Indigenous Water Governance: Canadian Overview

**Issues**

- Arguments over jurisdiction and tension with the government.
- The colonial governance framework for water excludes indigenous law and knowledge.
- Capacity and funding barriers.
- Lack of trust between First Nations and Colonial Governments.
- First nations homes are 90 times more likely to be without running water.
- Lack of running water, lack of extensive medical facilities, and overcrowding faced by aboriginal residents in northern and isolated communities make them more susceptible to the H1N1 virus and intestinal sickness.
- In 2010 the UN declared water as a human right. Canada was 1 of 42 countries that abstained from voting.

**Timeline**

1977: The Canadian federal government promised to provide reserves with water and sanitation services comparable to similarly situated non-aboriginal communities.

1991: Indigenous and Northern Affairs Canada (INAC) committed to achieving equality amongst Canadians with respect to access to safe drinking water by 2001.

1995: INAC reported that serious problems with drinking water quality exist on 1 in 4 reserves, and are committed to fixing the problem by 2004.

1995-2003: The Canadian government spend $1.9 billion to improve water and waste water infrastructure for first nations.

2006: The Canadian government announced $60 million over 2 years to ensure that all first nation reserves have access to safe drinking water.


2015: Trudeau comes into power- $1.8 billion for first nations water and waste water infrastructure. Also plans to end boil water advisories by 2020.

2017: Still lots of work to be done. 40 years have passed since the federal government promised that drinking water infrastructure on first nations communities will be similar to other Canadian communities.
Sources


LEGAL DIMENSIONS OF INDIGENOUS WATER GOVERNANCE IN CANADA

ABORIGINAL WATER RIGHTS IN CANADA
• Currently there is no legislation at either provincial or federal level that addresses Aboriginal water rights specifically. Therefore, water regulation and allocation varies from province to province and is usually negotiated on a case-by-case basis.

DEFINITIONS
• Aboriginal Title: A common law doctrine that acknowledges First Nations peoples exclusive and ongoing right to occupation, use, and economic benefit form the land and natural resources of their traditional territory that was occupied prior to European settlement.
• Aboriginal Rights: Legally defined by the Supreme Court of Canada as “collective rights that contribute to the cultural and physical survival of Aboriginal peoples’ and include practices, customs, or traditions that are ‘integral to the distinctive culture’ of any indigenous people.” These naturally include the right to sufficient water to sustain Aboriginal ways of life (not just limited to domestic water).
• Treaty Rights: Rights and allocations determined in a nation-to-nation agreement between a First Nation or First Nations group and representatives of the Canadian Government.

LEGAL AVENUES FOR THE AFFIRMATION OF INDIGENOUS WATER RIGHTS AND GOVERNANCE
• Modern land claim agreements, self-governance agreements, and comprehensive governance agreements generally involve specific water allocations and co-management frameworks have been established.
• Aboriginal rights and treaty rights were included in the Canadian Constitution in 1982
• Supreme Court rulings supporting and expanding the scope of Aboriginal title claims.
• Deriving the right to water from from the right to life (Section 7 of the Canadian Charter of rights and freedoms).

BARRIERS TO INDIGENOUS WATER GOVERNANCE
• Jurisdictional overlap — treaty negotiations and reservations were/are established by and fall under the jurisdiction of the federal government, water rights, as determined under the Constitution Act, 1867, are the domain of the provincial government. This makes water rights difficult to negotiate.
• Pro vincial contention and extinguishment of treaty water rights.
• Though Aboriginal title and rights have been legally ratified, the current framework that First Nations must prove their title. This legal process is often lengthy and expensive and usually results in the Canadian government balancing Aboriginal rights with Newcomer society (economic) interests. This limits the ability to sufficiently protect Aboriginal water rights.

CONCLUSION
• Though there are significant barriers to establishing Indigenous water governance in Canada, the establishment of Aboriginal title can provide strong legal precedent for the affirmation of First Nations water rights and protections.
References


Harris L., and R. Simms. 2016. “All of the water that is in our reserves and that is in our territories is ours”: Colonial and indigenous water governance in unceded indigenous territories in British Columbia. Project Report. Canadian Water Network & Water, Economics, Policy and Governance Network.


Intro

I will discuss important environmental issues that currently exist with water management systems in small remote communities in Canada. These small rural communities, particularly indigenous communities, currently face the greatest risk to clean, fresh drinking water. In this section I will tie together the environment and community health through drinking water. Our reliance on drinking water is said to be one of the most important pathways through which the environment affects human health.

To underline the severity of this issue, I will discuss potential factors why indigenous communities experience significant disparities to the access of safe water with a pretext of what water quality means and why it is important. I will end this section with a discussion of how current management systems are proving insufficient for providing and protecting water quality in these communities, and explore some possible alternatives to restoring water quality.

Defining water quality

Before we consider why indigenous communities experience an overrepresentation in the number of drinking advisories, it is important to first have an understanding of what water quality is, how it is measured, and why it is important. Water quality is ultimately defined as water that is safe for drinking and cooking. Health Canada has since separated this definition into three measurable groups: (1) water that is free of disease causing organisms, (2) water that has chemical and physical parameters within acceptable ranges, and (3) water that has radioactive compounds below defined thresholds (2017).

Microbiological parameters (1) include enteric protozoa, enteric viruses, *E. coli*, among other indicators. Indicators are commonly sourced from human and animal faeces or are naturally occurring in the vegetation or soil. Microbiological parameters are most commonly associated with gastrointestinal upset, such as nausea, vomiting, and diarrhoea.

Chemical and physical parameters (2) and radiological parameters (3) are varied in terms of their sources and associated health impacts. Compounds that Health Canada has listed include trace elements and heavy metals, industrial compounds, and physical characteristics such as hardness and odour. Most common sources are listed as industrial effluent, emissions, and leaching into the water supply. Other sources include leaching and run-off of agricultural operations, by-products of water disinfection and filtration, or naturally occurring. Health impacts can include lung, bladder, liver, and skin cancer (in the case of Arsenic), irreversible neurological symptoms (in the case of Mercury), and many other specifically targeted symptoms and effects.

Water quality disparities

Now that we have an understanding of how the environmental condition of water supplies is explicitly related to human health, and the severity and importance in keeping water quality within acceptable thresholds and ranges, we can bring into question why so many rural, small communities, particularly indigenous communities, experience water qualities outside of guidelines set by Health Canada.
First we will underline the issue of water disparity. Indigenous groups in Canada (that being First Nations, Metis, and Inuit) experience “poorer health status and a greater proportion to risk factors relative to the general population” (CAHR, 2011). Indeed, 117 of 640 First Nation reserves are experiencing a lack of safe drinking and thus threats to community and individual health. In such areas, drinking water must first be boiled prior to use, or not used at all. Such drinking water advisories can last from a few days to several years (9 years in the case of the Yellow Quill First Nation near Saskatoon, Saskatchewan) (CAHR, 2011).

Such deplorable conditions would not be tolerated near urban centres, so why is it that they can persist for so long in so many indigenous communities? Answers to this question are numerous and complex in nature. In attempt to understand why such disparities exist, I will look at the nature of settler economies and the geography of affected communities. First, it is important to consider that the maintenance and growth of the settler economy in Canada relies heavily on the extraction of natural resources, such as water, from an ecosystem to satisfy industrial, agricultural, and residential needs. This reliance, along side ongoing processes of colonialism, denies or has made difficult for indigenous groups to obtain water rights (a topic that Joy will elaborate more on). The geography of small remote communities also creates disproportionate risks to poor water quality. Small remote communities rely on small water systems that are limited in their capacity to resist contamination from land-use changes (such as logging, mining, and agricultural). The rate of which such land-use changes are taken into effect is much greater nearer small remote communities than near larger, urbanized communities. This results in small water systems to have greater difficulty to treat contaminants and higher exposure to contaminants entering the water supply. Remoteness is also a barrier to water quality in term of access to operators, additional supplies of water, and abilities to water quality testing.

Solutions

Davies and Mazumder (2003) notes that management and treatment of the environmental impacts of industrialization, agriculture, logging, and urbanization, have been insignificant in preventing the degradation of water quality in local and global scales. Solutions to restoring water qualities in affected areas thus go beyond slight adjustments in the ways in which we extract natural resources. Changes in the ways hydrological systems are managed should be made so that current barriers to water quality can be overcome.

Associated limitations of remoteness can be overcome with the education and skill training of community members. By providing the skill set to take preventative action and to monitor the state of local water quality, indigenous communities can decrease the reliance on external and relatively inaccessible means of assessment.

Associate limitations that are apparent with increased rates of resource extraction near affected communities can be overcome with the legitimization and empowerment of indigenous communities to decide on the activities that take place within their watershed. This would allow for an enhancement of indigenous management and for a greater difficulty of external extraction proponents to remove resources at the community’s expense.


In Canada, drinking water is not nationally enforced or monitored, the federal government merely sets guidelines, of which not all provinces even follow. This leads to massive gaps in knowledge, monitoring, and data collection for drinking water nationwide, but especially so in the marginalized first nations communities.

1. First Nations Governments - they own, manage, monitor and operate water and waste water systems. Responsible for 20% of maintenance costs, and they issue drinking water advisories

2. Aboriginal Affairs and Northern Development Canada- Responsible for the remaining 80% of drinking water maintenance costs, along with funding for first nations training and staff for operations.

3. Health Canada and First nations health authority- ensures monitoring programs are in place, provides public health advice and monitors quality of tap water

4. Environment Canada- regulates treatment of waste water discharged to the receiving waters. Provides advice on source water protection

5. Municipal Governments- Some cases, reserve drinking water systems are connected to municipal drinking water systems

Overall, The Liberal budget for First Nations water, falls short of the $5-billion over 10 years a government report in 2011 detailed would be required to end the water access crisis for good.

Barriers to Funding:
1. Source water access and protection
2. High Costs of Equipping facilities in remote locations- Road access, permafrost
3. Deficient Infrastructure
4. Limited local capacity and ability to retain operators
5. Lack or resources and funding
6. Fragmentation
7. First Nations Jurisdiction and Authority
8. Misguided Governance

Example Of Walkerton Ontario i.e Economic Marginalization: When water became contaminated in Ontario, we saw lawsuits, charges, compensation and millions of dollars invested into state of the art infrastructure immediately.

Bigger Economic Picture:
- Big Oil: Pollutants in the Athabasca River, detrimental to First Nations Health
- Kinder Morgan: Approved by BC in conjunction with the federal approval of Cite C, flooding the Peace River Valley destroying sacred sites
- Ring of Fire: Deep distrust of the government in northern Ontario reserves, who have been on boil water advisories for upwards of 20 years, income from mining could renew failing infrastructure
Joy M. Kaegi Maurer

Indigenous Water Governance- Social Outline

The meaning of water for First Nations peoples is deeply rooted in their history and culture. It is a vital part of their lives, from blessing rituals performed on water sources themselves, to passing down traditional names associated with water, to legends and myths about water being “the Creator” of all life. Women especially have seemingly stronger ties to water, being seen as the bearers of life themselves. It becomes clear that in order to understand why the issues surrounding water claims and access rights have become so contested, we must gain insight into how water is not just a source for fishing and transport but also a form of life itself, rich with stories and ancestral knowledge. In my presentation I aim to highlight the various ways in which water plays a significant role in Aboriginal communities and how it is not just a source of spiritual connection but also a crucial component to the sustenance of their livelihood. In trying to bring in some current modern resistances and protests such as Idle No More, I aim to show how the struggle against historical colonial systems are still going on today.

References


Websites

Water Governance https://www.watergovernance.ca
Assembly of First Nations https://www.afn.ca
The North Coast- Skeena First Nations Stewardship Society http://www.northcoastskeenafirstnations.ca/
Overview
Grassy Narrows First Nation is an Ojibway First Nation band government who inhabit northern Kenora in Ontario. As a small community in Ontario near the Manitoba border, they have suffered from the effects of mercury in local lakes and rivers. This has impacted their food supply, economy and health. 90% of residents in Grassy Narrows First Nation displayed signs of mercury poisoning, with the majority experiencing sensory deprivation through the loss of feeling in their fingers and toes.

Timeline
1962: Dryden Chemical, a pulp and paper manufacturing company and subsidiary of Reed begins dumping untreated mercury waste into the Wabigoon River.

1963: Grassy Narrows community moved by order of the federal government to make the reserve accessible by provincial roads. The stated goal was to improve access to public services such as water, sewers and electricity, and creating an on-reserve school, which the government said was impossible at the reserve’s old location.

1969-70: Investigations determine that Dryden Chemical had dumped more than 20,000 lbs of mercury into the Wabigoon. Manitoba tries to financially sanction Dryden Paper but cannot impose a legal penalty on the company for something it had done in Ontario.

1975: Dryden Chemical ordered by the government to stop polluting the Wabigoon.

1977: Grassy Narrows begin legal actions against Dryden Paper seeking damages for the health and economic effects of mercury pollution.

1979: Reed International sells the Dryden mill and chemical plant to Great Lakes Forestry Products.

1985: Government of Canada and Ontario, as well as Reed International and Great Lakes reach a legal settlement with the Grassy Narrows and Wabaseemoong First Nations, providing nearly $17 million in compensation.

1998: Great Lakes Products has been sold twice and finally to Weyerhauser who terminate the Dryden sawmill and paper machines a few years later.

2011: The Ontario Ministry of Environment orders Weyerhaeuser to monitor mercury levels around the Dryden site. Weyerhaeuser goes to court to stop the order, saying the indemnity Ontario provided in 1985 makes monitoring the government’s responsibility.

2016: The Ontario Superior Court of Justice rules in favour of Weyerhauser. Japanese experts in mercury poisoning report that 90% of Grassy Narrows have been exposed to mercury

Politics
The First Nations groups believe the problem is a lack of political will to clear the mercury. However, Premier Wynne told the legislature the government wants to make sure any remediation efforts will not stir up more mercury in sediment and make the situation even worse.

Economics
The economic losses from the fishing ban sent the community from a 95% employment to 95% unemployment rate. Between when the mercury was discovered in 1970 and 1984, Reed’s operations received net profits of $235 million, averaging almost forty million annually. In 1980 the company began a $250 million expansion of Reed’s Dryden operations

Treaty 3
Currently, three copies of the Treaty exist: the Anishinaabe’s oral history, a document in possession of the government, and the Papom documents. The government document is used as the official version, which denies the legitimacy of Indigenous oral history. As a result, the Anishinaabe community is denied access to decision making regarding their Treaty 3 territory.
References


