

Water Challenges and Solutions in First Nations Communities

Summary of Findings from the Workshop *Sharing Water Challenges and Solutions: Experiences of First Nations Communities*, April 15-16, 2010, Kitchener-Waterloo, Ontario



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Preface

This report summarizes the discussions from a workshop that was held on April 15-16, 2010 in Kitchener, Ontario entitled *Sharing Water Challenges and Solutions: Experiences of First Nations Communities*. The workshop brought together members of First Nations from across Canada and representatives of organizations involved in water management to discuss water governance challenges and solutions in First Nations communities¹. The workshop was the result of a partnership between the Water Policy and Governance Group (WPGG) and the Centre for Indigenous Environmental Resources (CIER). Financial support was provided by the Canadian Water Network (CWN), the Walter and Duncan Gordon Foundation, and the Social Sciences and Humanities Research Council of Canada (SSHRC).



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Members of the team that organized the workshop include Rob de Loë, Suzanne von der Porten and Kate Cave (University of Waterloo and WPGG), Paul General (Six Nations), Lisa Hardess (CIER), and Ryan Plummer (Brock University and WPGG). Thanks also are due to volunteer note takers who helped Rob de Loë and Sue von der Porten to record the discussions at the meeting: Thomas Dyck (Wilfrid Laurier University), Kate Fairbrother (University of Toronto), and Kate Cave (University of Waterloo and WPGG). Special thanks are due to Josephine Mandamin and Paul General for their words of welcome at the workshop. The authors would like to thank Paul General, Ryan Plummer, Lisa Hardess, Merrell-Ann Phare, Kate Cave, Dan Murray and Josephine Mandamin for comments and feedback on drafts of the report. Finally, thanks are due to the participants who travelled from across Canada to participate in the workshop (see Appendix 2).

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Copies of this workshop report are available from the project web site (www.governanceforwater.ca) and from the Water Policy and Governance Group web site (www.wpgg.ca).

Cover Photograph: “Misshepezhieu, canoe and serpents”. Agawa Rock Pictographs. Lake Superior Provincial Park, Ontario, Canada. Credit: iStockphoto.

¹ The term “communities” in this report is generally used to refer to settlements. However, it is recognized that in many cases participants were discussing the experiences of their nations.

Executive Summary

This report summarizes major findings from a two-day workshop entitled *Sharing Water Challenges and Solutions: Experiences of First Nations Communities*. The workshop, which took place on April 15-16, 2010 in Kitchener, Ontario, explored water governance experiences in First Nations across Canada. The purpose of the meeting was to bring together people familiar with both the challenges and solutions related to water governance in First Nations so that these could be shared with fellow First Nations communities and professionals.

During the discussions, many issues were identified as common to the nations represented at the workshop. The relative importance of each issue varied because of the size, location, resources and specific situation of each nation. Nonetheless, several key themes were identified by workshop participants as both prominent and common to all nations. The key themes identified were as follows.

- **Capacity:** Many First Nations are under-resourced and lack the capacity to adequately address the increasingly severe water governance challenges they face.
- **Common Voice:** There is a need for a common voice among First Nations in Canada; this common voice should account for the cultural and situational variation of each nation.
- **Community Water Strategy:** Many First Nations would benefit from a clearly articulated community water strategy that reflects the needs and vision of community members.
- **Consultation:** Workshop participants emphasized the inadequacy of consultation conducted by government and industry with First Nations on projects that directly affect water in their traditional territories and communities.
- **Jurisdiction:** The problem of unclear and overlapping political jurisdiction over water complicates many of the problems related to decision making in regards to water governance in First Nations.
- **Respect:** Participants identified the notion of mutual respect among parties involved in water governance as something that is crucial to the success of all negotiations and dealings over issues related to water and First Nations; the necessary respect, they emphasized, is not always present.
- **Scale:** The issue of varying scales, such as watershed versus political jurisdiction, confounds the perspective from which water governance decisions should and can be made by First Nations; scale-related problems should be recognized explicitly in evaluating challenges and creating solutions.

Considering the tremendous water-related challenges facing First Nations communities today, which are complicated by escalating levels of industrial development and increased pressures on water resources, it was not surprising that numerous governance-related issues were identified. However, tangible solutions also were identified during the workshop. Five key conclusions/implications emerged from the discussions.

1. **Participation:** Workshop participants pointed to increased participation as a viable solution. Due to the entrenchment of Aboriginal rights in the *Constitution of 1982*, land claims and self-government agreements

and treaties, and ongoing affirmation of Aboriginal rights by the Supreme Court of Canada, Indigenous peoples in Canada have distinct rights, both as governments and as individual rights-holders, to be active participants in water-related decision-making. Thus, workshop participants emphasized that it can no longer be assumed that “participation” means finding ways to have First Nations participate in the water governance processes of federal, provincial and municipal governments. Instead, participants pointed out that it also has become necessary to find ways for non-First Nations actors to participate in First Nations water governance processes. Rethinking the challenge of participation in these terms is a positive step. However, workshop participants suggested that accomplishing this “reverse” participation may involve First Nations communities initiating processes that assert how decisions are and will be made in regard to water resources in Canada, rather than simply participating in processes led by governments and others.

2. ***Indigenous Knowledge:*** Workshop participants pointed to the importance of increased respect for and application of Indigenous knowledge in water governance. In light of their increasingly collaborative nature, contemporary water governance processes involve diverse types of knowledge, both scientific and non-scientific. The *meaningful* incorporation of Indigenous knowledge – on terms satisfactory to the Indigenous peoples who hold that knowledge – into water governance processes and water-related decision making was highlighted by participants as being essential.
3. ***Timing:*** In light of the evolving legal landscape relating to Indigenous water rights, and relative to growing awareness of the scope and magnitude of problems being faced in many First Nations communities, participants noted that the time has come for First Nations to assert their rights to water more strongly and forcefully.
4. ***Pooling common resources:*** There is enormous variability across Canada in the capacity of First Nations to address water governance challenges. Many have limited resources and small populations relative to other cities and municipalities with larger tax bases, and many face water governance issues that have escalated over the last century. Workshop participants emphasized strongly that considerable power and common voice could be acquired through nation-to-nation collaboration on issues of water governance.
5. ***Need for more sharing:*** Participants suggested that opportunities for First Nations leaders and water professionals to collaborate on the resolution of challenges relating to water governance are rare. Therefore, building on the previous point, workshop participants emphasized the importance of forums such as this workshop for dialogue and sharing among First Nations leaders and professionals.

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1. Introduction

The crisis of poor water quality in First Nations communities in Canada is long standing and serious. Over 100 First Nations communities are under drinking water advisories^[23]. A 2003 study by Indian and Northern Affairs Canada (INAC) estimated that 29% of the 740 community water systems assessed posed potential high risks that could negatively affect water quality, 46% medium risks, and 25% low or no risk. Since that study was completed there has been some progress, but it remains the case that people living on many First Nations reserves have substantially poorer quality drinking water than is found in other Canadian communities. Not only does contamination of the water supply of First Nations communities pose significant human health risks for community members, but also in many cases this contamination has been caused by activities outside of those communities^[29], often with the support of governments^[4]. The consequences are profound for a people who draw their lives from land and waters, and whose identity and survival are threatened by contamination, diversion and depletion of water bodies^[23].

The *Sharing Water Challenges and Solutions: Experiences of First Nations Communities* workshop brought together leaders, water professionals and partners from First Nations across Canada to discuss water governance concerns from the perspectives of First Nations. Its overall goal was to address the need for sharing of experiences by First Nations, and the limited number of opportunities that exist for such sharing. The workshop brought together both Indigenous and non-Indigenous participants interested in bettering the practice of water governance as it relates to First Nations in Canada. People from several First Nations in Canada were the majority of participants at the workshop (Appendix 2). Participants shared their experiences and expertise on topics including, but not limited to, water stewardship strategies, consultation, water rights, legal and treaty negotiation, water supply, water assessment, water policy, and Indigenous knowledge. Presentations and case studies from the following people provided a departure point for wide-ranging discussions that revealed a host of key challenges.

- Merrell-Ann Phare, a lawyer and the Executive Director of CIER, presented on legal matters and water rights as they relate to First Nations in Canada.
- Tim Heron, a participant in the development of the Northwest Territories Water Stewardship Strategy, discussed the development of the strategy, including the challenges faced.
- Irving Leblanc, a member of the Wikwemikong Unceded Indian Reserve and Water Specialist for the Assembly of First Nations, discussed concerns related to the proposed First Nations Safe Drinking Water Act.
- Paul General, manager at the Six Nations Eco-Centre, presented on the water challenges particular to the Six Nations reserve.
- Shelley Denny, Biologist and Research Coordinator for the Unama'ki Institute of Natural Resources, and Kim Paul, Environmental Technician with the Union of Nova Scotia Indians, discussed water management in the Bras d'Or Lake, specifically the Collaborative Environmental Planning Initiative.

This document synthesizes major findings from the workshop. Thus, it contributes to understanding the nature and severity of the water governance challenges facing First Nations, and highlights potential solutions.

2. Background: Water Governance Challenges in First Nations in Canada

This section sets the stage by providing context for the challenges and solutions presented by participants at the workshop. It brings attention to well-understood concerns that were also reflected in workshop discussions. The perspective is broad because the degradation of water directly impacts people in ways that go beyond the availability of clean drinking water. Water is integral to the cultural, social and economic survival of First Nations people as it permeates every aspect of their lives. In fact, freshwater is fundamental to all life and healthy ecosystems^{[13][20]}. Reflecting this broad perspective, water is important to First Nations for spiritual/ceremonial purposes, navigation, fishing, irrigation, industry, and recreation – as well as for domestic purposes. Therefore, all water needs protection.

2.1. Conditions in First Nations Communities

The disparity in access to safe drinking water in Canada among First Nations and non-First Nations communities is unmistakable^[12]. Consider that within Canada's First Nations communities, one third of the population considers the primary source of drinking water to be unsafe to drink, and 12% of First Nations communities must boil their drinking water^[1]. As of April 30th, two weeks after the workshop took place, the official count of First Nations communities that were under Drinking Water Advisories was 116^[12].

Poor water quality on First Nations reserves is a longstanding concern with deep roots^{[11][14]}. Causes are numerous, and include the legacy of the settlement and development of traditional First Nations lands, which in many cases has deprived Indigenous peoples of their water rights. As a result, First Nations as a whole face threats to water quality and quantity of a magnitude and severity that most other Canadians do not experience; these include pollution, habitat damage, flooding of traditional lands, forced relocations, and lost control over this vital resource^[22]. In the context of drinking water, crisis conditions exist in many communities^[11]. The fact that communities exist that rely on trucked-in water for drinking by residents because local river and lake water sources can no longer be relied upon is a stark reminder of the disparity that exists^[3].

2.2. Indigenous Perspectives on Water

Water issues inherently involve value conflicts since water has very different meanings to different groups of people in varying contexts^{[15][18]}. This is particularly the case in the context of First Nations.

Indigenous people in Canada have an intimate relationship with the natural environment. The relationship is embedded in Indigenous knowledge, has existed from time immemorial, and is vital to the spiritual and cultural

“Water, we call it Mother Earth’s blood, her nourishment to her children. I call this term “the blood of life” . . . and without it we’d never survive. So we need water, and we need to keep it clean because if it continues in the manner that it’s going . . . That’s one of those things that the ancestors talked about. So that’s why I’m saying that we need to learn to preserve water.”

— *Mary Louie, Syilx Nation*^[5]

integrity of the people^[13]. As a result, Indigenous perspectives on “sustainability” are not merely about sustaining the ecosystem, but also relate to the preservation of cultural and material ways of life based on the land^[28]. Because First Nations people see the earth as a living entity, environmental justice from that perspective is about justice for all beings of Creation^[20]. The teachings that have emerged from Creation stories emphasize the importance of the interrelationships among all elements of Creation, the roles and responsibilities to nonhuman and human relatives, and the ideas of holism^[20]. These values are consistent with other Indigenous peoples globally. For example, Indigenous Australians have managed to live successfully in an arid and water-variable landscape for over 40,000 years based on the values and practices that were developed in that landscape^[8].

“Our traditional laws are not dead. They are bruised and battered but alive within the hearts and minds of the indigenous peoples across our lands. Our elders hold these laws within their hearts for us. We have only to reach out and live the laws. We do not need the sanction of the non-indigenous world to implement our laws. These laws are given to us by the Creator to use. We are going to begin by using them as they were intended. It is our obligation to the children yet unborn.”

— Sharon Venne, *Saulteau First Nation*^[25]

Water is vital to all humans and to all life, and is also sacred to many cultures worldwide^[21]. For Indigenous peoples, water is tied to specific places and involves communities, culture and identity. Water can also be tremendously important at a symbolic level – for security, self-determination, and as an expression of a preferred lifestyle^[15]. Some have suggested that water-related ceremonies reflect the long-standing belief by Indigenous peoples that the spirit world is a part of all life^[7], and that water is a relative^[3].

The different meanings associated with water are not simply a cultural curiosity. In the Canadian context, First Nations are increasingly voicing their concerns that there is a serious lack of First Nations input into proposed federal water strategies, and in fact that there is an almost complete absence of any cultural references in legislation pertaining to water^[17]. This gap has significant implications for water governance. As is discussed below, First Nations increasingly do not view traditional systems of decision making relating to water as being able to provide a satisfactory forum for addressing their needs and values.

Indigenous women have a special connection to water^{[3][17][19][30]}. Traditionally, women took care of water for the household, looked after and performed ceremonies for water^[17], and were responsible for praying to the water^[3]. This connection to water stems from the life-carrying and life-giving responsibility of women and continues to this day^{[3][17]}.

2.3. Governance Challenges

The term “water governance”, as used in this document, refers to the ways in which societies are organized to make decisions that affect water^[10]. Numerous considerations are important in the context of water governance. These include the organizations and people involved, the roles they play, the relationships among the various

actors, and the formal and informal institutions that facilitate decision making. The biophysical and socio-economic setting within which governance occurs also is an important concern.

The concepts of decentralization and participation in decisions regarding water appear frequently in the water governance literature^[24]. The creation of more open and transparent forums for water governance is part of the rationale behind increased participation by civil society in water-related decision making in Canada. However, this characteristic of water governance does not account for the power differentials that can exist among the people and organizations involved in governance, and cannot on its own compensate for the resource, skill and cultural barriers to participation by marginalized populations^[15]. In First Nations communities, there are particular challenges as well as opportunities that exist because of both context and culture. Problems often arise from water policy and management decision making processes that are dominated by Western scientific perspectives, and which therefore may exclude other ways of knowing^[15].

Water-related governance challenges confronting First Nations are well documented. In this section, we briefly discuss governance challenges relating to capacity; legal frameworks, regulations and treaties; rights; and equity.

Capacity

Most First Nations communities are relatively small in size compared to other Canadian communities. Additionally, they tend to be spread out across a vast landscape, and despite being under-resourced, are tasked with key responsibilities for water. Unlike their non-Indigenous counterparts, First Nations reserve lands do not fall under provincial jurisdiction on matters related to water. Rather, First Nation reserves lands fall under federal jurisdiction, meaning that the protection and provision of water to First Nations is a responsibility of the federal government, in general, and INAC, in particular. Concerns about the extent to which the Canadian federal government has met its responsibilities are well documented^[23]. As a result, First Nations typically must scramble to manage water resources with minimal internal capacity. The governance of water is one among many other important responsibilities that tax the capacities of First Nations.

Legal Frameworks, Regulations and Treaties

Adding to the issue of capacity for water governance in First Nations communities is the weak legal framework that exists for drinking water on reserves. A new legal framework is being considered by the federal government (the proposed *First Nations Safe Drinking Water Act*), but at this time there are no laws or regulations in Canada that govern the provision of drinking water in First Nations communities^[16]. The basic water and waste-water management systems (such as tanker-trucked water septic systems) are managed locally and funded to some extent by the federal government^[16]. Unlike the United States (US) and the European Union (EU), Canada does not have national, legally-binding standards for drinking water, but merely voluntary drinking water guidelines. The result is a patchwork of drinking water laws which create disparity not only between provinces, but also leave First Nations populations disproportionately vulnerable to waterborne diseases, drinking water advisories, and the health effects of poor water quality^{[11][12]}.

Rights

Rights to water are an increasingly prominent and contested topic particularly in Canada and in regard to First Nations. Water rights are essential for both economic development and the preservation of traditional ways of life^[22]. Many legal scholars note that the right to the access and use of water by Aboriginal people predates the confederation of Canada. Aboriginal rights to water uses stem from (1) traditional use rights, (2) treaty rights, (3) unceded land, (4) constitutionally protected Aboriginal rights to the use of water and (5) riparian rights (because they are determined by priority and Indigenous traditional uses have occurred since time immemorial)^{[16][22]}.

Aboriginal claims for water are distinct because they are being recognized retroactively stemming from not only neglected past treaties, but also rights stemming from Section 35 of the *Canadian Constitution*^[14]. At times, these claims contrast with the non-Indigenous and corporate socio-economic investment in many areas of Canada, creating impediments to the definition of clear objectives and actions.

Equity

Most Canadians have access to clean water, and can be assured of its safety. This is not the case for many First Nations communities^[26]. It has been suggested that First Nations simply are not allowed to exercise an inherent jurisdiction to manage or use water, and that the current lack of federal legal frameworks surrounding drinking water on First Nations reserves leave Chief and council with no legislated comprehensive powers related to water management^[23]. Although First Nations have rights to sit at the decision making table, which flow from unextinguished title and rights, treaty rights, self-government rights, and inherent rights, they often are excluded despite continued attempts to assert these rights^[23].

The Canadian federal government has fiduciary responsibilities relating to Aboriginal peoples. Nonetheless, the federal government often is the main opponent to First Nations in court^[23]. Its longstanding unwillingness to sign the *UN Declaration of the Rights of Indigenous Peoples* has been identified as an example of its overall attitude^[23]. Importantly, while Canada finally signed the Declaration in November 2010, it did so with the caveat that its provisions will be implemented strictly within the limitations of the *Canadian Constitution* and legal system.

3. Key Themes that Emerged from the Workshop

During the discussions that took place over the two days of the workshop, numerous themes were raised that were enormously important to participants. These included capacity, common voice, community water strategies, consultation, jurisdiction, respect, and scale. Many of these echoed the concerns discussed previously in Section 2. Themes that appeared less frequently during discussions, but which also appeared to be significant to participants, included the importance of future generations, knowledge, leadership, nationhood, treaty rights, values, water rights, and youth. Finally, themes that appeared infrequently during the discussions included the importance of colonial history, economic development, shortfalls in education systems, the need for reconciliation, and spiritual connections to water. In this section, we concentrate on the themes that were raised frequently and which were considered critical by workshop participants.

3.1. Capacity

One issue that was spoken about frequently by the majority of participants at the workshop was the importance of capacity, and the ways in which capacity limitations undermined effective water governance. In many cases, First Nations communities lack the capacity and resources to deal with the escalating water governance related issues facing their nations. This problem was attributed by participants to numerous factors, including (1) the small size and staffing of many First Nations governments, (2) the lack of resources available to train community members in key water management skills, (3) the increasing number of difficult water-related predicaments, and (4) the competition of other non-water related problems facing the nations.

The sometimes overwhelming number of water governance issues faced by participants' communities is common to all, but the size and capacity of each nation varies widely. For example, one nation represented at the workshop has a multi-million dollar fund used solely to fight for treaty rights to water, and another had a legal team funded independently that helps to address legal concerns faced by the nation. At the other extreme, one participant reported that a lawyer friend occasionally gives free legal advice over the phone, and that that was the extent of legal support available to that First Nation. Furthermore, participants noted that some First Nations are constrained by the shortcomings of their treaty agreements, while others do not have as much political capacity or say in terms of water and water rights because they are a non-treaty nation.

“We are finding that people are coming to Six Nations and asking very technical questions but we don't have the capacity and technical people to address the issues.”
— *Paul General, Six Nations*

In many cases, participants reported being overwhelmed with documents such as environmental assessments and resource extraction plans that came to them from interests outside their nation. Workshop participants noted that First Nations governments are expected to read, to understand, and to respond to all of these by specific, externally-established (and often short) deadlines. These documents often are written in technical language and may have been prepared by paid experts who had many years to prepare them. Participants called for the need for funds to increase community/nation capacity, as well as, in some cases, creating a traditional land use plan as a step toward creating a broader framework for water governance, in general, and for responding to proposed

developments and activities that affect their nation. The capacity challenges discussed at the workshop have been identified previously by organizations such as the National Centre for First Nations Governance (NCFNG) which points out that both sufficient and appropriate resources are essential for First Nations to achieve and sustain their vision. This is also essential to the building of trust and legitimacy.

3.2. Common Voice

Many of the workshop participants spoke about the importance of having a common voice and shared vision not only within individual communities, but also among First Nations communities. This provides a further rationale not only for the articulation and documentation of community water strategies, but also for the development of shared strategies. Within nations, participants spoke about the hurdle of overcoming internal issues and conflict that sometimes occurs. As development issues come to the forefront, First Nations communities are trying to ascertain who the correct spokespersons are, and what messages are consistent with community values which can vary and conflict. Participants also stressed the importance of the need for environmental practices that protect waters near the communities before addressing external water governance issues.

In addition to community/nation-level consistency, several participants at the workshop spoke about the importance of the creation of a shared vision that would bring First Nations in Canada together with a common voice. Reasons why this common voice does not exist yet were identified. These included the facts that (1) neighbouring First Nations may be competing for economic purposes and therefore not working together, (2) that governments or industries may consult one nation rather than another even though both First Nations stand to be affected by a given project, and (3) the nations may have differing water governance goals. Participants reported success stories where First Nations have created alliances and where Chiefs have agreed as nations on decisions and policies.

Reflecting concerns for a common voice, workshop participants suggested that a shared vision for water – created by and for First Nations – could be beneficial at the nation-level, among neighbouring nations, and at the national scale as a guide for regional and territorial plans and strategies.

“Part of the problem for water is we are often subject to political complexities so we can't respond effectively to outside pressure.”

— *Paul General, Six Nations*

3.3. Community Water Strategies

Many of the participants at the workshop identified the need for the creation of clear community plans which include a water strategy, or the creation of a stand-alone community water strategy. One participant asserted that success in governance by First Nations is contingent upon them having a clear idea of how they will govern themselves. It was suggested by participants that this would include defining what a good governance structure looks like, developing fundamental principles, and thus creating a structure upon which a water strategy could be articulated. There was some consensus that the community plan and/or water plan should be driven from the bottom up so that it incorporates the needs and voices of the nations, as well as the fact that it should be comprehensive and extend beyond the nation and the watershed. A community water plan, it was suggested,

would allow First Nations to be proactive rather than reactive to development projects and water related issues that come up. Plans and strategies should also address practical challenges, such as the need to more effectively collect, store and manage information.

While community plans would vary in scope and focus between nations with vastly different needs and resources, participants pointed out the shared need for integrated watershed management, planning and governance strategies, as well as the need for funds and capacity to effectively implement these plans. Plans and strategies would be strengthened by clear consultation and accommodation policies. This would include clearly delineated steps that specify how the nation wants to be consulted in regards to projects which relate to water or the environment. The *Northwest Territories Water Stewardship Strategy* is one example of a clear strategy at a larger scale^[13]. This strategy was developed as a partnership between Aboriginal governments and the government of the Northwest Territories. The Okanagan Nation is also working towards more proactive water management.

3.4. Consultation

Many of the participants talked about the problems associated with the ways in which their nations are consulted, particularly in relation to industrial projects that have an effect on water in the First Nations' traditional territories. Despite the precedent-setting wins in the Canadian courts which created the duty of government to consult First Nations on projects and other proposals of this kind, appropriate consultation is not happening in many of the nations. This was illustrated by a case described by workshop participants where only one of two adjacent nations located in the watershed was consulted regarding a proposed mine that would affect both of them. In other nations, participants suggested that consultation was done within a time frame too narrow for First Nations governments to adequately engage, done in the absence of compensation for the time spent by the First Nations government, done with disregard for Indigenous ways of consultation and respectful ways of approaching the First Nation, or not done at all.

From a legal standpoint, the duty to consult is created when a First Nation or government expresses concern over a development. The lines on maps alone cannot determine the boundaries of a duty to consult, but rather extend to a reasonable articulation of where that nation sees a concern. In many cases, participants suggested that the government tries to shift the responsibility for consultation and accommodation onto industry, even though the onus of the legal duty to consult is on the government. In practice, it was suggested, because industry has a vested interest in having

“What does a good governance structure look like? Why can't we develop our own governance structures based on how we traditionally governed our nations; the structures could/should be contemporary design, based on fundamental principles of traditional governance. Once we achieve that, everything else will fall into place.”

— *Bob Duncan, Hupasacath First Nation*

“Just receiving information is not consultation. We need to have total inclusion and clear understanding of what the consultation process is.”

— *Clint Cornelius, Oneida Nation of the Thames*

projects move forward expeditiously, communication and consultation often occur via industry representatives.

Another key challenge discussed at the workshop relates to the issue of *who* to consult. Many participants mentioned the problem, which also related to having a common voice, of determining whom to consult within a single nation, and which nation to consult when multiple nations would potentially be affected by a given project. Several workshop participants noted that there must be established nation representatives who can respond to issues related to consultation on behalf of the nation. They stressed that an agreed-upon definition of consultation was needed, and that clarity was essential regarding how consultation actually occurs for each individual nation. Financial support, they stressed, also should be provided to the nation being consulted to address the fact that proponents typically have considerably more resources and technical expertise at their disposal.

“In the province of Manitoba they have the plan and mapping in place, certain parts of that are missing, First Nations are missing. We had no idea when the consultations were going on.”

— *Dion McKay, Fisher River Cree Nation*

3.5. Jurisdiction

Jurisdiction over issues of water (including source waters, drinking water, and watersheds) appeared as an issue common to First Nations communities across several scales. In one case discussed by a participant, where a First Nation is split by a provincial-territorial border, the two nations within the exact same watershed are competing between themselves for resources and economic development opportunities. The ability for First Nations to create good relationships with local municipalities was also discussed. This often critical relationship is hindered by the fact that jurisdictionally, First Nations are a federal jurisdiction, while municipalities are a provincial jurisdiction. For example, one participant noted that his nation was dealing with the wastewater from millions of people, different levels of government, and six separate nations all with a mismatch of administration and government issues.

In some cases, First Nations simply do not want to get involved with provincial government bodies. For example, participants pointed to several examples where First Nations did not wish to become involved in collaborative governance processes that existed under provincial jurisdictions. It was noted by one participant that this is mostly due to a lack of respect for First Nations rights from provincial officials. The time constraints that limit capacity building in order to participate in these forums, and incompatibilities between First Nations processes and provincial government processes, also were identified as problems.

These examples of jurisdictional problems are consistent with the findings of the *Report of the Expert Panel on Safe Drinking Water for First Nations*^[27] which pointed to the difficulty of multi-jurisdictional involvement in watersheds, the large number of First Nations water and wastewater

“Right now, my town of Fort Smith [in the Northwest Territories], we get Alberta’s last flush of the toilet. “

— *Tim Heron, Northwest Territory Métis Nation*

systems that do not fall under provincial or territorial jurisdiction, and the confusion regarding who should manage water on First Nations reserve land.

3.6. Respect

Respect emerged as a key concern throughout discussions among participants regarding the water-related challenges faced by First Nations. Respect includes recognition by non-Indigenous Canadians that First Nations are not just “another stakeholder” in decision making relating to water. Rather, participants suggested, decision making and negotiation must begin with respect for the fact that First Nations are indeed *nations*. They suggested that explicit recognition that nationhood and sovereignty exist must be present in all governance processes. Workshop participants also stressed the importance of First Nations and non-Indigenous peoples demonstrating a willingness to work together, to respect each other, and to be involved in decision making related to water governance.

3.7. Scale

There are several different scales from which water challenges and opportunities related to First Nations are and can be approached. On the one hand there are human-related scales from the community/First Nation level to the national. For instance, one participant pointed out that issues relating to water can be seen as involving the community, the band, the nation, the regional assembly, the tribal council and the Assembly of First Nations. At the same time, water problems exist at scales ranging from small sub-watersheds to river basins. Participants emphasized that reconciling these various scales is an important challenge for governance.

Participants had several solutions to this issue. One was the creation of an integrated community plan that extends beyond the borders of the nation to include the watersheds. Another was to better integrate governance across multiple scales (including both water and human) and to make decisions at the most appropriate scale depending on circumstances. Additionally, it was suggested that the local scale cannot be separated from other scales – including global – and thus decisions should always be made with respect to implications for other scales.

Several participants also noted the importance of the consideration of time scales in decision making. Water governance practices and decisions must take the future generations into account. It was suggested that First Nations communities need to ensure that governance protects future generations.

“As a grandmother, it’s important to consider what we are leaving behind for our future generations.”

— *Eliza Terbasket, Lower Similkameen Indian Band*

4. Conclusions

First Nations in Canada face many water governance challenges – now and in the future. However, the discussions at this workshop also offer hope and point to solutions. Importantly, discussions at the workshop emphasized there are no one-size-fits-all solutions. The challenges and opportunities that exist in the nations from which participants came vary tremendously because of their different sizes of communities, capacities, treaty processes (or lack thereof), histories, traditions, and geographies. This reinforces the fact that context is critical to understanding and addressing the water governance challenges faced by First Nations.

4.1. Participation in First Nations Processes

In order to address water governance challenges faced by First Nations, participants pointed out that leadership in water governance processes must come from First Nations ways of knowing and doing. In many cases, participants talked about not having enough resources to send community members or First Nation government representatives to the many forums and meetings held by governments and firms that include a “seat” for a First Nations voice. The assumption typically seems to be that the onus is on First Nations to attend these public consultations or meetings if they want their voices heard, that First Nations should be consulted like any other stakeholder, and that First Nations people ought to participate in the Western processes of communication and development.

These assumptions are not consistent with the realities facing First Nations people in Canada. A different, more appropriate, approach discussed at the workshop involves accepting that there are circumstances under which water governance will occur through First Nations processes. Hence, the challenge will be to find ways to incorporate non-Indigenous actors in these processes. In this way, First Nations communities and nations could take the lead on water governance or other resource-related initiatives within their jurisdictions, on their own terms and according to their ways of governing. In some respects this is the approach that is being pursued in the Northwest Territories relative to the development and implementation of the water strategy that was jointly developed by the Government of the Northwest Territories and Aboriginal governments through an Aboriginal Steering Committee.

4.2. Indigenous Knowledge

Many participants noted that Indigenous knowledge needs to be incorporated and respected as a legitimate form of knowledge in all decision-making processes and actions in regard to First Nations water governance. Many participants saw increased incorporation of Indigenous knowledge in water governance processes as a way to address increasingly complex water management challenges. In some cases this included blending Indigenous knowledge with Western scientific knowledge in order to make informed and

“We have to understand that [water] is living just like we are. We are forgetting that. I do respect the water and want to take care of it any way I can. We need to work together, to understand how we need to take care of the water.”

— *Josephine Mandamin, Anishinabek Women's Water Commission*

culturally appropriate water governance decisions. Another reason for recognizing the importance of Indigenous knowledge in water governance is the close connection of Indigenous people to the land. This point is consistent with literature that points to First Nations people in particular as the ones who are sounding the alarm over deteriorating water quality in Canada^[5]. It has also been noted that in order to build a holistic or integrated understanding of water governance, water governance must draw on various forms of knowledge since no one individual can encompass the range of knowledge required for effective environmental governance^[10].

4.3. Asserting Water Rights

It was noted by several participants that it is important for First Nations to assert their rights to water in Canada. To date, Canada has no national water policy, there are no enforceable drinking water quality standards on First Nations reserves^{[2][23]}, and there is, as of yet, no First Nations-created water policy at the national level. The need to assert Indigenous water rights, participants suggested, makes sense because there have been several important and precedent-setting Aboriginal legal cases in the past few decades^{[6][9][23]}.

According to the presentation by Merrell-Ann Phare at the workshop, many First Nations have inherent or reserved rights that were never relinquished through the treaty-making processes with Canada. In addition, others have Aboriginal rights, including unextinguished title and rights, which include water rights. While these rights are seen by First Nations as inherent to their nation, the Canadian government has only considered them valid once recognized by the courts. Despite the lag by the Canadian government in recognizing these rights, the importance of First Nations assertion of water rights through the court system has broader legal implications for all Aboriginal nations. A future Supreme Court decision that clarifies the water rights held by Indigenous people, it was suggested at the workshop, could fundamentally rewrite the rules of water governance in Canada.

An example offered at the workshop of a First Nation asserting its rights is the Hupacasath First Nation. This nation took the approach of declaring its rights over its traditional territory and resources, in part through initiating legal challenges. Similarly the Kitchenuhmaykoosib Inninuwug First Nation has fought for its right to say no to development in its traditional territory in an attempt to counteract the ways in which decisions are made in Canada with regards to impacts of development on Indigenous rights. Other examples of the assertion of water rights by First Nations identified at the workshop include the Unama'ki Institute of Natural Resources, which created a water management structure; the Fort Smith Community Plan, and the Northwest Territories Water Stewardship Strategy.

4.4. Pooling Common Resources

Workshop participants agreed that there are opportunities for the development of Indigenous-Indigenous alliances wherein common resources could be pooled to address shared water governance concerns. Indigenous nations in Canada had well-established nation-to-nation alliances before colonial contact. For instance, pre-contact Indigenous North Americans had well developed systems to protect their access to land from those who threatened it^[6]. Participants noted that these systems should be renewed with the goal of promoting Indigenous-centric water strategies. Renewing Indigenous nation-to-nation alliances, participants suggested, could provide

powerful models for solidarity on issues of water governance, and could contribute to a common voice on issues such as the proposed *First Nations Safe Drinking Water Act*.

4.5. More Sharing Among First Nations

One message that emerged clearly from this workshop was the need for more collaboration, sharing and dialogue of the kind that occurred at this meeting. First Nations participants indicated that they gained insights not only from sharing their own nation's water experiences at the meeting, but also by learning from the experiences of others. With many First Nations communities spread across a wide landscape and lacking the resources and time to collaborate with other, sometimes remote, First Nations, the opportunity to create dialogue around water governance challenges and opportunities was valued highly by participants. Meetings such as the one that occurred at the workshop can be an opportunity to build upon past successes, to address the issues of the present, and to ensure that clean, safe water resources and healthy natural ecosystems are available to future generations of First Nations people.

5. Appendices

5.1. Appendix 1: Workshop Agenda

Sharing Water Challenges and Solutions: Experiences of First Nations Communities

Thursday, April 15: Issues and Challenges

8:30-10:00	Breakfast at Delta Kitchener-Waterloo
10:00-10:30	Meeting Introduction and Welcome: Rob de Loë, Paul General, Josephine Mandamin
10:30-10:45	Collaborative water governance and First Nations communities: Rob de Loë
10:45-12:00	Round Table Introductions
12:00-1:15	Lunch
1:15-4:00	Plenary discussion of water from the perspective of First Nations communities
4:00-5:00	First Nations and water governance in Canada: Merrell-Ann Phare
6:00pm	Dinner at Botanica Restaurant, Delta Kitchener-Waterloo

Friday, April 16: Solutions

8:00-9:00	Breakfast
9:00-9:30	Introduction and goals for the session: Rob de Loë
9:30-12:00	Experiences of First Nations people in collaborative water governance: case studies & plenary discussion
12:00-1:15	Lunch
1:15-3:30	Towards a common vision for First Nations and collaborative water governance (Breakout group discussions)
3:30-4:00	Workshop wrap up
6:00	Dinner for remaining attendees in Kitchener

Saturday, April 17th (optional)

8:30	Departure from Delta Kitchener-Waterloo (front doors)
8:30-9:45	Drive to Six Nations
9:45-11:00	Tour of Six Nations Reserve focused on water
11:00-12:00	Lunch at Six Nations (catered) (End of Formal Session)
12:00-3:00	Drive to and visit Niagara Falls
3:00-5:30	Drive to Kitchener-Waterloo

5.2. Appendix 2: List of Participants and Communities Represented

Participant	Affiliation/Nation	Province
Kate Cave	University of Waterloo/Water Policy and Governance Group	ON
Bernadette Conant	Canadian Water Network	ON
Clint Cornelius	Oneida Nation of the Thames	ON
Rob de Loë	University of Waterloo/Water Policy and Governance Group	ON
Shelley Denny	Unama'ki Institute of Natural Resources	NS
Bob Duncan	Hupasacath First Nation	BC
Thomas Dyck	Wilfrid Laurier University	ON
Kate Fairbrother	University of Toronto	ON
Paul General	Six Nations Eco-Centre	ON
Lisa Hardess	Centre for Indigenous Environmental Resources	ON
Tim Heron	Northwest Territory Métis Nation	NWT
Clynt King	Six Nations Environment Office	ON
Stuart Kirkness	Fisher River Cree Nation	MB
Irving Le Blanc	Assembly of First Nations	ON
Josephine Mandamin	UOI – Anishinabek Women's Water Commission	ON
Dion McKay	Fisher River Cree Nation	MB
Tim Morris	Walter and Duncan Gordon Foundation	ON
Kim Paul	Union of Nova Scotia Indians	NS
Merrell Ann Phare	Centre for Indigenous Environmental Resources	MB
Ryan Plummer	Brock University/Water Policy and Governance Group	ON
Eliza Terbasket	Lower Similkameen Indian Band	BC
Carrie Terbasket	Lower Similkameen Indian Band	BC
April Varewyck	Oneida Nation of the Thames	ON
Sue von der Porten	University of Waterloo/Water Policy and Governance Group	ON
Matthew Whitehead	Mikisew Cree Nation	AB

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Water Policy and Governance Group: About Us

The Water Policy and Governance Group (www.wpgg.ca) is a multi-university research collaborative. Our focus is water governance and water policy, primarily – but not exclusively – in Canada. Major themes in our research program include water security, source-water protection, water allocation, and adaptation to climate change. We conduct practical, policy-relevant research that contributes solutions to these problems.

Our success is grounded in our network of researchers and partners across Canada and around the world.

Graduate training is a central part of our mission. We accomplish our goals in large part because of the excellence of our graduate students, post-doctoral fellows, and research associates.

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