



ATLANTIC POLICY CONGRESS OF FIRST NATIONS CHIEFS SECRETARIAT

BRIEFING NOTE

TITLE: First Nations Clean Water Initiative – Atlantic Region

Purpose: Project overview

Background:

In his speech to Assembly of First Nations on December 6, 2016, Prime Minister Trudeau noted that Reconciliation means “that if you are a child living on reserve, you should be able to turn on the tap and have clean water come out. Water that you can drink, and bathe in, without fear”. The Atlantic Policy Congress of First Nations Chiefs Secretariat [APC] applauds the Prime Minister goal for safe, clean water and as an active partner in addressing this National challenge. The APC has dedicated significant effort toward the success of the First Nations Clean Water Initiative (FNCWI).

The FNCWI strives to sustain safe, clean water for now and generations to come and thereby improve public health and prosperity for First Nations through proper water and wastewater management. Three main activities comprise the FNCWI:

- Regional First Nation Water Authority
- Drinking water & wastewater regulations for First Nations communities
- Determine Finance Models

Through the vision and leadership of the Atlantic Chiefs, the concept of the First Nations Clean Water Initiative, and by extension, an Atlantic First Nations Water Authority (AFNWA) was born. To that end, the Water Authority will be a First Nation organization, constructed, owned and operated by First Nations. The Water Authority will not be a political organization, rather, it will be a progressive utility focused on the provision of water and wastewater services. The Water Authority will be a legal corporation, incorporated under the Canada Not-for-Profit Corporations Act.

Current Initiatives:

The First Nations Clean Water Initiative – Atlantic Region has been in development for 8 years. Since then the project has transformed from a PPP Canada submission, which included an asset condition assessment by CBCL limited and a comprehensive opportunity report by Raymond Chabot Grant Thornton, to its current iteration. Over the years, APC has engaged with numerous consultants and experts to determine the best options for Atlantic First Nations leadership’s consideration and approval. APC has worked in partnership with Dr. Graham Gagnon, Director of the Centre for Water

Resource Studies and Professor of Engineering at Dalhousie University, from the beginning, relying on his expertise on all aspects of the project. Additionally, Dr. Gagnon has developed comprehensive Water Regulations and conducted a pilot of the aforementioned regulatory benchmarks. As well, McInnis Cooper Law firm was previously engaged and drafted term sheets for First Nations shareholders, conducted a review of municipal transfer agreements (MTA) and developed a baseline MTA.

Today, the Government of Canada continues to support APC in exploring the concept of a pan-Atlantic First Nations Water Authority. Through our constant research and engagement, we continue to garner support from communities, industry and academics alike. APC, in partnership with; Halifax Water, Accelerator Inc., Dalhousie University and Ulnooweg Development Inc. are currently working toward an assessment of the feasibility of the Atlantic First Nations Water Authority. The current phase of the project sees APC completing the following:

Establish a Corporate Structure for the AFNWA

Halifax Water and Accelerator Inc. have since been working in partnership with APC to develop corporate structure options for the AFNWA drawing from their own experience, reviewing industry best practices, and holding workshops with First Nations Stakeholders to incorporate First Nation culture and values. For each proposed model, Halifax Water and Accelerator Inc. will evaluate the triple bottom line, looking at economic, social, and environmental factors.

Conduct a Financial Analysis

To ensure project success, the completion of a financial analysis into the Atlantic First Nations Water Authority's potential impact on communities is imperative. The more information that can be gathered regarding operations and maintenance costs of water and wastewater facilities, potential capital costs for upgrades, and any annual contributions towards water and wastewater facilities from federal government sources will contribute to a clearer picture on the magnitude of the project. All information gathered will be used to perform a financial analysis with the goal of making a specific financial plan for the future AFNWA. APC is working in partnership with Ulnooweg Development Inc. to complete this deliverable.

Complete a Life-Cycle Analysis on Current Water/Wastewater Assets

The life-cycle analysis refers to investigating the status of all water and wastewater infrastructure in participating First Nations communities. In 2017-2018, APC will release a tender to hire a third party engineering consulting firm to review data obtained from INAC, the individual communities, and previous reports by Neegan Burnside and CBCL Ltd. to complete a 25-year life-cycle cost analysis on existing water and wastewater infrastructure. This assessment will provide a more detailed picture on the status of the water and wastewater assets and the future capital upgrades required. The third party engineering firm will also work in collaboration with the financial institution to build an integrated resource management plan for the AFNWA.

Barriers to Success:

Over the years, the Government of Canada has put in place a number of initiatives for First Nations water in the face of no legislated regulation. However, it is well documented by the federal government

and scholarly articles that First Nations water is still of poorer quality than that of the water quality in the rest of the country.^{1 2}

A major concern is that First Nations lack the capacity to meet current standards. As of 2011, only 54 percent of the 572 First Nations water systems in Canada that require an operator had primary certified operators in place. Further, 3 percent of systems did not have a primary operator, and 19 percent of systems did not have a back-up operator on staff³. Training and retaining of primary or secondary operators is imperative, as the most significant operational need is for certified operators.

There has been a shift from high-risk to more medium- and low-risk systems in recent years. This indicates that advances have been made with regard to infrastructure, management and monitoring of water systems on-reserve.⁴ However, more needs to be done to adequately train and retain certified operators. A suggested path forward is “to increase the capacity of First Nations communities and their peoples, which can only happen as the dependency relationships dissolve and self-sufficiency evolves.”⁵

Training of the primary or secondary operator to the required level of the treatment system is imperative. There are water and wastewater operators in First Nations communities in the Atlantic Region are not certified to the standard required for their facility, or lack certification completely.

“The most insistent theme we heard from First Nations was that the core problem was inadequacy of resources: mainly in terms of funding to run water and sewage systems, and in many places in terms of long waiting lists for capital funding.”⁶

-John Edmond

A collaborative approach is necessary to address the current policy shortfalls. Bradford Morrison suggests that *“First Nations and government agencies need to share in the co-production of readiness and capacity measurements, and strategies for implementation, so that everyone involved in designing the solutions to the problem understands the purpose of the policy intervention, and how to progress will be measured and reported over the intervention period.”*⁷

To make the First Nations Clean Water Initiative a success, there must be a firm commitment and resources allocated for the removal of these barriers.

¹ Harvey, Murphy, Mcbean, and Gharabaghi. Using Data Mining to Understand Drinking Water Advisories in Small Water Systems: A Case Study of Ontario First Nations Drinking Water Supplies. 5129-5139.

² Expert Panel on Safe Drinking Water for First Nations. Report of the Expert Panel on Safe Drinking Water for First Nations. Indian Affairs and Northern Affairs Canada, 2006.

³ Indian Northern Affairs Canada, and Neegan Burnside Ltd. National Roll-up Report - Final. National Assessment of First Nations Water and Wastewater Systems. Department of Indian Affairs and Northern Development, 2011.

⁴ Morrison, Alasdair, Lori Bradford, and Lalita Bharadwaj. Quantifiable Progress of the First Nations Water Management Strategy, 2001–2013: Ready for Regulation? (Canadian Water Resources Journal / Revue Canadienne Des Ressources Hydriques 2015): 365.

⁵ Jerry P. White, and Laura Murphy. Water and Indigenous Peoples: Canada’s Paradox. (International Indigenous Policy Journal 3 2012) 3.

⁶ Edmond, John. "First Nations Water: Is Regulation the Answer?" (Law Now 35 2011): 63

⁷ Morrison, Bradford, and Bharadwaj. Quantifiable Progress of the First Nations Water Management Strategy, 2001–2013: Ready for Regulation? 365.

Recent High Profile Regional Challenges:

First Nations have suffered from inconsistent and unpredictable funding for years. A symptom of this unpredictability is Potlotek First Nation's longstanding concern with their substandard water and wastewater quality. As community residents continuously bathe and consume their local water, they are facing increased adverse health risks. INAC and government leaders cite that the permanent solution to Potlotek's water quality problem will require a replacement of the existing system. These adverse conditions were reported by the CBC on September 27th, 2016 in an article that has been shared 8721 times.

At the center of Potlotek First Nation's adverse state of water is the elevated levels of Manganese and Iron causing detriment to local residents. The water treatment facility in Potlotek is not designed to handle high amounts of these undesirable parameters resulting in discolored and malodorous water.

At the time, manganese was not a health based regulated parameter. However as of 2017, manganese will now be regulated and the levels seen in Potlotek First Nations exceed what is considered safe. The issues in Potlotek demonstrate a need for a long-term, on-going and sustainable solution to the issues First Nations face with their water.

Regional Authority and Regulation Federally Enabled:

The Safe Drinking Water for First Nations Act, Bill S-8, was proposed in Parliament in 2012, and achieve royal assent June 2013. The Safe Drinking Water for First Nations Act contains 15 clauses, the majority of which confer the responsibility of developing regulations regarding drinking water provision and wastewater disposal on First Nation lands to the Governor in Council. Following recommendations similar to those made in the Report of the Walkerton Inquiry, the Safe Drinking Water for First Nations Act clearly defines lines of responsibility between the owner and regulator of water assets.

With that in mind, our partner Dr. Graham Gagnon developed a set of draft regulations for the Atlantic Region that incorporated the most stringent elements of Atlantic provincial regulations. These draft regulations were submitted to INAC in 2012. Further to these efforts, a proposal has been submitted to INAC to conduct a pilot on Water Safety Plans. If this pilot yields positive results, it can be implemented to help the Water Authority meet regulations in the future.

During the summer of 2017, the federal government plans to engage on the Safe Water for First Nations Act. Each regional engagement will help inform a memorandum to cabinet to be submitted in the Fall of 2017. Engagement on all projects and initiatives pertaining to First Nations Water and Wastewater must be constant.

A Path Forward In Response to Legislation:

When the Water Authority is established, the liability will shift from Chief and Council to the Water Authority.

With the above stated challenges in mind, the proposed Atlantic First Nations Water Authority will manage the delivery of safe drinking water and wastewater in participating First Nation communities

in Atlantic Canada. The Safe Drinking Water for First Nations Act makes the proposed Authority possible when stating the following: "the Minister may enter into an agreement for the administration and

enforcement of regulations made [...] with any province, corporation or other body”⁸. To date, the liability for the provision of water and wastewater services rests with Chief and Council, and this continues to be the case with the passing of The Safe Drinking Water for First Nations Act. The status quo changes with the instatement of the Water Authority. When the Water Authority is established, the liability will shift from Chief and Council to the Water Authority.

Committed Community Workforce:

In recent years, APC has worked diligently to address the challenges noted above. In partnership with Health Canada, APC has been instrumental to the training and success of Atlantic Community Based Water Monitors and Water Operators. From 2007 to 2015, the number of samples taken in the region annually has raised from 5634 to 8221. Furthermore, the percentage of samples in non-compliance has fallen from 29.6% in 2007 to 11.6% in 2015. Even with this success, it has been a challenge for Atlantic First Nations to provide safe drinking water.⁹

In part, the success of the Community Based Water Monitors is due to the annual training APC has organized over the last 11 years. This training focuses on ensuring water monitors receive proper certification and maintain good standing with their current certification. Furthermore, our training promotes continued capacity building, education, awareness and empowerment of First Nations.

Members of the water community aspire to perfection, and the efforts of Community Based Water Monitors and Operators are commendable. However, as was stated above, operators and monitors require further training and the support to obtain it.

It must be noted that the AFNWA will hire all current First Nations operators as they are the experts in each of their community’s systems. The Water Authority will place each operator on a systematic career building track and will support those who aspire to advance their careers, such as increased certification level or the pursuit of an engineering degree.

Economic Impact of a Regional Water Authority:

The provision of reliable and safe drinking water and wastewater treatment in First Nations Communities can support current economic development initiatives and spur additional projects in the future. This claim is supported by the recent APC commissioned study *1.14 Billion Strong: Indigenous Economic Performance in Atlantic Canada*, which states that during the study’s outreach process, investment in First Nations infrastructure, specifically water and waste water, is needed for further economic development.

That said, as of 2015, Atlantic First Nation’s investment into their fisheries was. \$41,007,455.00 and the fisheries are amongst the largest sources of own source revenue for communities. Having reliable water will help communities develop land-based aquaculture facilities, hatcheries and processing and packaging plants, much like that being developed in Waycobah First Nation.

⁸ “Safe Drinking Water for First Nations Act.” Government of Canada 2013, Assessed November 12, 2016. <http://laws-lois.justice.gc.ca/PDF/S-1.04.pdf>

⁹ Gagnon, Graham. “Regulatory Research and Development on Atlantic First Nation Communities.” Presentation, Atlantic First Nations Water Forum, Halifax, NS, March 15, 2017

The impacts are not limited to fisheries, as any economic development, be it: gas stations, restaurants, convenience stores, proper lot servicing for new housing units, community gardens or the new day-care facility in Sipekne'katik First Nation will all require safe, reliable drinking water and wastewater treatment to operate.

Government of Canada Priority:

The creation of an Atlantic First Nations Water Authority would demonstrate a true Nation-to-Nation solution to the First Nations water crisis.

Canada will significantly benefit from the success of the First Nations Clean Water Initiative – Atlantic Region. Primarily, it help Canada fulfill priorities set forth in the most recent federal election campaign and subsequent budgets. As it states in budget 2016:

“The relationship between Canada and Indigenous peoples is vital. Yet First Nations, the Métis Nation, and Inuit do not enjoy the same quality of life as other people in Canada. Intergenerational poverty harms families and has costs for the Canadian economy. The Government is committed to working in partnership with Indigenous peoples to break down the barriers that have for too long held back individuals and communities from reaching their full potential to contribute to and participate in Canada’s prosperity”¹⁰

Furthermore, the mandate letter to the minister of Indigenous and Northern Affairs Canada states: *“Work, in collaboration with the Minister of Infrastructure and Communities, and in consultation with First Nations, Inuit, and other stakeholders, to improve essential physical infrastructure for Indigenous communities”¹¹* To that end, Minister Carolyn Bennett has urged the creation of First Nations institutions to recognize community driven innovative solutions.

Clear Benefit To First Nations:

The most apparent benefit to Atlantic First Nations with the establishment of a pan-Atlantic Water Authority is increased public health and safety with the improvement in quality of drinking water and wastewater. However, in addition to this improvement are a suite of other benefits.

With an Atlantic Authority comes an agreed upon standardization of care. All First Nations who are part of this initiative will receive the same quality of water that the other participating communities enjoy. Furthermore, the burden and liability of delivering safe water, operating & maintaining will be transferred to the AFNWA and away from Chief and Council.

Having consolidated funding for water operations, management and facilities there is an opportunity to standardized water systems and buy in bulk, in turn maximizing First Nations resources. As well, the water authority can put an emphasis on First Nations procurement, creating spinoff opportunities for economic development.

¹⁰ Hon. William Francis Morneau. *Gorwing the Middle Class*. Minister of Finance, 2016

¹¹ Rt.Hon. Justin Trudeau to Hon. Dr. Carolyn Bennett, November 13, 2015

When the AFNWA is in place, there will be the first true Atlantic First Nation organization that is technical in nature. Having this type of organization will help to inspire First Nations youth to not only pursue careers in the water sector but also in science, technology, engineering and math.

Lastly, the Atlantic First Nations Water Authority will benefit First Nations communities by aiding in their ability to plan. It will help community planning, for example, by providing consistent lot servicing for new housing developments. As well, the Water Authority can help with emergency management by; having a speedy, professional response when water quality is suspect, the ability to fix damaged infrastructure quickly, and with a predictable flow of water, have the ability to better combat fires if they arise.

Path Forward

Once the feasibility assessment is complete, **Atlantic First Nations will be seeking a firm 25 year commitment from the Government of Canada to ensure the success of this worthwhile initiative.** In order to succeed, we need political support that addresses the critical need for safe water.