

An aerial photograph of a rural landscape during autumn. The scene is dominated by dense forests of trees with bright yellow foliage. A winding road or path cuts through the landscape, leading towards a small cluster of buildings, possibly a farm or a small village. In the foreground, a body of water, likely a lake or a wide river, reflects the sky and the surrounding trees. The overall atmosphere is peaceful and scenic.

Indigenous water governance

GEOG 412

LAND ACKNOWLEDGEMENT AND POSITIONALITY STATEMENT

At the University of British Columbia, we are present on the traditional, ancestral, and unceded Coast Salish territory of the hə́h̓qəmiḥə́ speaking ʷməθkʷə́yəm (Musqueam, People of the River Grass).

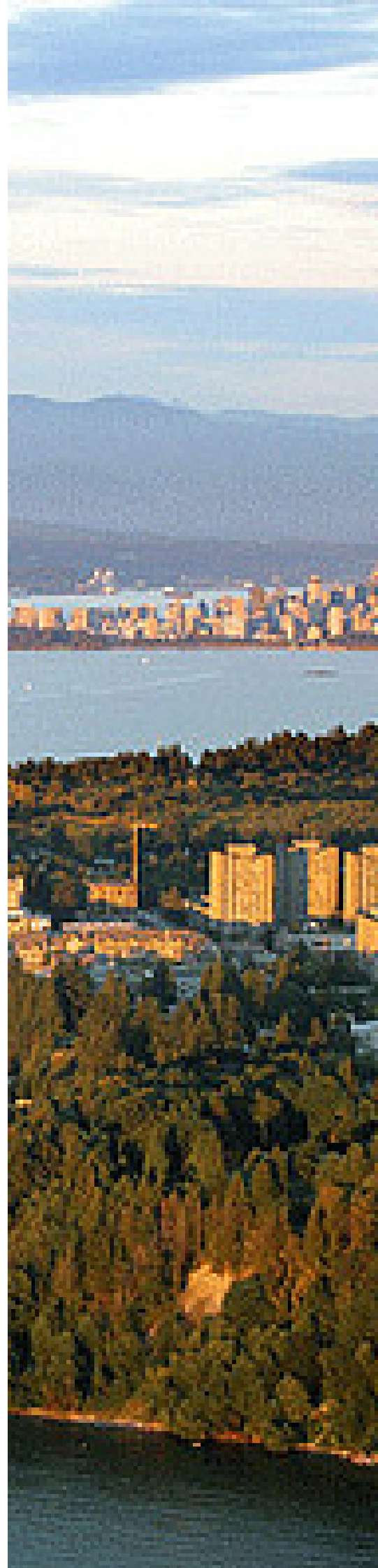
While studying in a colonial institution, it is important that we recognize that “state education systems ... are primarily designed to produce communities of individuals willing to uphold settler colonialism.” (Simpson 2014) and that as we move through the institution we remain cognizant of our positionality and how we are at risk of reproducing systemic inequalities. For those of us who are non-Indigenous, Settlers, and uninvited guests on this land, Land Acknowledgement serves as a starting point for us to recognize the inherent privilege we have as Settlers, and act on our responsibility to lift up the voices and work of Indigenous peoples.

POSITIONALITY STATEMENT

All of us who are working on this presentation are Settlers on Indigenous land. Our knowledge on these topics is limited to our personal understandings and interpretations of academic papers and news articles. These are learned from a Settler perspective, and outside the cultural context. This research may or may not accurately reflect the view of individuals, Nations and communities discussed, and therefore we do not claim to represent their values and ideas, but aim to discuss issues and conflicts represented in a body of primary research and other articles.

While we discuss an overview of Indigenous Water Governance, it is important to recognize that Inuit, Metis, and the First Nations of Turtle Island have distinct cultures and governance systems.

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INTRODUCING INDIGENOUS WATER GOVERNANCE

Paul Yioldassis

**WHY SHOULD INDIGENOUS
COMMUNITIES NOT HAVE
THE SAME REGULATIONS
ON CLEAN AND ACCESSIBLE
DRINKING WATER?**

First Nations have historically been excluded from colonial governments' decision-making and management frameworks for fresh water.

Why is Indigenous Water Governance an issue?

Many First Nations communities lack running water or sewage services.

Many communities have been advised to boil their water before consuming for decades instead of having access to clean potable water.

Threatens aboriginal autonomy and their rights as Indigenous governance is not being honoured and respected.

Colonial Governance Framework

Water policies that are administered by colonial governments do not always respond adequately to conditions and needs.

Colonial water governance systems lack consideration for the diverse cultural and spiritual relationships, laws, and forms of governance for water that different First Nations practice and uphold.

Water is a First Nations Priority

First Nations across BC have clearly identified that water and water governance are among one of their main concerns regarding Indigenous rights and governance.

For First Nations, their cultural, spiritual and socioeconomic values of water are very special to them in a way that no other could understand.

Many view water as powerful as medicine, others associate it as the lifeblood of the land and others view water as a relative that must be cared for and respected. These views are echoed by Indigenous communities through scholars and literature.

The capacity to govern water resources varies between individual First Nations and nation or tribal alliances in British Columbia, but it is also constrained within colonial governments.

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History of Canadian Water Law & Policy

Ryan Saunders

Pre-colonization -Early Confederation

Prior to colonization, water was governed by various indigenous customary law systems.

Under British Colonial rule, water rights governed by riparian rule, which is still used today in Ontario and the maritimes

In the early years of the confederation, the Canadian government passed a series of legislation consolidating power over water management in the hands of the federal government.

One piece of particularly relevant legislation is the NW irrigation act. This act asserted canadian government control over all water sources in the newly settled areas of the country in order to facilitate agricultural expansion. This act ignored indigenous governance systems in place in these areas.

Early 20th Century

Throughout the first decades of the 20th century, we see expansion of the colonial government's power over waterways in Canada, including provision of hydro power through the damming of rivers.

During the 1930s the state took on many large scale water infrastructure projects, especially dams. The process of constructing these dams included mass river diversion and flooding. These government led projects often displaced aboriginal settlement and destroyed important food sources for these communities.

With suburbanization there was a redistribution of certain facets of water management to the municipal level. While there was a redistribution of power, it remains in the hands of the colonial government.

Late 20th Century

In the late 20th century, Canada began to create policy for a sustainable water future. A major part of this movement was the Canada Water Act. The Canada Water Act asserted significant federal authority over water quality and management.

The Canada water act claimed to address “any aspect of water resource management that relates to restoring, maintaining or improving the quality of water in places of national concern” The act created a plan to work with local governments to fix water quality issues through measures such as fines for polluting.

In 1973 the James Bay project, a Quebec Hydro expansion was stopped due to an injunction by Canadian courts on behalf of the Cree Nation. This was the first of its kind, although the injunction was later reversed.

In 1982 the constitution act section 35 passed, protecting all existing indigenous rights in the constitution. This protected treaty rights, reserve rights, and aboriginal title rights including those involving water.

1982-2000s

The constitutional protection of indigneous rights has created opportunities for indigenous groups to make claims to water sources within the canadian legal system.

For example, legal scholars have argued that: "aboriginal title gives aboriginal peoples the right to land submerged by water and entitles them to make use of the waters for a variety of purposes." They also argue that: "aboriginal title imparts ability to make decisions with respect to water and the right to apply aboriginal law systems to water uses." (Laidlaw, 2010)

Indigenous claims have the potential power to override provincial licensing regimes in order to secure water rights. In recent decades there has been efforts made by the liberals and the conservatives to improve water quality in indigenous communities. Contention remains between the CDN government and indigenous communites, rooted in this complicated history as well is inefficacy of these policies

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Water Governance In Canada

Ella Kim-Marriott Geog 412

- The provision of water supply and sanitation services in Canada falls to municipalities
- Provincial and federal government have responsibilities relating to standards, research, economic regulation and water resources management
- CCME creates VOLUNTARY guidelines, "source to tap" process

Key Issues

- Water quality is a concern in Canada, only OECD country to not have legally enforceable federal drinking water standards
- Water governance in Canada is decentralized and therefore characterized by a lack of inter-governmental coordination
- i.e. a duplication of efforts, poor data collection and sharing, and inadequate monitoring and enforcement

CROWN-INDIGENOUS RELATIONS

Contention over water governance stems from:

1. Ignoring or erasing of Indigenous rights to water
2. Lack of meaningful consultation
3. Weak attempts by the Canadian gov to improve water quality for First Nations

1.

- Reserve water allocations fall under provincial or territorial water regimes,
- Reserve lands= federal creations
- Provinces have refused to honour reserve water allocations or cancelled them outright, or issued licenses that reduce water available to these land

2.

- Lack of consultation in forming regulations and policies regarding water infrastructure for First Nations
- Consulting Elected chiefs vs hereditary chiefs on projects that compromise Indigenous water quality:
 - > Elected chiefs = creation of the Indian Act, authority over reserve lands
 - > Hereditary chiefs = traditional form of leadership

3.

- **Conservatives: The Safe Drinking Water for First Nations Act**, enables federal government to develop enforceable regulations to ensure access to safe, clean and reliable drinking water, effective treatment of wastewater, and protection of sources of drinking water on First Nations lands, provides regulations but not resources
- **Liberals: Platform aims to eliminate all long-term drinking water advisories on reserve by 2021**, \$2 billion invested, have ended 87 long-term drinking water advisories, "band-aid" solutions, **promoting public-private partnerships** as a solution - raises concern over potential loss of community control and jobs

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UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (UNDRIP)

The United Nations Declaration on the Rights of Indigenous Peoples was officially adopted by the General Assembly on the 13th of September 2007. However, Canada was part of the 4 States that initially refused to sign the Declaration, along with Australia, the United States and New Zealand.

These 4 States share a similar colonial history, and as a result share common concerns. These concerns revolve around the fear that the level of autonomy, as recognized in the UNDRIP, would undermine the sovereignty of their own States, particularly in the context of land disputes and natural resource extraction.

Canada's Timeline

November 2010: the government issued a Statement of Support, endorsing the principles of the Declaration

November 2015: Prime Minister Justin Trudeau asked the Minister of Indigenous and Northern Affairs to implement the Declaration

May 2016: Canada announced its full support of the Declaration

Implications of UNDRIP

The implications of UNDRIP, in terms of policy implementation, have yet to be seen in Canada. Trudeau's recent commitment to end boil water advisories within the next five years will be telling to this. Although Canada recognizes the Declaration as "non-legally binding," it offers an international platform for voicing and protecting Indigenous concerns that may be ignored or poorly governed at the national level. Black et al's study (2017) concludes that "incorporating UNDRIP, and recognizing the importance of putting more responsibility and power back into the hands of communities, should be a foundational element of any water strategy." It also provides an international framework for countries to abide by, and therefore it is hoped that this will impact national policies due to international pressures. Most importantly, the UNDRIP promotes a human-rights based approach to addressing issues faced by Indigenous peoples, it therefore emphasizes that **water should be a human right**.

Relevant Articles in Indigenous Water Governance

Article 18: "Indigenous peoples have the **right to participate in decision-making** in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to **maintain and develop their own indigenous decision-making institutions**."

Article 19: "States shall **consult and cooperate** in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent **before adopting and implementing legislative or administrative measures that may affect them**."

Article 21: "1. Indigenous peoples have **the right, without discrimination, to the improvement of their economic and social conditions**, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, **sanitation**, health and social security.

2. **States shall take effective measures** and, where appropriate, special measures to **ensure continuing improvement of their economic and social conditions**. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities."

Article 23: "Indigenous peoples have the **right to determine and develop priorities and strategies for exercising their right to development**. In particular, indigenous peoples have the right to be **actively involved** in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions."

Article 25: "Indigenous peoples have the **right to maintain and strengthen their distinctive spiritual relationship** with their traditionally owned or otherwise occupied and used lands, territories, **waters** and coastal seas and other resources and to uphold their responsibilities to future generations in this regard."

Significance of UNDRIP

1. To date, it is the most thorough international instrument for Indigenous rights
1. It enforces a universal framework of minimum standards for the survival, dignity, and well being of Indigenous Peoples
1. It had facilitated the critiquing of Canada's efforts to deliver sufficient clean water to its Indigenous Nations, as the government's actions have not aligned with the Declaration

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Problems with infrastructure: Lack of access to adequate water

Zhitian (Oliver) Li Geog 412

Some Facts:

- **Water infrastructure of First nation:** only 72% of the homes are piped. 13.5% of the homes are on truck delivery. 13% of the homes are serviced by Individual wells and Sadly, 1.5% of the homes still are reported to have no water service. Right now there still are 61 long-term drinking water advisories in effect.
- **The long term drinking water advisories:** Preventive measures provided by First nation Health Authority to protect people from drinking water that could be contaminated.
- **Government Investment and plan:** At of end of the September, 2019, the government has invested 1.3 billion CAD to support water infrastructural projects and they claims that all long term drinking water advisories on public systems on reserves will be lifted by March 2021.

Case of Neskantaga :

- Neskantaga is a First Nation in northwestern Ontario and they hasn't had access to safe tap water since 1995. The tap water they use looks like tea and has to be boiled to use. The only clean water source is a reverse-osmosis machine located at a motel near the community and people living in this community have take a trip to get clean water. The other option for clean water is bottled water which is not affordable for them since the water is transported by plane. The price is two or three times higher than the market price. The government has spent \$8.8 million to help the community and to improve the water treatment system including build a new plant but the project has not finished yet and still no safe tap water for them.

Reason Behind:

- There still are lots of communities facing the same water infrastructural problem. In 1970s, the Canadian federal government had mentioned they will solve the water crisis on reserves. For over 40 years, the water crisis problem still could not be solved. One reason is the federal government has not created a legislative base to hold itself accountable to make sure all the project could effectively plan and delivery to the communities. The inconsistent government policies is the other reason that lead to the current situation. For example, In 2005 the liberal government signed Kelowna Accord, spending \$5 billion in next 10 years to help First Nation to get clean waters but when conservative government came to power in the following years, they cut the budget for clean water project. The inadequate fund and unclear assignment of rights and obligations among federal government and local government and first nation lead to the fail of the infrastructure construction.

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Livelihood, Economic benefits, and Rights

CAUSES OF POVERTY

Poverty results from unequal access to resources and wealth gained from these resources. Indigenous peoples have suffered passive exclusion from economic activity, as well as deliberate restrictions to resource access. Indigenous People's Declaration against Racism states that environmental racism "has led and continues to lead to the ruination of indigenous lands, waters, and environments by the implementation of unsustainable schemes". This includes dumping into and polluting water, oil and gas, and other practices that do not respect indigenous ways of life, livelihood, subsistence and health.

TREATY RIGHTS

Treaties often recognize rights to traditional livelihoods. For example, Treaty 8 states "that the same means of earning a livelihood would continue after the treaty exists" free from "white competition". It has been noted that Aboriginal rights are difficult to accommodate within existing legal frameworks. Additionally, recognition of rights and political rhetoric are not necessarily matched by practices.

SPATIAL ACCESS AND JURISDICTION:

Livelihood, economic and employment benefits require spatial access to resources. States have the power to grant groups access to certain resources via licenses and tenure. Resource access benefits can flow to local communities or to other countries and distant corporations, or be shared by stakeholders.

Self-governance, management rights, and sovereignty are important for livelihood security.

TRADITIONAL LIVELIHOOD

Traditional economies are closely linked with land and water; healthy water is needed for traditional foods. Many consider living from the land and practising traditional and cultural activities to be part of individual and community health.

DEVELOPMENT – THE SOLUTION OR THE CAUSE?

Alleviating poverty requires a role in economic development. This can help overcome unequitable structures and development patterns imposed by ruling elites. There also are many criticisms and negative connotations of 'development'. Mainstream development is referred to as a cause of problems among indigenous peoples and as being linked with genocide and violence. Criticisms of the Millenium Development Goals include that they do not question the paradigm or address the economic, political, social, and cultural structural causes of poverty.

A COMPLEX ISSUE

There are many different views and values among Indigenous individuals and among First Nations about participating in mainstream economy, and maintaining traditional livelihoods. This issue is further complicated by a Canadian history of genocide against Indigenous peoples, dispossession and disruption of ways of live, and a resulting loss of traditional knowledge.

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Shifting Contexts in Canadian Water Governance

- Increased legal recognition for Aboriginal rights and title to territories, including expanded water rights
- Government required to undergo meaningful consultation
- There have been calls for greater Indigenous participation in water management, and recognition of First Nations as sovereign nations rather than stakeholders

Critical pressures faced:

1. Conflicts over jurisdiction between First Nations groups and the colonial government
2. Uncontextualized water policy and management, which does not include First Nations' laws, understandings, or needs
3. Resource & capacity limitations which constrain First Nation participation

Co-governance

- Co-creating a governance approach to water management
 - Establishing processes for authority -sharing and decisions
- Creates an opportunity for Canadian governments to build understandings of First Nations' laws, principles, and languages

Concerns

- May not sufficiently address concerns of First Nations or include their voices
- Risk that it will force First Nations to restructure their beliefs and practices to fit western ideals

Indigenous Water Governance

- First Nations establish and assert their own laws and water management strategies
- Serves as a baseline for evaluation of project and resource use proposals
- Asserts authority beyond participation in colonial governance systems

Concerns

- Will Indigenous laws be recognized and upheld by the Canadian government?
- There's a risk of oversimplifying indigenous traditions, practices, and relationships with water

Approaches to Decolonizing Water Governance

- Increased access and funding for First Nations
- Transitory approach in the interim & bridging organizations to support trust building and cooperation
- Community Based Monitoring
- Inclusion of Indigenous Research
- Two-Eyed Seeing

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