsewhere include innovative uses of alternative water sources (other than treated) for appropriate uses, grey water re-use; alternative approaches to household plumbing to separate treated and non-treated water, and similar approaches.
- In addition to envisaging and designing related water conservation research projects, and including assessment of needed modifications for the geographic and geologic locations of systems, there is again the opportunity to ensure that these research projects and water conservation installation projects include training and job opportunities for First Nations youth and young professionals.

## RECOMMENDATIONS

There is a significant opportunity for inclusion of specific research regarding innovative solutions for First Nations communities. There is also a need and an opportunity to include First Nations youth, students and young professionals in this research, in related training, and in related implementation of these innovative solutions.

A more formal assessment of these opportunities, along with more specific assessment and recommendation of specific community-based First Nations water research projects, specific First Nations youth interests and needs for related involvement in research and training, and assessment of the potential for implementation of the results of innovative research through demonstration on-site projects should be undertaken as an early project of the Technology Acceleration Project with relevant First Nations partners.

A proportion of research and demonstration projects should be specifically set aside for this research and the Ministry of Training, Colleges and Universities should be included in discussions on how best to involve Ontario First Nations youth, students and young professionals in these opportunities ranging from post-secondary academic to trades. These opportunities should where possible be made available in conjunction with specific needs for research into First Nations community water systems.



## BACKGROUND

# First Nations Communities and Drinking Water in Canada

Most Canadians are fortunate enough to have access to clean water and sanitation, but there are still some who fall through the gaps and lack consistent and binding standards for drinking water quality.

Seventy per cent of Canadians are concerned about water quality, and one in five is concerned about the safety of their drinking water.<sup>2</sup>

In rural Canada, it is estimated that 20% to 40% of all rural wells have nitrate concentrations or coliform bacteria counts in excess of drinking water guidelines and pose threats to health.<sup>3</sup>

However, the most persistent and challenging problems with drinking water quality in Canada are generally found in First Nations communities. These areas fall into a regulatory gap and are vulnerable to drinking water contamination.

Water has a specific spiritual standing in First Nations culture, medical uses and spiritual practices.<sup>4</sup> In addition, it is an age-old right for First Nations to be the keepers of this resource and First Nations state this was never relinquished to the Crown.

Some First Nations communities have witnessed an increase in pressure placed on water in their communities from economic and resource development. Historical contamination from activities associated with military and industrial natural resource exploitation has also resulted in high levels of many contaminants in water systems which First Nations people access.

In many cases, environmental degradation and damages have greater influence on First Nations people than on other Canadians, since they may practise traditional lifestyles and consume traditional foods.

In 2001, almost three-quarters of drinking water systems on reserve posed significant risk (according to DIAND and Health Canada assessments).

In 2003, the federal government announced a \$1.6 billion investment over five years (May 2003 to March 2008) in a *First Nations Water Management Strategy*.<sup>5</sup>

In 2005, 946 people from a First Nations community of 1200 in Northern Ontario, called Kashechewan,

evacuated their community because of elevated E. coli levels in water which resulted in a state of emergency.<sup>6</sup>

The confusion surrounding accountability and responsibility for the supply of safe drinking water on First Nations reserves worsened the situation at Kashechewan. The federal government looked to the Province of Ontario to manage the problem – as the authority primarily responsible for health and water services – while Ontario argued the federal government was responsible given its jurisdiction over First Nations.<sup>7</sup>

There is no national legislation governing drinking water in Canada,<sup>8</sup> since drinking water for the general population is within provincial jurisdiction. For First Nations, the *Protocol for Safe Drinking Water for First Nations Communities* (revised 2006), which now includes “Decentralised Water and Wastewater Systems,” sets out guidelines for the design, operation and maintenance of drinking water systems<sup>9</sup> – but these are not binding. In addition, these protocols, when implemented, will require planned operation, maintenance and structured management plans. Furthermore, in one community there may be more than one system in operation. This is contrary to the situation in many provinces, which have, since Walkerton, established their drinking water guidelines as binding standards in legislation.

“Aside from the lack of laws and regulations, the technical support available to First Nations, such as training in operations and maintenance, is also inadequate,” said Johanne Gelin, the Commissioner of the Environment and Sustainable Development, in her report in 2005.

In Canada, municipal governments are commonly the direct provider of drinking water for towns and cities. The provincial and territorial governments have traditionally taken the main legislative responsibility for regulating the provision of safe drinking water. Nationally, the federal government has direct regulatory responsibility in First Nations communities, on military bases, in national parks, and at federal facilities.<sup>10</sup>

## RECENT FEDERAL INITIATIVES

In 2006, the Government of Canada in collaboration with the Assembly of First Nations (AFN) appointed an Expert Panel on Safe Drinking Water for First Nations. This independent panel was formed after a federal government announcement about the *Plan of Action for Drinking Water on First Nations Reserves*. Most elements of this plan were extended by the Government of Canada in 2008 by *The First Nations Water and Wastewater Action Plan*.<sup>11</sup>

The Standing Senate Committee on Aboriginal Peoples (2007) suggested that any effort to push through a regulatory regime without securing greater funding to build capacity is a fundamentally flawed strategy.<sup>12</sup> Closing the resource gap is also one of the three preconditions for success suggested by Expert Panel. The second precondition is the legal duty of the federal government to consult with First Nations when it develops and implements any regulatory regime for drinking water in First Nations communities. Third, high-risk communities need immediate consideration since reaching the ultimate goal of any option would take time – probably several years – while many reserve residents currently face serious risks.<sup>13</sup>

In 2007, the Assembly of First Nations reported that 20 per cent of Canada's 600 First Nations communities live with contaminated water, posing severe health risks.<sup>14</sup>

The Panel determined that there were three viable options for the establishment of a regulatory framework: 1. Parliament could enact a new statute referencing existing provincial regulatory regimes; 2. Parliament could enact uniform federal standards and requirements; or 3. First Nations could develop a basis of customary law that could then be enacted in a new federal statute. At least three classes of First Nations rights may be impacted by all of the options presented by the Expert Panel: water rights, environmental protection rights, and self-government rights.<sup>15</sup>

As of December 2006, the final three options were presented to the House of Commons by Jim Prentice, the Minister of Indian and Northern Affairs, with the federal regime approach as the favourite option at that time.

The federal government launched discussions and a series of engagement sessions with First Nations across the country to ascertain First Nations perspectives on developing federal legislation between summer 2008 and spring 2009.

The first expressed message in all of the engagement sessions was a call to recognize the sacred place of water in First Nations cultures, knowledge and world-views. A second principal message was criticism of the engagement process and emphasis on the importance of government consultation. Other expressed issues and concerns were the sufficiency of funding, the need to include source water protection off reserve in any regulatory regime, and the need to seek support for proposed regulations at the community level. Concern for protecting Aboriginal and treaty rights also pervaded many of the sessions.<sup>16</sup>

There was considerable acceptance for a regionally based regulatory framework, while there was virtually no support in any of the regional sessions for a national approach to developing regulations, save for AFN officials, who preferred a national approach to a regionally based one.

As of 2009, there were still 48 First Nations communities whose systems remain classified as high risk. However, this number has steadily declined from 218 in 2003.<sup>17</sup>

As of April 30, 2010, there were 116 First Nations communities across Canada under a Drinking Water Advisory with a mean average duration of 343 days. Despite the policy outlined in the 2006 *Protocol for Safe Drinking Water for First Nations Communities*, 36 per cent of these communities still do not have any level of certification for water systems operators.

Canada now indicates by way of introduction of a First Nations Water Bill in the federal Senate that it wishes to proceed with an approach that incorporates provincial laws by reference (Bill S-11, 40th Parl., An Act respecting the safety of drinking water on first nation lands). This bill has not yet gone to a Senate Committee for study.

Mr. Justice O'Connor said in the Walkerton Inquiry report, "I encourage First Nations and the federal gov-

ernment to formally adopt drinking water standards, applicable to reserves, that are as stringent as, or more stringent than, the standards adopted by the provincial government.”<sup>18</sup>

## RECENT PROVINCIAL INITIATIVES

Following the Walkerton Inquiry, the provincial government established the Walkerton Clean Water Centre to assist with training water operators and to demonstrate clean water technology. The Clean Water Centre subsequently developed a “Circuit Rider” program of drinking water operator training which would collaborate with the existing Ontario First Nations Technical Services Corporation–Circuit Rider Training Program (CRTP) in training some First Nations water operators in the far north of Ontario.

In addition, the Ontario Clean Water Agency has provided assistance to various Ontario First Nations

communities with respect to their drinking water and wastewater systems in a variety of ways, sometimes in project management or under retainer, sometimes by way of assistance during an emergency situation.

Ontario also made provision for First Nations communities located in or adjoining Ontario’s Source Protection Planning regions to sit on the Source Protection Planning committees or otherwise participate in that process, including the potential to seek designation of their system under Ontario’s Clean Water Act by way of a Band Council Resolution. Ontario also sponsored some pilot work regarding First Nations and source protection with the federal government as it was developing the source protection framework for the province. On the other hand, many Ontario First Nations communities are outside of Ontario’s system by reason of location or have chosen to date not to actively participate in that system.



## Notes

- 1 ecojustice & FLOW & CIER, *Seeking Water Justice: Strengthening legal protection for Canada's drinking water*, page 10..
- 2 Unilever RBC Water Survey (2010), cited in ecojustice & FLOW & CIER, *Seeking Water Justice: Strengthening legal protection for Canada's drinking water*. Also Commissioner of the Environment and Sustainable Development (2005), "Chapter 5 – Drinking Water in First Nations Communities," in 2005 Annual Report of the Commissioner of the Environment and Sustainable Development to the House of Commons. Cited in *Seeking Water Justice*.
- 3 Van der Kamp, G., and G. Grove (2001), "Well Water Quality in Canada: An Overview," in M. Mahmoud & R. van Everdingen (eds.), *An Earth Odyssey: Proceedings of the 54th Canadian Geotechnical Conference Held September 16-19, 2001* (Richmond, B.C.: Bitech Publishers, 2001), pp. 45-49. Cited in *Seeking Water Justice*.
- 4 Assembly of First Nations, Federal Crown Political Accord on the Recognition and Implementation of First Nation Governments.
- 5 Indian and Northern Affairs Canada. Retrieved August 2010 from "<http://www.ainc-inac.gc.ca/ai/arp/es/0708/fn-wms/fnwms-eng.asp>"
- 6 Wyndham-West, M. (2009), "Phenomenologically Productive 'Creation' Stories: Aboriginal Health Discourse and Mass Media Coverage of the Kashechewan 'Crisis,'" *Explorations in Anthropology* 9(1): 143-157.
- 7 ecojustice & FLOW & CIER, *Seeking Water Justice: Strengthening legal protection for Canada's drinking water*, page 5.
- 8 ecojustice & FLOW & CIER, *Seeking Water Justice: Strengthening legal protection for Canada's drinking water*, page 3.
- 9 Indian and Northern Affairs Canada (2006), *Protocol for Safe Drinking Water in First Nations Communities*.
- 10 Commissioner of the Environment and Sustainable Development (2005), "Chapter 4 – Safety of Drinking Water - Federal Responsibilities," in 2005 Annual Report of the Commissioner of the Environment and Sustainable Development to the House of Commons.
- 11 INAC (2008), Plan of Action for Drinking Water in First Nations Communities, Progress report. Available at <http://www.ainc-inac.gc.ca/enr/wtr/pubs/prpf/pad08/pad08-eng.asp>
- 12 The Senate (2007), "Safe Drinking Water For First Nations: Final Report of the Standing Senate Committee on Aboriginal People."
- 13 Swain, H., Louttit, S., & Hruday, S. (2006), *Report of the expert panel on safe drinking water for first nations*.
- 14 Assembly of First Nations (2007), "Expert Panel Report on Safe Drinking Water for First Nations Position Paper." Retrieved August 2010 from [www.afn.ca/cmslib/general/water-panel-report.pdf](http://www.afn.ca/cmslib/general/water-panel-report.pdf)
- 15 ecojustice & FLOW & CIER, *Seeking Water Justice: Strengthening legal protection for Canada's drinking water*, page 12.
- 16 Institute of Governance (March 2009), *Engagement sessions on the development of a proposed federal legislative framework for drinking water and wastewater in first nation communities*, Summary report.
- 17 ecojustice & FLOW & CIER, *Seeking Water Justice: Strengthening legal protection for Canada's drinking water*, page 10.
- 18 O'Connor, D.R. (2002), Part II – *Report of the Walkerton Inquiry*, "Recommendation 89" (Toronto: Queen's Printer).