

An aerial photograph of a vast, calm body of water, likely a lake or a wide river. The water is a deep blue-grey color. Scattered throughout the water are numerous small, forested islands and peninsulas. The trees on these islands are mostly green, with some showing early autumn colors of yellow and orange. In the far distance, a low, flat shoreline is visible under a pale, overcast sky. A single, tall, thin structure, possibly a tower or antenna, stands out on the horizon line.

GEOG 412

INDIGENOUS WATER GOVERNANCE

**At the University of British Columbia, we are
present on the traditional, ancestral, and
unceded Coast Salish territory of the
hə́n̓qəmí́n̓əm speaking ^wməθk^{wə́y}əm
(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.

Why is Indigenous Water Governance Important?

In 2012, 20% of all First Nations communities were under drinking water advisories due to contaminated water. A Majority of these advisories were in place for years at a time due to government inaction to resolve problems.

Many First Nations communities lack running water or sewage services and therefore are not included in the count above.

The codes and standards for Indigenous people are inadequate, inefficient and lack follow-up.



Why should Indigenous Communities have a say in Water Governance?

For many Indigenous people, their connection to the land is far more complex than others. They have much more knowledge and cultural traditions that tie in their communities with the land itself.

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.



Respecting Indigenous Communities

An Indigenous community in Ontario is conducting water policy research that uses collective knowledge sharing frameworks to facilitate respectful, non-extractive conversations among Elders and traditional knowledge holders.

Indigenous water relations are often based on the concept of reciprocity, but the focus of attention must be a reciprocal relationship instead of viewing resources as commodities.



Canadian Water Law and Policy History

- Long and complex history with a long list of actors and stakeholders
- Variety of legal systems and contexts
- Key moments in legal history provide context for the topic of indigenous water governance



Pre-Colonization - Early Confederation

- Prior to colonization: water use and rights governed by indigenous practice and customs
- Under British rule: riparian rights govern jurisdiction over water sources
- Early confederation: Established federal authority over many facets of water management
 - NW Irrigation Act
 - Fisheries
 - Navigable Waters Protection Act



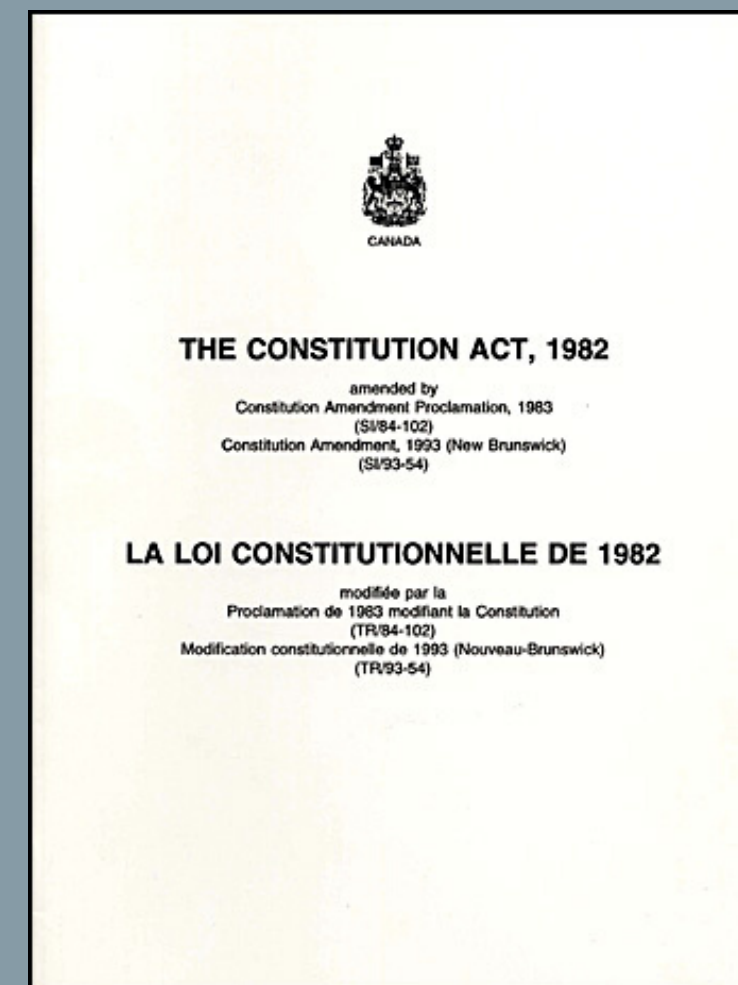
Early 20th Century

- State power over water is expanded
- State investment into water infrastructure development, ignoring well being of indigenous people
 - Hydro power expansion in the 1930s
 - Mass river diversion projects
- Redistribution of jurisdiction over water
 - Suburbanization -> municipal management
 - Overall, power remains in the hands of settler government



Late 20th Century

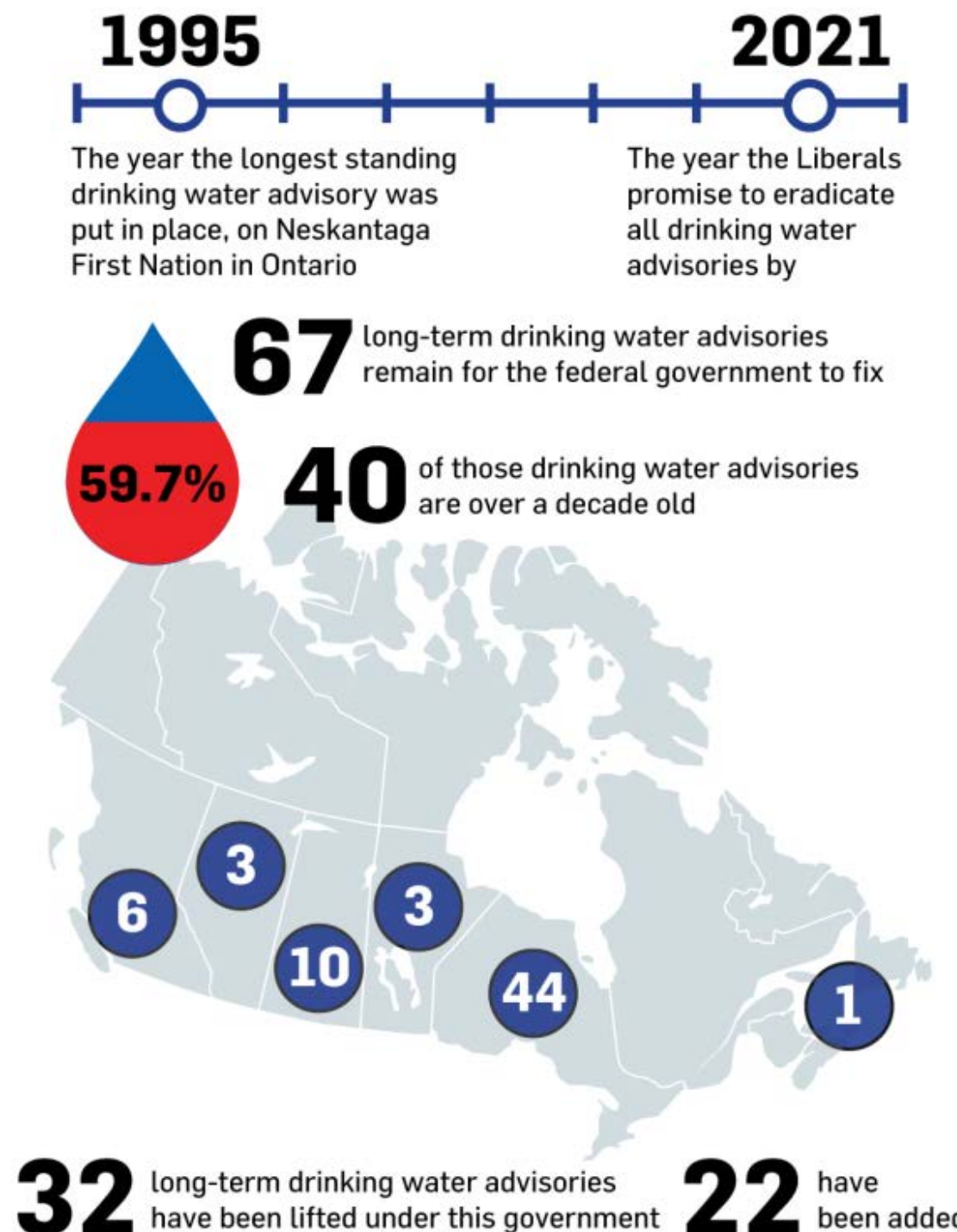
- 1950: organizations dedicated to water quality emerge
- 1970: Canada water Act
 - Asserts federal authority over water quality and management
 - CWA claim to address issues relating to water quality in areas of “national concern”
 - Ineffective against mercury pollution/ poisoning, harming indigenous communities in NW Ontario
- 1973: James Bay Project
- 1982: Constitution Act, section 35



1982 - Present

- Indigenous claims to water rights made within Canadian legal system
 - Based on (constitutionally protected) reserve rights, treaty rights, and aboriginal title
 - Potential to override Provincial licensing regimes (riparian, prior allocation etc)
 - Arguments that constitutionally protected rights infer autonomy over water governance
- 2000s: law and policy aimed at improving water quality and quantity in indigenous communities by the federal government

By the numbers: Drinking water advisories in First Nations communities



Sources: Indigenous Affairs Canada and Health Canada as of Dec. 21

Water management in Canada

- 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
- The Canadian Council of Ministers of the Environment : environment ministers from federal, provincial and territorial governments
 - establish guidelines for Canadian drinking water quality
 - take a multi-barrier approach that they call the “source to tap” process: set guidelines for source protection, treatment and distribution of drinking water
 - following guidelines is VOLUNTARY, not enforced

Water Management in Canada: 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

Contention over water governance between Indigenous Nations and Canada stems from:

- The ignoring or erasing of Indigenous rights to water
 - Lack of meaningful consultation
- Weak attempts by the government to improve water quality for Indigenous Nations



The ignoring or erasing of Indigenous rights to water

Why is water managed so poorly on reserves?

- 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 lands

Lack of meaningful consultation

Lack of consultation in forming regulations and policies regarding water infrastructure for First Nations

- "The existing legal regime, imposed on First Nations without consultation, is fatally flawed and must be repealed and replaced"
 - Assembly of First Nations

Consulting Elected chiefs vs hereditary chiefs on projects that compromise Indigenous water quality

- Elected chiefs and council: Created as a result of section 74 of the Indian Act, hold authority over reserve lands and their infrastructure
- Hereditary chiefs: oversee territories, hold ceremonial and historical significance to First Nations, traditional form of leadership
 - Elected chiefs are colonial creation, made to eradicate hereditary system and replace with an electoral system more recognizable for Western government
- Who represents the nation's voice in external relations is contested
 - EX. coastal gaslink pipeline approved by elected chiefs, opposed by all five hereditary chiefs of the Wet'suwet'en clans

Weak attempts by the government to improve water quality for Indigenous Nations

Conservative government: The Safe Drinking Water for First Nations Act – came into force Nov 1, 2013

- 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
- Critiqued for providing regulations but not resources, and for failing to respect First Nations authority and concerns
 - Trudeau called SDWFNA example of “government dictating terms rather than working in partnership to support First Nations governance”

Weak attempts by the government to improve water quality for Indigenous Nations

Liberal government:

- Platform aims to eliminate all long-term drinking water advisories on reserve by 2021
- Have invested nearly \$2 billion to build, repair and upgrade public water systems in First Nations communities
- Working with First Nations partners, have eliminated 87 long-term drinking water advisories
- Criticisms: the needed funding has not been committed, very little progress, promoting public-private partnerships, "band-aid" solutions

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

- UNDRIP was officially adopted by the General Assembly in September 2007
- Canada was part of the 4 States that initially refused to sign the UNDRIP

Canada's Timeline

November 2010: Statement of Support issued

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

May 2016: The Minister of Indigenous and Northern Affairs announced Canada's full support

- Most thorough international instrument for Indigenous rights
- Enforces a universal framework of "minimum standards for the survival, dignity, and well being of Indigenous Peoples"
- It has facilitated the critiquing of Canada's efforts to deliver sufficient water to its Indigenous nations

ARTICLE 18

ARTICLE 19

ARTICLE 21

- Establishes Indigenous rights to participate in **decision-making** in matters that would affect their rights
- Emphasizes that States shall **consult and cooperate with Indigenous Peoples** with regards to the **adoption and implementation of legislative or administrative measures** that may affect them
- Highlights Indigenous rights, without discrimination, to the **improvement of their economic and social conditions (including sanitation)**
- Emphasizes the **role of the state** in taking **effective measures** to ensure the continuing **improvement of their economic and social conditions**

ARTICLE 23

ARTICLE 25

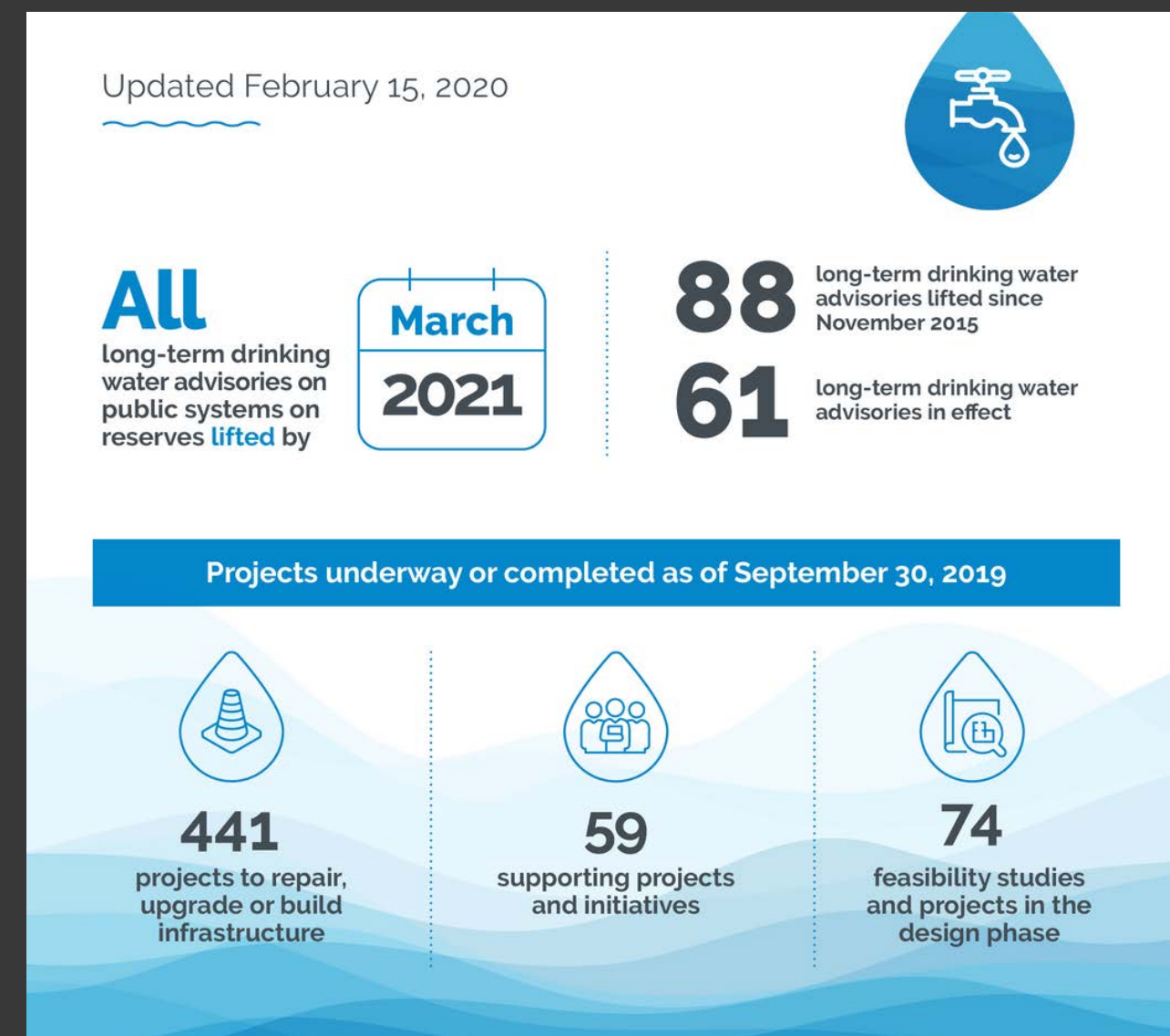
IMPLICATIONS OF UNDRIP IN INDIGENOUS WATER GOVERNANCE IN CANADA

- Establishes Indigenous **rights to development** and emphasize their rights to be **actively involved** in developing health, housing, and other economic and social programs affecting them
- Establishes the right for Indigenous Peoples to **maintain their spiritual relationship** with their traditionally owned lands, territories, waters and other resources
- Although "non-legally binding," it offers an international platform for voicing and protecting Indigenous concerns, and an international framework for countries to abide by
- UNDRIP promotes a human rights-based approach to addressing issues faced by Indigenous Peoples, and thus emphasizes that water **should be** a human right

Problems with infrastructure: Lack of access to adequate water

Water infrastructure of First nations

- There are a total of 807 water system serving 560 First Nations
- 72% of the homes (81,026) are piped
- 13.5% of the homes (15,451) are on truck delivery
- 13% of the homes (14,479) are serviced by individual wells
- 1.5% of the homes (1,880) are reported to have no water service
- 314 (39%) are categorized as high overall risk
- 278 (34%) are categorized as medium overall risk
- 215 (27%) are categorized as low overall risk



Problems with infrastructure: Lack of access to adequate water

Case of Neskantaga First Nation

- The Neskantaga First Nation in northwestern Ontario had no access to safe tap water since 1995.
- The boil water advisory in Neskantaga is the longest running advisory in Canada.
- Residents have to drive trucks to get clean water from a reverse-osmosis machine located at a motel near the community. It is the only free source of clean water on the reserve.
- The community is usually under a self-evacuation and state of emergency when their only water pump is broken.
- The government has spent \$8.8 million in 2018 to help the community and to improve the water treatment system including build a new plant but it the project has not finished yet.
- The Trudeau government promised to lifted all advisory by 2021 March but recently Indigenous Services Minister Marc Miller said the plan may be delayed due to several reasons



Livelihood, Economic benefits, and Rights

ROOTS OF POVERTY

- Unequal access to resources and wealth gained from these resources.
- Both passive and deliberate exclusion from economic activity and resource access.
- Environmental racism: unsustainable land management often affects indigenous communities disproportionately.

RESOURCE ACCESS AND JURISDICTION

- Livelihood, economic and employment benefits from resources require spatial access. Benefits can flow to local communities, to corporations, and/or to distant countries. The Crown has the power to determine access via licenses and tenure agreements.
- Self governance, management rights and sovereignty are important for livelihood security.

RIGHTS AND POLICY

- Treaties often recognize rights to traditional livelihoods.
- Aboriginal rights difficult to accommodate within existing legal frameworks.
- Policy-makers often use universalistic principles of water development and planning, resulting in policies that are de-contextualized.
- Recognition of rights and political rhetoric do not necessarily match practice.

TRADITIONAL ECONOMIES + TRADITIONAL LIVELIHOOD

- 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.

DIFFERING VIEWS ON 'DEVELOPMENT'

Alleviating poverty requires a role in economic development. This can help overcome unequitable structures and development patterns imposed by ruling elites. The United Nations Permanent Forum on Indigenous Issues stated Indigenous peoples have the same right as other peoples to benefit from the Millennium Development Goals, noting that Indigenous peoples lagging behind these goals exacerbates gender-related disadvantages and discrimination

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 Millennium 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 opinions among Indigenous individuals, groups, and among First Nations about participating in the mainstream economy, and maintaining traditional livelihoods. This issue is further complicated by a Canadian history of genocide against indigenous peoples, disruption of ways of live, and loss of traditional ecological knowledge.

Example: Aquaculture on the West Coast

Some Nations are in-favor and actively engaged.

They hold that it creates employment in a time of collapse of traditional economic sectors.

Port Hardy, Ahousaht, and Kitasoo

Some Nations are actively opposed

They hold it directly conflicts with traditional and commercial livelihoods and has generated only marginal local employment opportunities.

Bella Bella, and Alert Bay

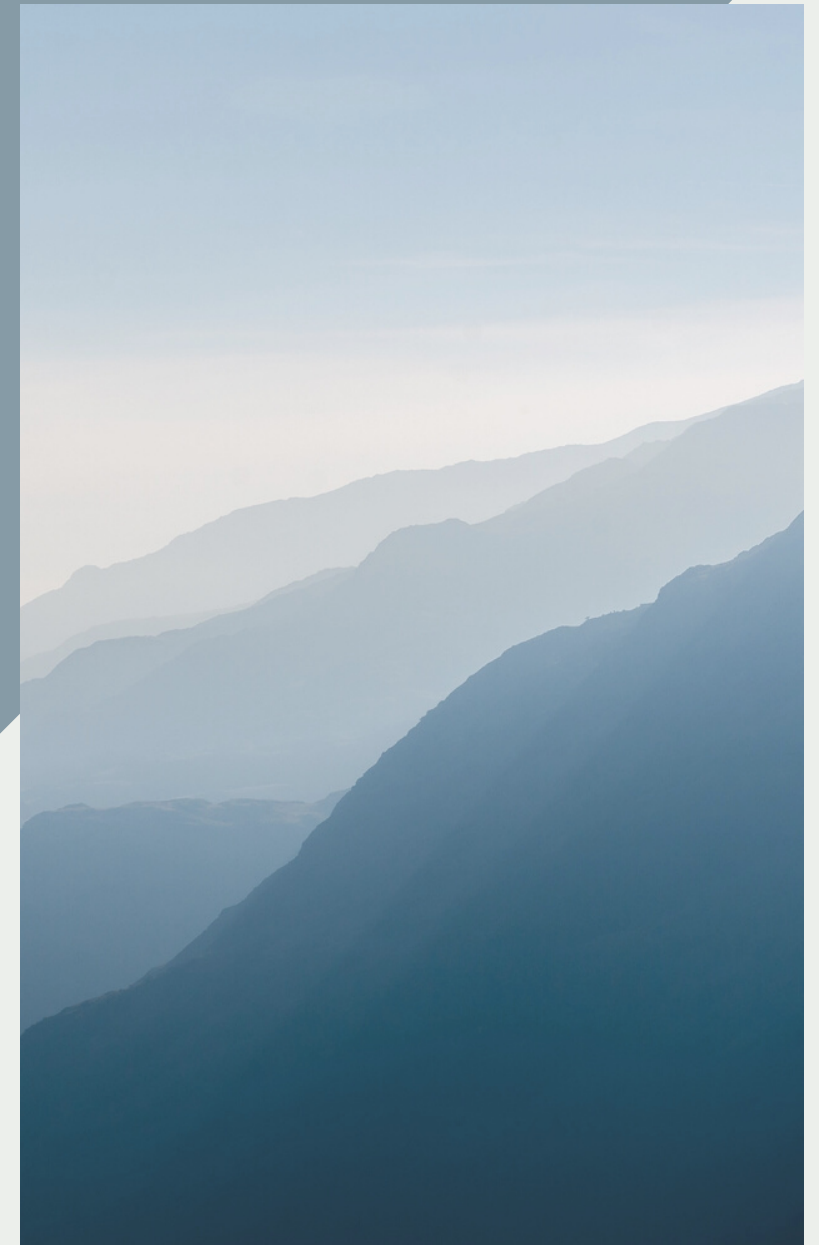
Moving forward

1. Legal Changes & Pressures in the Canadian Context

2. Alternate Approaches:

- Indigenous water governance
- Co-governance

3. Decolonizing Water Governance



An Evolving Landscape

- Shifting legal framework
 - Increased legal recognition for Aboriginal rights and title to territories, including expanded water rights
 - Requirements for meaningful consultation and engagement
- Opportunities and implications for First Nations in water governance
 - Emphasis among academics and advocacy groups in shifting governance towards having First Nations as partners in decision-making processes
 - Moving towards greater collaboration and participation?



Delgamuukw v. British Columbia, Source: CBC News

Pressures in Canadian Water Governance

Conflicts over jurisdiction

- Many First Nations maintain decision-making and other rights to land and water, but face barriers to participation in water governance - call for consultation beyond "stakeholders"
- First Nations frequently face the challenge of "proving" their rights in court
- Tension and distrust

Uncontextualized water policy and management

- Policies often based on general guidelines, don't directly address local needs
- Explicit or implicit exclusion of First Nations laws, ontologies, and cultural/spiritual relations to water

Limits of capacity

- Linked to historical and ongoing colonialism
- Equal participation requires equal access to funding, staff, knowledge, and other resources
- Colonial governments must also build capacity

Indigenous Water Governance

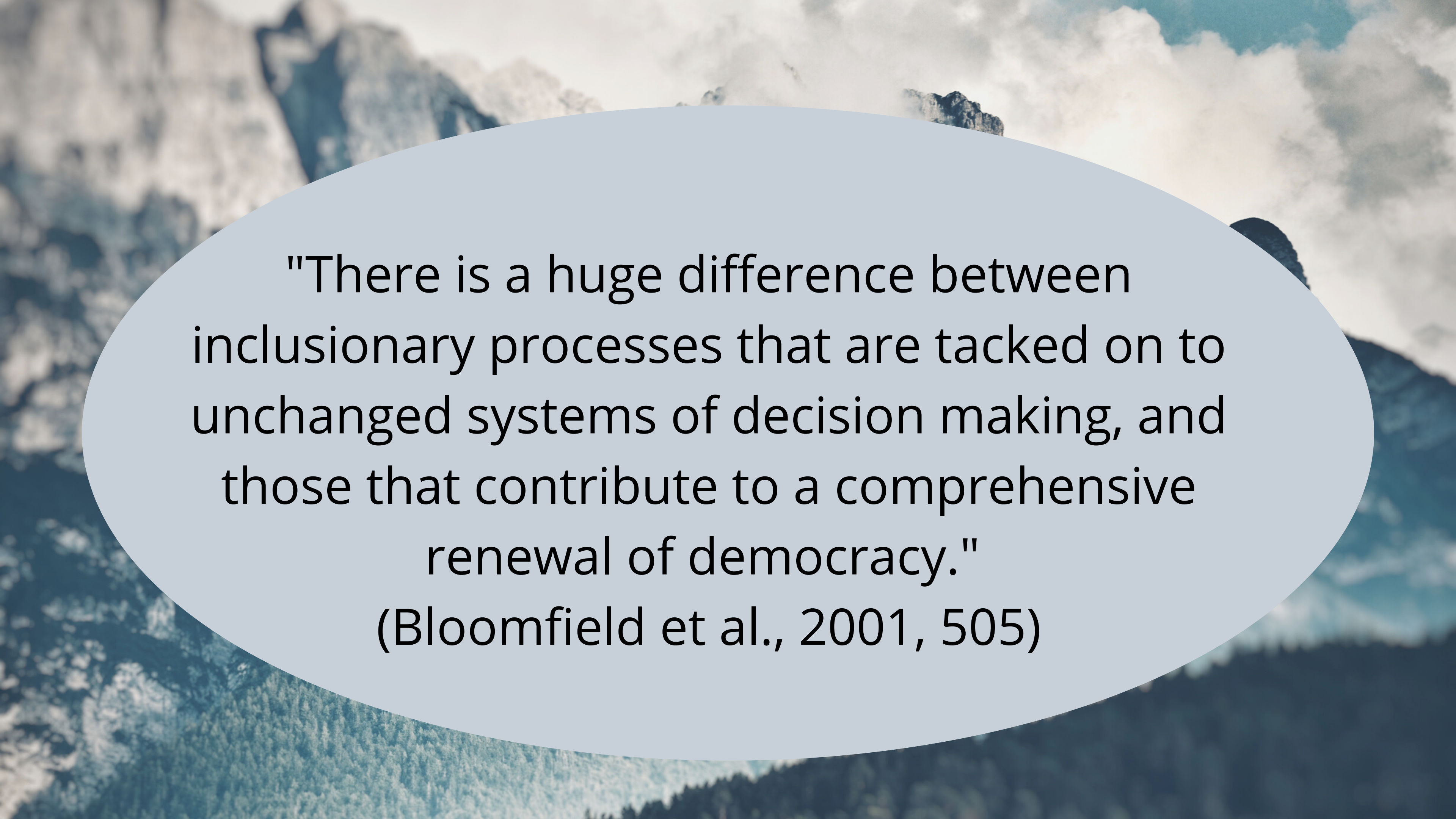
- First Nations establish and assert their own laws and water management strategies
 - Directs their own management as well as that of third parties
 - Used as a baseline for the evaluation of project proposals
- Promotes self-determination and establishes authority through other means than participation in colonial governance systems
- There are concerns as to whether Indigenous laws will be recognized and upheld by the Canadian government
- First Nations may risk oversimplifying traditions, practices, and relationships with water, or conforming to Western forms of understanding
- Syilx Water Strategy
 - Syilx perspective on the importance and value of water, how it should be used and not used, strategies to conserve, respect, and protect water in Syilx territory
- Yukon First Nations have established legislation based on Indigenous law and values

Co-Governance

- A process of co-creating a governance approach to water resources
 - Defining and agreeing upon processes for authority-sharing and decision-making
 - Can alleviate tensions and increase influence of First Nations
 - Creates opportunity for Canadian governments to build understandings of First Nations' laws, principles, and languages
- There is a risk that new governance structures may not address key concerns of First Nations or sufficiently include their voices: influence of power differentials
- Post-colonial theories argue co-governance tends to force groups such as First Nations to restructure their beliefs and practices to fit western ideals
- Nicola Valley Memorandum of Understanding
 - 5 First Nations groups and the provincial government
 - Framed as government-to-government partnership
 - Goal of developing a governance structure that includes both authorities, in order to sustainably manage Nicola watershed

Decolonizing Water Governance

- Reducing structural barriers to participation through increased access and funding
- Building a baseline of trust
 - Transitory approach: Acknowledging that jurisdiction over water governance and territory is disputed, while seeking to build a productive relationship
 - Bridging organizations
- Community Based Monitoring
 - First Nations leading data collection on water quality to inform decision-making
 - Increases trust, accessibility, and relevance of data for First Nations
- Indigenous Research
 - First Nations communities undertaking research that respects their worldviews and knowledge systems
 - Can inform both their own as well as colonial water policy
- Two-Eyed Seeing
 - Acquiring knowledge through both Indigenous and Western ways of knowing



"There is a huge difference between
inclusionary processes that are tacked on to
unchanged systems of decision making, and
those that contribute to a comprehensive
renewal of democracy."

(Bloomfield et al., 2001, 505)