

Indigenous Water Governance 101

GEOG 412

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Inherent Water Rights

- **Aboriginal Title:** First Nations exclusive and ongoing right to occupation, use, and benefit from the land and natural resources of their traditional territory
- **Aboriginal Rights:** “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” – Supreme Court
- Court cases have established that water is included in Aboriginal Title and Aboriginal Rights (*Delgamuukw* and *R. v. Van der Peet*)
- Section 35 of the Constitution Act, 1982
 - “The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.”

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Inherent Water Rights Continued

- United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)
 - Articles referring to Indigenous peoples right to self-determination, right to use, develop and control resources they possess, and the right to participate in decision-making matters that affect their rights or development of resources on Indigenous lands
 - Articles referring to states implementing open and transparent processes, collaborating, and recognizing indigenous peoples’ governance
- UN Human Right to Water and Sanitation
- Canadian Charter of Rights and Freedoms – Equality Rights

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The Need to Prove Water Rights

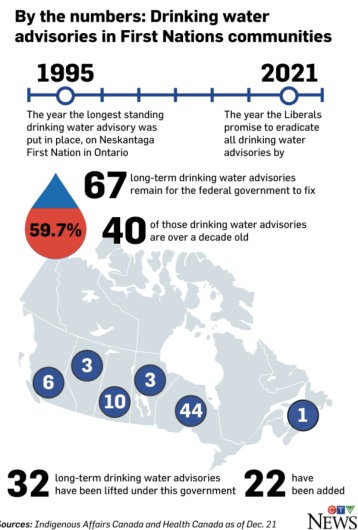
- The legal landscape in Canada is not upholding or fully recognizing indigenous peoples’ laws and water rights.
 - There is no legislation at either provincial or federal level that addresses Aboriginal water rights specifically
- The need for lengthy, costly court cases to prove their Aboriginal Title or Aboriginal Rights in water
- Case-by-case basis
- Summary: currently there is no secure protection of Indigenous water rights in Canada

Source: Walkem, A. (2004). Indigenous Peoples water rights: Challenges and opportunities in an era of increased North American integration. Centre for Global Studies, University of Victoria, BC. November.
Source: Boyd, D. (2011). No taps, no toilets: First Nations and the constitutional right to water in Canada. McGill Law Journal/Revue de droit de McGill, 57(1), 81-134.

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Drinking Water Advisories on Reserves

- Water for First Nations is a federal government concern
 - Indigenous and Northern Affairs provides funds for designing, constructing, and maintaining the water systems on reserves
 - First Nations responsible for getting the construction done and maintenance
- Severity and duration of water advisories
 - 67 long-term drinking water advisories in First Nations communities
 - Plus ~80 short-term advisories
- Health, livelihood, and cultural impacts



Drinking Water Security on Reserves

Issues with the current system:

- Lack of regulatory framework
- The design, construction, operation, and maintenance is deficient
- INAC standards are inconsistent and follow-up is poor
- Health Canada inconsistent water testing
- Insufficient collaboration
- Lack of adequate training & funding



Source: Chelsea Vowel (2016) "Chapter 24: Dirty Water, Dirty Secrets." In Vowel, C. (ed) Indigenous Writes: A Guide to First Nations, Métis and Inuit Issues in Canada. Winnipeg, MB: HighWater Press.
Source: The Council of Canadians & David Suzuki Foundation (2017) Glass Half Empty? <http://bit.ly/2Bo1ONy>

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Water Walks



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Safe Drinking Water for First Nations Act (Bill S-8) (2013)

- Purpose of ensuring all First Nations communities have access to safe and reliable water and wastewater systems on First Nations lands
- Enables the Government of Canada to develop enforceable federal regulations

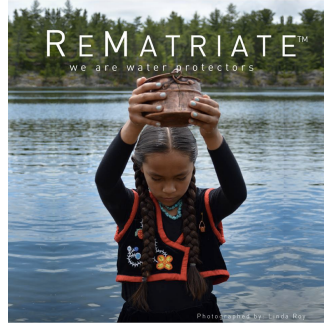
Criticism from Assembly of First Nations:

- No funding formula
- Short timeline for engagement and lack of meaningful consultation
- Top-down approach
- First Nations government structures and Aboriginal rights now respected

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Indigenous Water Worldviews

- Cultural and spiritual significance of water
- Planning for many generations
- Water as a living entity — spiritual nature
- Respect and reverence
- Traditions and oral stories as a vessel



Source: Walkem, A. "The land is dry: Indigenous peoples, water, and environmental justice." In Bakker, K. (ed) *Eau Canada: the future of Canada's water*, 311-329. Vancouver, BC: UBC Press.

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Sources Cited in this Lecture

- Walkem, A. (2004). [Indigenous Peoples water rights: Challenges and opportunities in an era of increased North American integration](#). Centre for Global Studies, University of Victoria, BC. November.
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