



Protecting Water Our Way

FIRST NATIONS FRESHWATER GOVERNANCE
IN BRITISH COLUMBIA



The First Nations Fisheries Council's *Water for Fish* Freshwater Initiative

Through the *BC First Nations Fisheries Action Plan*, British Columbia First Nations have directed the First Nations Fisheries Council of BC (FNFC) to support, protect, reconcile and advance Aboriginal Title and Rights and Treaty Rights as they relate to fisheries and the health and protection of aquatic resources. Our priorities are to develop effective governance mechanisms, form collaborative relationships among First Nations organizations and work together to build a cohesive voice on fisheries matters.

The FNFC's *Water for Fish* freshwater initiative was launched in 2012 to advance objectives in the *Action Plan* under the theme of Safeguarding Habitat and Responding to Threats. Through this initiative we work to support First Nations in their engagement in water governance and freshwater habitat protection and management activities. The intended impact of this program is for BC First Nations to be informed and have the necessary resources to actively exercise governance and jurisdiction of fresh waters in their traditional territories. Our current core activity areas are:

COORDINATING

Coordinating the BC First Nations Water Network

BUILDING

Building Capacity for First Nations Water Governance

ADVANCING

Advancing Aboriginal Water Rights

See the *FNFC Statement of Solidarity on Freshwater Governance of Fish and Aquatic Ecosystems* (2017) at www.fnfisheriescouncil.ca.

The FNFC respects each Nation as rights holders to make their own decisions. The FNFC's role is to provide information and to support First Nations' positions where their collective interests align. This publication is intended to be an informational tool for BC First Nations.



ACKNOWLEDGEMENTS

This document integrates input and feedback from community and peer reviewers. We acknowledge that their review does not necessarily represent endorsement of the content of this report. The FNFC would specifically like to thank the following individuals for their thoughtful contributions: Sarah Alexis, Katherine Capot-Blanc, Mark Cleveland, David deWit, Joe Enns, Andra Forney, Roy Francis, Cathy Galligos, Larry George, Sally Hunter, Lydia Hwitsum, Beverly Ketlo, Kevin Koch, Tim Kulchyski, Don MacDonald, Tara Marsden, Elinor McGrath, Cathy Narcisse, Chief Larry Nooski, Allison Oliver, Mike Ridsdale, Jaime Sanchez, Dr. David Schaepe, Jesse Sinclair, Denise Smith, Gordon Sterritt, Alex Sutcliffe, Pauline Terbasket, Tessa Terbasket, Michelle Tung, Lisa Wilson, Lori Wilson, and Howie Wright.

The FNFC also thanks Jennifer Archer, Jessica Asch, Hannah Askew, Oliver Brandes, Gwen Bridge, Darlene Gait, Nadia Joe, Julia Ko, Natasha Overduin, Simon Owen, Rowena Rae, Ian Rogalski, Rosie Simms, Jim and Kirsten Skipp, Jennifer Vigano, and Dr. Kelsey Wrightson.

In addition, the FNFC wishes to acknowledge the contributions of Deborah Curran and law students Joelle Karras, Graham Litman, and Brodie Quinton at the Environmental Law Centre at the University of Victoria for the content on case law and advancing Aboriginal water rights.

The FNFC would like to recognize the Gordon and Betty Moore Foundation and Environment and Climate Change Canada for their support in the publication of this report.

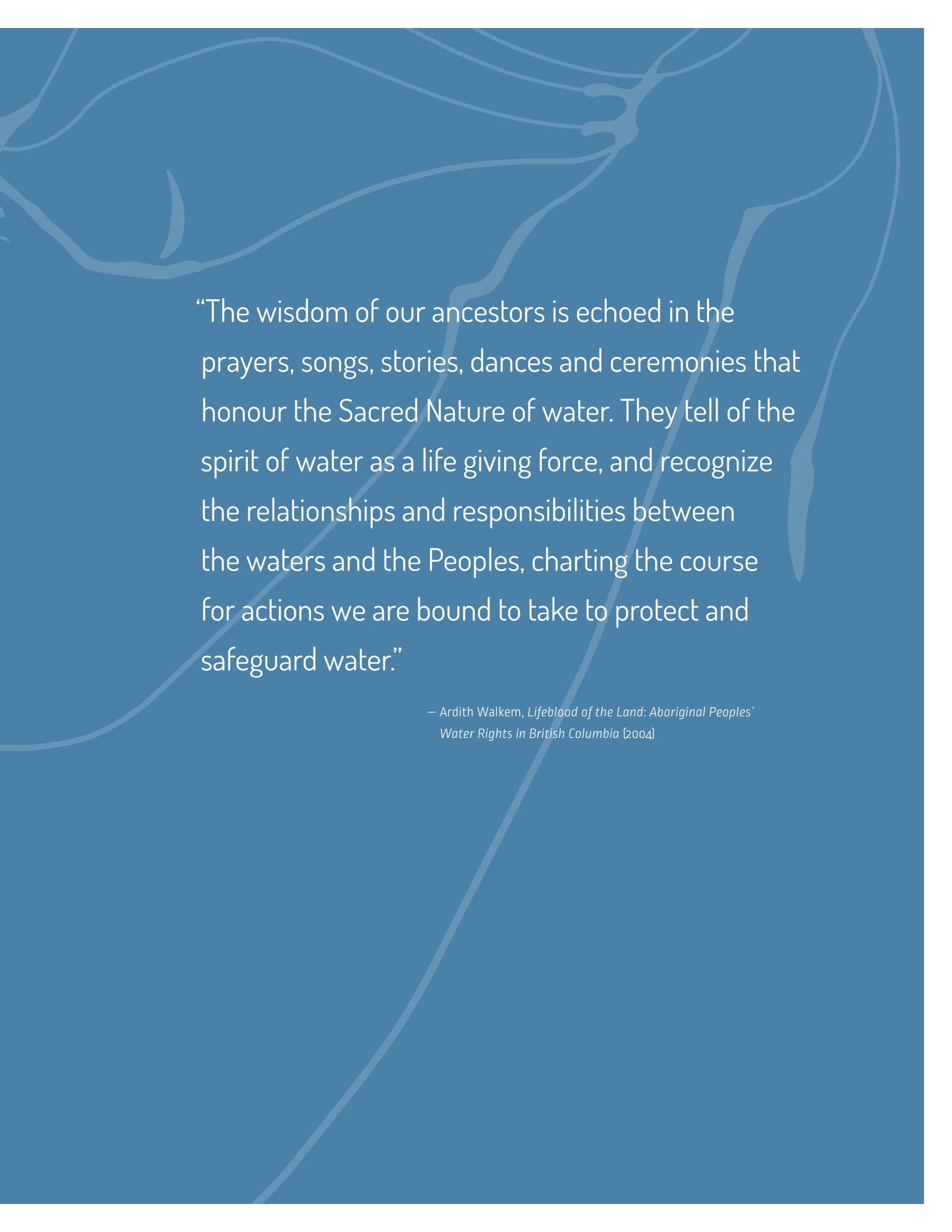
GORDON AND BETTY
MOORE
FOUNDATION

This project was undertaken with the financial support of:
Ce projet a été réalisé avec l'appui financier de :



Environment and
Climate Change Canada

Environnement et
Changement climatique Canada



“The wisdom of our ancestors is echoed in the prayers, songs, stories, dances and ceremonies that honour the Sacred Nature of water. They tell of the spirit of water as a life giving force, and recognize the relationships and responsibilities between the waters and the Peoples, charting the course for actions we are bound to take to protect and safeguard water.”

— Ardith Walkem, *Lifeblood of the Land: Aboriginal Peoples' Water Rights in British Columbia* (2004)



ABOUT THIS REPORT

Decision making over freshwater resources is a critical issue for First Nations in British Columbia. This report is for First Nations leadership as well as lands, natural resources and fisheries staff who are interested in learning more about First Nations-led initiatives to protect fresh water in BC.

First Nations have practiced sustainable guardianship of land and waters since time immemorial. Indigenous laws, knowledge and decision-making processes to manage and govern watersheds mean that First Nations have a critical role to play in addressing the challenges that waters in BC will face in the years ahead. From the headwaters of the mighty Fraser, to the Cowichan River on Vancouver Island, to the Skeena River in the northwest, communities across the province are taking opportunities to make a difference, protect their fresh waters, advance rights, and rebuild and sustain cultures and ecosystems through planning, local knowledge and governance of the waters in their territories. This report is an attempt to share some of these stories — to help celebrate success and also offer viable examples for other communities to consider as they contemplate following a similar path and approach.

Today, more than ever before, First Nations have a distinct opportunity to change the course of freshwater management in BC. Several circumstances are converging to create this watershed moment: First Nations are actively asserting their rights and jurisdictions and revitalizing their laws; for the first time in the history of Canada, both the federal and BC provincial governments have expressed a willingness to move toward broad reconciliation with Indigenous Peoples; and in BC, the *Water Sustainability Act* offers a rare opportunity to create new water laws. The challenge for First Nations is to ensure that the necessary lasting conditions, capacity and relationships are created so that they are in a position to exert true and full decision making over fresh waters in their territories. Now is the time for First Nations to play a defining role in shaping the future of fresh water for all for generations to come.



Protecting Water Our Way

Introduction

“Many First Nations have developed watershed strategies as a means of governance over their resources. These are critical matters to the survival, rights, and interests of First Nations and crucial in developing sound strategies that must not and cannot be denied.”

— Strategy to Protect and Advance Indigenous Water Rights, Assembly of First Nations (2013)

Water is sacred, alive and the lifeblood of First Nations’ traditional territories. For tens of thousands of years, First Nations have honoured, protected and managed aquatic resources according to traditional laws and governance structures. But today, rivers, creeks, streams, wetlands and aquifers across BC are facing unprecedented pressures from the cumulative impacts of climate change, mismanagement, over-allocation, resource extraction and industrial development. At the same time, conflicts over water are increasing with pipelines, dams, land use, agriculture and Crown laws regulating decisions and jurisdictions.

Access to healthy fresh water is essential to the continued survival of fish and other aquatic species, and to the protection of Aboriginal Title and Rights and Treaty Rights. First Nations have much to gain by developing water plans and strategies as a means of securing governance over limited freshwater resources, particularly now when BC is undergoing the most significant change in Crown water law and policy since the early 1900s with the ongoing implementation of the new *Water Sustainability Act* (2014). In the absence of a clear interpretation of Aboriginal water rights by Canadian courts to date (see [Box 3](#)) and unsettled jurisdiction (see “[Whose Water is it, Anyway?](#)”), many BC First Nations are asserting their rights, authorities, and laws to protect fresh water through planning and governance initiatives. These activities range from developing water declarations based on Indigenous laws, to establishing water monitoring networks that span multiple territories, to negotiating shared decision-making agreements, to co-leading watershed boards. Many of these initiatives are with other partners in the watershed.

PURPOSE OF THIS REPORT

By asserting Aboriginal, Treaty and inherent Rights, First Nations can take significant steps toward addressing many of the current pressures on watersheds in BC. This report is for BC First Nations leadership and staff who are interested in learning more about protecting fresh waters in their territories through planning and governance initiatives. The purpose of this report is to share different approaches that Nations across BC are taking to address their water concerns. Some are upholding their community’s role by planning and building capacity; others are leading new, and often collaborative initiatives. All are challenging the status quo.

This report centres on five case stories from BC First Nations. Each story describes the successes and challenges of one or more communities. Before presenting the case stories, the report provides brief context on Indigenous and Crown laws and jurisdiction as they relate to fresh water in BC.

BOX 1**Defining Governance**

“‘Governance’ means ‘establishing rules to coordinate our actions and achieve our goals.’ As societies, the institutions we create to make rules and then enforce them, we call ‘government.’ [...] The reality that we lived in productive, sustainable and viable societies is a testament to the fact that our governing systems worked. With the arrival of the newcomers, all this quickly changed. While we may have had some form of government under the *Indian Act*, we were for the most part denied the powers (jurisdictions) we needed to govern and the governing institutions that could exercise power effectively. [...] Thankfully, this is changing, and a more robust concept of governance based on Indigenous legal traditions is re-emerging as we slowly rebuild strong and appropriate governance.”

From BC Assembly of First Nations Governance Toolkit: A Guide to Nation Building (2014)

BOX 2**BC First Nations’ Participation in Fresh Water Management and Governance: A Snapshot**

In 2016 the Centre for Indigenous Environmental Resources and the First Nations Fisheries Council released a research report assessing the capacities and needs of BC First Nations in engaging in freshwater governance and planning activities.¹ Key findings from this research include:

- > 53 percent of respondents reported having a written document to protect fresh water in their territories that was created by the community;
- > 75 percent of those who have a water protection plan in place reported that it reflects traditional values, laws and/or customs;
- > Most BC First Nations report having an annual budget of \$30,000 or less to participate directly in freshwater governance and/or management activities;
- > Despite significant gaps in financial and staffing capacity, most BC First Nations have a strong interest in governing and managing fresh water within their traditional territories.

From Indigenous Watershed Initiatives and Co-Governance Arrangements: A British Columbia Systematic Review (2016)

BOX 3

Unclear Waters: Case Law Relating to Aboriginal Water Rights and Section 35 of the Canadian Constitution

Litigation on Aboriginal Rights and Title in the Canadian courts has focused on land and resources rather than water specifically to date, though more cases are now underway. While no specific case in a Canadian court addresses an Aboriginal Right to water, existing case law points to several avenues for acknowledging such a right.

- > *Saanichton Marina Ltd v Claxton*, 1989 57 DLR. The BC Court of Appeal upheld an injunction against Saanichton Marina because proposed construction would, among other things, result in loss of eelgrass beds, the preferred habitat of crab traditionally fished by the Tsawout People. If eelgrass is protected, it can be argued that water — far more important to the survival of fish — is also protected.
- > *Halalt First Nation v British Columbia (Environment)*, 2011 BCSC 945. The court spoke of bathing and ceremonial purposes of the Chemainus River as having significance for Aboriginal Rights even though no conclusive findings were made on this point and the case was overturned on another issue.
- > *Saik'uz First Nation and Stelat'en First Nation v Rio Tinto Alcan Inc.*, 2015 BCCA 154. The court allowed a claim by the Saik'uz and Stelat'en First Nations to proceed against Rio Tinto Alcan for the impacts from a dam on the Nechako River. While the court did not determine if an Aboriginal Right to water exists, it also didn't state that this right does not exist at all.
- > *Sts'ailes Nation v Canada and British Columbia*, ongoing. Sts'ailes Nation launched a landmark legal action in 2016 to confirm Sts'ailes Aboriginal Title and Rights within the Harrison-Chehalis watershed, including rights to manage and govern fisheries and fresh water. If successful, this case could be the first to establish Aboriginal Title in relation to water.



L-R: Nuu-chah-nulth justification trial, by FNFC; Chinook jumping in Moricetown Canyon, by David Luggi.

Whose Water is it, Anyway?

A Word on Aboriginal Water Rights

“First Nations have sovereign, Inherent and Treaty rights over the land and waters in their traditional territories, and continue to assert and exercise their rights and responsibilities through ceremony and practices of management and use. This is the responsibility given to us by the Creator.”

— Strategy to Protect and Advance First Nation Water Rights, Assembly of First Nations (2013)

First Nations communities and governments in BC face two systems of laws and decision making that influence their lands and waters: the Canadian legal system (including federal and provincial laws) and Indigenous legal orders. These systems often overlap and can conflict, and how they align and work with one another remains unresolved. This grey area will be a major challenge now and into the future. In the main section of this report, the Case Stories, we share a range of on-the-ground examples that First Nations communities across BC are leading to manage and govern their waters more sustainably, despite the legal, institutional and governance challenges. While the purpose of this report is not to resolve these challenges, having some background on Aboriginal Rights, jurisdiction and laws regarding fresh water will give context for reading the Case Stories.

INDIGENOUS LEGAL ORDERS

The legal systems of First Nations have existed since time immemorial. Many are founded on the common spiritual principle that existence is a gift from the Creator, and with this gift comes a stewardship responsibility toward all inanimate and animate beings on Earth, along with their intricate interconnections. Inherent rights and responsibilities cannot be changed or dismissed by any body, not even by First Nations people themselves. Therefore, no government-to-government agreement or Crown or local government decision can extinguish these rights.

Many First Nations have expressed inherent rights and legal principles and processes linked to water in a statement or declaration, often in their own language.² These declarations can act as a foundation when developing resource management and governance policies and strategies for the territories, and when negotiating engagement and governance agreements with the Crown. (See Box 4 for examples of First Nations in BC that are working to revitalize their Indigenous water laws).

AN ABORIGINAL RIGHT TO WATER

From the perspective of First Nations, Aboriginal Rights include the Title to use and govern fresh water that flows through their territory. This right includes the responsibility to protect waters for future generations. The First Nations Leadership Council drafted “*The BC First Nations Water Rights Strategy*” in 2013 that articulates and affirms the inherent water rights of First Nations:

“We have rights and a sacred responsibility to protect and manage water for our people today and generations to come. Our rights include the use of water for drinking, irrigation, commercial purposes, transportation, cultural ceremonies, and access for fishing, hunting, trapping and other harvesting and gathering activities. These rights also include the right to protect water and aquatic habitat that supports plants, trees and other life forms with whom First Nations share their traditional lands and upon whom they depend. Finally, these rights include jurisdiction and stewardship over use and access to water and the protection of water and aquatic habitat from both a health and resource management perspective.”³

TREATY RIGHTS TO WATER IN BRITISH COLUMBIA

Several treaties in BC reference Treaty Rights related to water resources. The Douglas Treaties include the right to “carry on their fisheries as formerly,”⁴ and Treaty 8 guarantees the rights of First Nations to hunt, trap and fish.⁵ Modern treaties and claims in BC (e.g., Nisga’a Treaty, 2000) address water rights more directly. These generally include a water reservation under provincial law,⁶ require First Nations to consent to and abide by the Province’s authority over water and can have provisions about the issuance of public water licenses and extraction and use of surface and groundwater, among others.

NON-INDIGENOUS JURISDICTION OF FRESH WATER

According to the Canadian Constitution, jurisdiction over fresh water in Canada is divided between federal, provincial and territorial governments. As a result, there are several jurisdictional overlaps, uncertainties and gaps ([see Box 6](#) for key federal and provincial Crown statutes relating to fresh water). Federal and provincial governments in Canada do not recognize Aboriginal laws and jurisdiction. However, because most First Nations’ territories in BC have never been surrendered, the Crown’s assertion of title and ownership of resources — including fresh water — remains uncertain. Canadian courts have not resolved this uncertainty either, and to date, have not affirmed Aboriginal Rights and Title to fresh water, although there are several potential avenues through existing case law ([see Box 5](#)).

Yet another overlapping jurisdiction is that of international law. In 2016 and 2017, respectively, the Canadian and BC governments finally declared full support of and a commitment to implementing the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP — [see Box 7](#)).⁷ Despite this long-awaited and important recognition, both the federal and BC governments still need to specify how they intend to apply UNDRIP and the embedded principle of free, prior and informed consent (FPIC).⁸ First Nations-led water governance strategies have the exciting potential to demonstrate what, from a First Nations perspective, new decision-making processes and protocols could look like when implemented according to UNDRIP principles.

SUMMARY

With no immediate prospects for resolving the differences between Indigenous law systems and the Canadian legal system, and with only piecemeal direction from case law, it is critical that First Nations continue to articulate and assert their rights, laws and jurisdiction over fresh waters in their territories through deliberate planning and governance processes. There are many avenues open to First Nations, depending on the particular concerns of the community and its capacity to address these concerns. The following case studies demonstrate workable examples pursued by First Nations across BC and therefore can be used as models for others to follow or adapt for their own needs and purposes.

BOX 4

Revitalizing Indigenous Water Laws

An important part of advancing Aboriginal water rights through governance is determining how decisions should be made. This requires understanding a Nation's rules or laws for taking care of the waters in its territories. In BC, several collaborations of academic institutions, NGOs and First Nations are working to revitalize and apply Indigenous laws. The University of Victoria's Indigenous Law Research Unit (ILRU)⁹ is an emerging leader in this field and has developed a formal research methodology to help articulate, rebuild and apply Indigenous laws. The methodology has four phases:¹⁰

1. Begin with a focused research question to generate clear, practical responses.
2. Seek and analyze formal and informal sources that could contain relevant elements of Indigenous law (e.g., oral stories, traditional place names, art, dances, institutional arrangements).
3. Synthesize all the collected Indigenous legal information in a way that can be built upon in the future.
4. Apply the themes, principles and laws to present-day concerns or conflicts of Indigenous Peoples or to develop broader governance institutions and evaluate the results for continual feedback into the synthesis.

Examples of First Nations in BC working to identify and articulate their Indigenous water laws include:

- > **Secwepemc Lands and Resources Law** – In 2015, the Secwepemc Elders Council directed the Shuswap Nation Tribal Council to work with ILRU to put together a Secwepemc law to sustainably govern and manage environmental resources.¹¹ ILRU researchers gathered and synthesized thirty stories from twenty-three First Nation members. Many themes emerged from the research, including *Qwenqwent*, which is a core Secwepemc principle about humility, dependence and respect between humans, other beings and lands and waters.



Box 4 continued...

- > **St'át'imc First Nation Water Law Stories and Policy** – St'át'imc territory in the Lillooet–Pemberton region is facing industrial pressures from mining, forestry and hydro dams. This has led to changes in water flows and quality that harm salmon populations that the St'át'imc People have fished since time immemorial. These issues are driving the Nation to explore options for water governance, including revitalizing laws. The St'át'imc have been working with West Coast Environmental Law's RELAW¹² project to collect more than 200 stories from community members about water laws. This information is being used to develop a water policy anchored in St'át'imc law, as directed by the St'át'imc Chiefs Council.¹³
- > **Indigenous Water Laws of the Tsilhqot'in, Cowichan and Lower Similkameen Nations** – Co-led by the Environmental Law Centre at the University of Victoria and ILRU, this project centres on issues related to Indigenous and colonial water laws in BC.¹⁴ Each of the three First Nations is working with researchers to articulate and apply processes around Indigenous water law traditions using the ILRU research methodology.
- > **Fort Nelson First Nation** worked with West Coast Environmental Law lawyers on a RELAW project that used the ILRU methodology to develop a water policy rooted in Dene law. The resulting living document contains detailed information about the history and culture of the community and serves as a tool to protect and revive traditional practices.¹⁵
- > The **Nadleh Whut'en and Stelat'en First Nations** have articulated their water laws through the Yinka Dene 'Uza'hné Water Declaration and Surface Water Management Policy released in 2016 (see Case Story 1).

These and other projects to revitalize Indigenous laws (including a new joint degree program in common law and Indigenous legal orders at the University of Victoria) are changing the face of law in Canada.¹⁶ Moving forward, there are outstanding questions and challenges, including how to implement and enforce these laws, how to integrate them into decision making within colonial governance and management processes, and how to gain recognition for Indigenous legal principles and processes by other orders of government.



L-R: Okanagan sturgeon release, by Ruby Alexis; Gill netting on Kamloops Lake, by Secwepemc Fisheries Commission.

BOX 5

Asserting an Aboriginal Right to Water through Planning and Governance Activities

Canadian common law and Constitutional interpretation of s.35 provides limited clarity on Aboriginal Rights and Title related to water. However, existing case law points to several potential avenues that First Nations may consider using to assert their rights to water through planning and governance activities:

- > *Right to Use Water*, such as using water from a specific source for domestic, cultural or other purposes.¹⁷
- > *Right to Water for Social or Ceremonial Purposes*.¹⁸
- > *Right to Water Attached to the Right to Fish*, which could include the right to water quality and quantity required for thriving fish populations.¹⁹
- > *Right to Transportation Route*, which could include traditional dependence on waterways to travel to communities, ceremony sites, meetings with other Nations and hunting, trapping and harvesting grounds.
- > *Right to Water on Reserve Lands*. Although two Supreme Court of Canada cases specifically state that the provincial government has possession of all navigable rivers on reserve,²⁰ these decisions say nothing about non-navigable waters or groundwater on reserves.
- > *Aboriginal Title to Water*. While Aboriginal Title in relation to water was not specifically addressed in *Tsilhqot'in Nation v British Columbia* (2014),²¹ because water has traditionally followed land ownership and management,²² a future case might seek to establish that Aboriginal Title to land includes water.



L-R: Duus (Dwikeno Lake), by J. Walkus and Wuikinuxv Fisheries; Smokehouse, Tl'azt'en Nation, by Darren Haskell.

BOX 6

Federal and Provincial Government Jurisdiction of Fresh Water

According to the Canadian Constitution, the **federal government** is generally responsible for navigable waters,²³ waterways where anadromous fish migrate, water and wastewater on reserves, and waterbodies on federal lands such as national parks and that cross the border with the United States.²⁴ Although the federal government does not have legislation pertaining specifically to managing fresh water resources, it does have health, environmental and fisheries legislation that impact fresh water management. Federal statutes most pertinent to fresh water governance and planning include the *Fisheries Act* (1985), the *Canadian Environmental Assessment Act* (2012), the *Species at Risk Act* (2002), and the *Navigation Protection Act* (2012). Many other federal laws can impact Aboriginal Rights and Treaty Rights related to water, including the *International Boundary Waters Treaty Act* (1985), the *International River Improvements Act* (1985), the *Canadian Environmental Protection Act* (1999), the *Canada National Parks Act* (2000), and the *Canada Water Act* (1985).

Provincial and territorial governments have regulatory power over water use, approvals and licensing. BC does not have overarching legislation designed to protect fresh water. Instead, it attempts to address various water issues through a number of separate laws. Key freshwater-related statutes in BC include the *Water Sustainability Act* (2014), *Environmental Management Act* (2003), *Drinking Water Protection Act* (2001), *Riparian Areas Protection Act* (1997), *Forest and Range Practices Act* (2002), *Oil and Gas Activities Act* (2008), and the *Local Government Act* (2015).

BOX 7

Water and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

This international resolution provides important guidance on the protection of inherent Indigenous rights and self-governance. Of the approximately 14 articles that are relevant to water,²⁵ Article 25 of UNDRIP affirms that “Indigenous Peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.” In addition, Article 32 states that “Indigenous Peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.” UNDRIP applies to Crown and Indigenous governments in Canada. The Canadian federal government has stated that it intends to implement UNDRIP as a framework for reconciliation through “a mixture of legislation, policy and action initiated and taken by Indigenous Nations themselves.”²⁶

5 FIVE CASE STORIES

FIRST NATIONS-LED FRESHWATER GOVERNANCE AND PLANNING IN BRITISH COLUMBIA



Each of the following case stories tells of successes as well as struggles that First Nations' communities experienced while engaging in freshwater planning and/or governance activities.

These stories are not intended to be prescriptive, but rather are stories from the community's view: where they are, how they got there and why they made certain decisions. From asserting Indigenous authority through water declarations, methodologies, and policies based on Indigenous laws, to entering into shared decision making agreements with the BC provincial government, to collaborative approaches to monitoring and managing a watershed, these stories illustrate the broad spectrum and diversity of approaches to freshwater governance being taken by First Nations across BC.

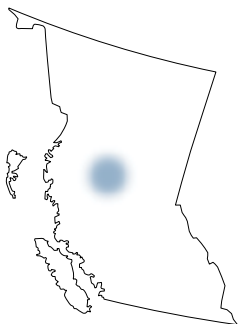


Yinka Dene 'Uza'hné Water Declaration and Policy Standards

CASE STORY 1

CASE STORY 1

Yinka Dene 'Uza'hné Water Declaration and Policy Standards



“Our Rights, including our Title and our legal responsibilities, were given to us by our ancestors and cannot be altered or taken away by any other Nation or State. We will forever maintain our freedom of self-determination, our language, our spiritual beliefs and our culture. We will forever fulfill and maintain our rights and obligations to protect our water, and everything that water touches and gives life to, including the land, animals, air, plants and humankind.”

— Excerpt from the *Too (Water) Declaration* of the Yinka Dene 'Uza'hné (2016)

AT A GLANCE



Decades of industrial degradation due to mining and forestry have taken a toll on the lands and waters of the Nadleh Whut'en and Stelat'en. In 2016, the two Dakelh First Nations introduced a ground breaking Water Declaration and Policy, rooted in their traditional water laws, to protect surface waters in their territories.

The traditional livelihoods of the Nadleh Whut'en and Stelat'en people — two Dakelh First Nations located on Fraser Lake, west of Prince George — depend fully on access to clean waters and healthy aquatic ecosystems. All Dakelh stories originate from the Necha-Koh River, a major tributary of the Fraser River. Elders recount how the rivers, streams and lakes were created by a child named 'Ustas who ran away with and broke his grandfather's water bag.

Today, the Dakelh people do not travel with the seasons as much as their ancestors did, but they continue to practice traditional food gathering activities along the Necha-Koh River and within their traditional territories. For thousands of years, the Dakelh people have been following their Indigenous laws and governance system, which includes clans with hereditary leaders named 'uza'hné and networks of extended family units called *keyah*. The clans and *keyah* are each responsible for land and water management in a specific area of the territory and are governed by *Bahlats*, the Dakelh governance system.



L-R: Nautley River and bridge, by Nadleh Whut'en; UFFCA meeting, Saik'uz First Nation, by FNFC.

Cumulative effects from decades of resource extraction by forestry and mining industries, along with agriculture, the natural gas sector and climate change, have the potential to irreversibly impact water sources across the traditional territories of the Nadleh Whut'en and Stellat'en. In the 1960s, the Endako Mine, one of the biggest open pit molybdenum mines in North America, became active without any consultation with Nadleh Whut'en and Stellat'en First Nations. Effluents from this mine's operations go directly into Endako River and Francois Lake, flowing into Nadleh Bun (Fraser Lake). Even though mine activities have been suspended since December 2014, the Nadleh Whut'en and Stellat'en have ongoing concerns about the declining water quality downstream of the mine and the resulting impacts on fish and other aquatic life.

An Act of Self-Governance

In 2014, Nadleh saw a need to be proactive and establish their own water policy to protect their water and land. The Nation would then require the Province and industry to abide by the policy's water quality guidelines. With assistance from a consultant, Nadleh Whut'en's objectives for aquatic ecosystems were assembled in a draft Water Policy. In fall 2015, Nadleh Whut'en shared the draft policy with the elected Chief of Stellat'en who was excited by its relevance to his Nation and keen to join the initiative. The *Uza'hne'* of Nadleh and Stellat'en, along with local language speakers, wrote a Too (Water) Declaration in the Dakelh language to accompany the policy. The *Yinka Dene 'Uza'hne' Surface Water Management Policy* and the *Guide to Surface Water Quality Standards* include:

1. A **foundational water management objective**, stating that "Surface waters within our Territories should remain substantially unaltered in terms of water quality and flow."
2. **Eleven consultation steps** required of proponents wanting to extract surface water on the traditional territories of the Nadleh Whut'en and Stellat'en.
3. A **water classification system** that ranks waters for the level of protection required, in accordance with Dakelh laws and governance. The ranking identifies waters of high cultural or ecological significance, sensitive waters and typical waters.
4. **Numerical water quality standards** that establish the conditions necessary to protect water and its uses.

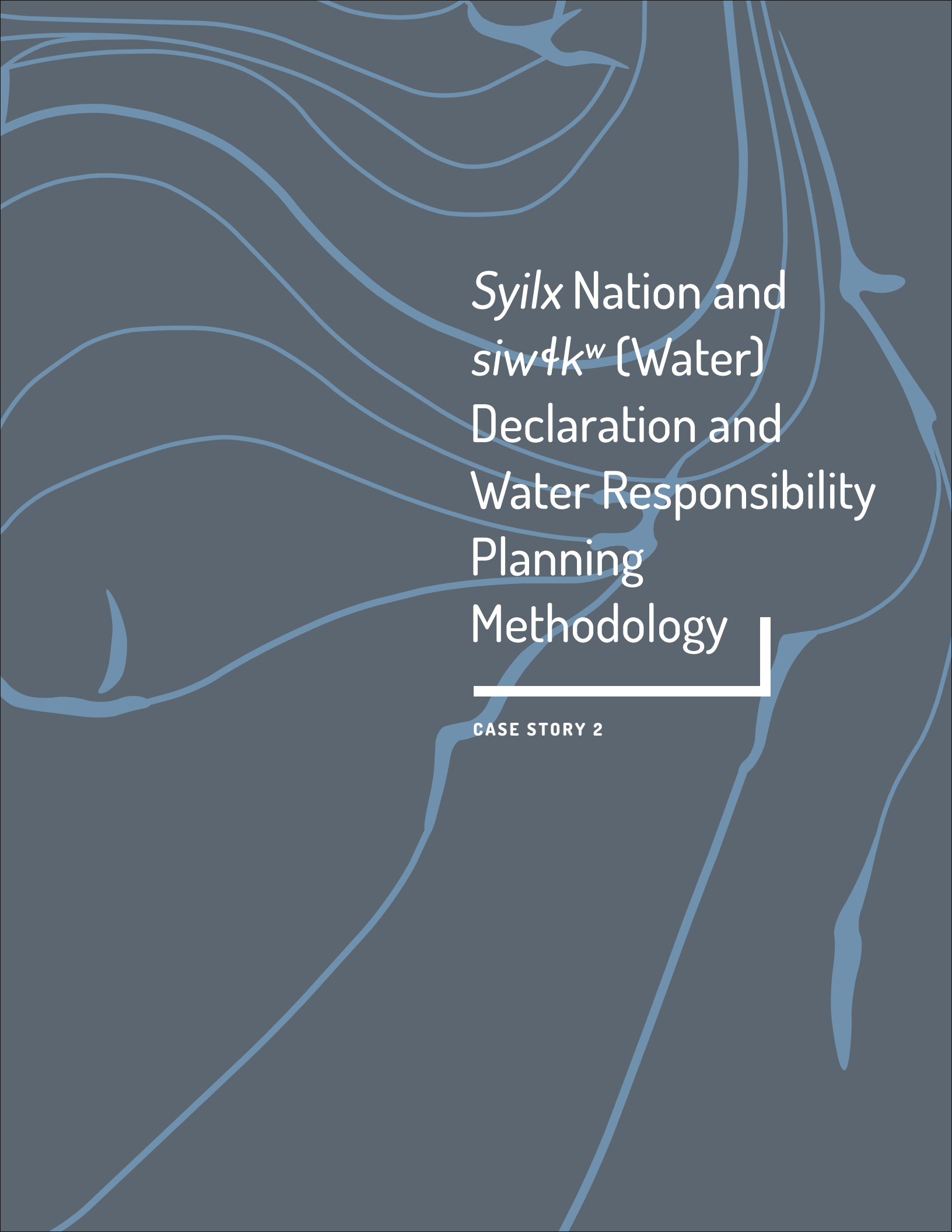
The Nadleh Whut'en and Stelat'en *Uza'hné* formally signed and adopted the Water Declaration and Policy on March 30, 2016. Developing and adopting this Water Policy is an act of self-governance that has potential for broad application in water use management, land-use planning, environmental assessments, natural resource damage assessments and environmental regulatory frameworks. It may also be adopted more broadly by the Carrier Sekani Tribal Council (CSTC), which has eight member Nations, two of them the Nadleh Whut'en and Stelat'en. The CSTC is interested in adopting the Water Policy as one of its own policies.

An Integrated Approach to Implementation

The next phase of the Nadleh Whut'en and Stelat'en Nations' journey was to enter discussions specifically about the Water Declaration and Policy with the Province of BC and proponents. As yet, the Crown has not acknowledged the Water Declaration and Policy. However, in 2015 the CSTC and the Province signed a Collaboration Agreement concerning the development of natural gas pipelines, and the CSTC pushed for the creation of a Water Sub-Working Group as part of this agreement. Nadleh Whut'en, Stelat'en and now Saik'uz First Nation are working to share the Water Policy directly with proponents, and to date, New Gold has responded favourably. New Gold is in the pre-application environmental assessment process for the Blackwater Mine southeast of Vanderhoof. The corporation has agreed to follow the Water Policy standards and also gave funding for a community meeting in each of the three First Nations to use traditional knowledge to classify waters that would be directly affected by mine discharge and transmission line construction and maintenance.²⁷



L-R: Nautley River, by Nadleh Whut'en; Nulki Lake, by FNFC.

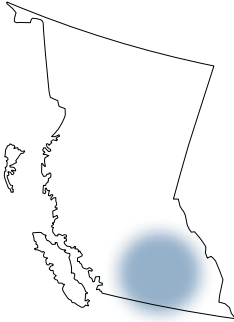


Syilx Nation and
siwɬk^w (Water)
Declaration and
Water Responsibility
Planning
Methodology

CASE STORY 2

CASE STORY 2

Syilx Nation and *siw4k^w* (Water) Declaration and Water Responsibility Planning Methodology



*“Our sacred *siw4k^w* connects and sustains all life. We as the Syilx people have a duty and responsibility to ensure *siw4k^w* can maintain all of its relationships, known and unknown, by showing due respect and humility.”*

— Excerpt from *siw4k^w* (Water) Declaration (2014)

AT A GLANCE



In the driest watershed in Canada, cumulative threats from agriculture, dams and urbanization have had an impact on *tmix^w* (everything alive – the land, water, animals, people, plants, etc.) in the *Syilx* (Okanagan) Territory. Guided by *Syilx* elders, knowledge keepers, and youth, the *Syilx* Nation has adopted a water declaration and water responsibility planning methodology that upholds *Syilx* laws and guides the protection and care of water in the region.

The *Syilx* (Okanagan) Nation is comprised of eight communities that share a common language, culture, and traditions of resource use and governance that have evolved over thousands of years within the shared *Syilx* Territory of the Okanagan and Upper Columbia River Basins.²⁸ The territory of the *Syilx* includes numerous ecosystems, rare and at-risk animal and plant species, and water systems. These water systems include rivers, wetlands, lakes, streams and aquifers, springs, marshes and what have now become reservoirs. There are over 27 different watersheds and hundreds of sub-basins within *Syilx* Territory, each with their own personality, needs and ways of being.

The *Syilx* People know history, passed on from one person to another, from generation to generation, as a record called *captikʷ*. It is a history of the meaning of being *Syilx*, rather than a history of dates. The *captikʷ* tells that *kʷlənčútən* (the Creator), created and sent *sənkʷlip* (Coyote) to help *Syilx* People to survive. *Sənkʷlip*'s travels across the land are a record of *Syilx* natural laws. *Syilx* People learn these laws from the land. The language that rose from this learning is the *Syilx* language — *nsyilxcən*. All people that speak it are called *Syilx* because the language carries the thousands of years of teachings. The *Syilx* communities have an intimate relationship with all of the life forms within their territory. For members of the *Syilx* Nation, stewardship is not just a responsibility, it is also a right.

siwʷkʷ (water) has sustained the *Syilx* for countless generations, it is a fundamental element of their cultural and spiritual identity. *siwʷkʷ* is sacred. *siwʷkʷ* is life. *Syilx* People recognize the importance of teachings, laws, governance structures, and principles of water, and the responsibility to care for and protect *siwʷkʷ* has been passed down through generations.



Both pictures: Okanagan Band kikinēe education, by Ruby Alexis.

Cumulative Threats to Water and Aquatic Species

As elsewhere, colonization in the *Syilx* territory brought urbanization, damming, overfishing, logging, industrialization, mining, recreation, tourism, ranching, and farming. These activities have led to harmful impacts on *tmixʷ*, such as invasive species, loss of biodiversity and habitat, pollution, severely reduced water quality, changes to seasonal water flows, and over allocation of water. The *Syilx* territory continues to face cumulative impacts to land and water from a rapidly growing population, increasing energy demands, and climate change (specifically through drought, flooding, and wildfire).

Upper Columbia anadromous salmon, lamprey and migratory sturgeon populations were extirpated by hydroelectric and reservoir dams. The Grand Coulee and Chief Joe dams on the Columbia River west of Spokane, Washington, blocked five salmon runs from accessing 2,250 kilometers of spawning habitat in the Upper Columbia watershed.²⁹ *Syilx* were a “salmon people”, and the negative impact of the loss of this cultural identity to *Syilx* People cannot be overstated.

In the late 1990s, the *Syilx* People upheld their laws and exercised their rights by beginning to address the need to recover salmon ecosystems. Over time, the *Syilx* Nation has rebuilt salmon populations and habitat with the guidance of knowledge keepers, Elders, and other partnerships. The *Syilx* People continue to uphold their laws and practice ceremonies to honour *tmix*^w.

A *Syilx* Approach to Caring for Water

In 2008, the Chiefs Executive Council³⁰ identified the need for a nation-wide approach to govern and care for water. To address this direction, the *Syilx* Nation and its communities have undertaken several different key initiatives, including the development of a Water Declaration, Water Responsibility Planning Methodology, establishing Environmental Flow Needs (EFNs) for several streams, and extensive aquatic habitat restoration. Other key ongoing projects include a *Syilx* Water Strategy, *Syilx* Wetlands Responsibility Principles, *Syilx* Water Laws, several different *Syilx* watershed plans, and continued work to restore aquatic species and their habitats.



L-R: McIntyre Bluff and Okanagan River, by AM Bezener and Okanagan Nation Alliance; Fish camp at Gallagher Lake, Okanagan Band, by Ruby Alexis.



L-R: Sockeye rebuilding, by Okanagan Nation Alliance; Sockeye salmon in Okanagan River, by Ruby Alexis.

siwʔkʷ (Water) Declaration

Syilx Peoples have a deep intrinsic and spiritual relationship with their relative *siwʔkʷ*. Maintaining the integrity of *siwʔkʷ* and respecting its relationship to all life is essential to their identity as *Syilx* People and is entrenched in their responsibility to their homelands. Through the guidance of *kʷlʷəncutn* (Creator) they have a sacred trust to protect *siwʔkʷ* and fully express their jurisdictional authority and responsibilities to protect and respect their relative *siwʔkʷ*.

Syilx water values, laws and guiding principles have been articulated in the *Syilx* Nation *Siwʔkʷ* Declaration of 2014.³¹ These principles include, but are not limited to, the following fundamental concepts that guide *Syilx* decisions related to water:

- *siwʔkʷ* is a familial entity, a relation, and a being with a spirit who provides life for all living things and must be treated with honour, reverence, respect and reciprocity;
- *siwʔkʷ* is not a resource or a commodity;
- *siwʔkʷ* is a part of us and a part of all life; it is the lynchpin of living in balance with the natural world and adherence to natural laws;
- *siwʔkʷ* is the lifeblood of our *tmxʷulaxʷ* and our *tmixʷ* and we as *Syilx* People recognize *siwʔkʷ* as a sacred entity and relative that connects all life. *siwʔkʷ* comes in many forms and all are needed for the health of *tmxʷulaxʷ* and for the *tmixʷ*;
- *siwʔkʷ* is our most sacred medicine: *siwʔkʷ* nourishes, replenishes, cleanses, and heals;
- *siwʔkʷ* comes from the sky and the highest places yet it never willfully rises above anything. It will always take the lowest path in its humility, yet of all the elements, it is the most powerful;
- Our sacred *siwʔkʷ* teaches us that we have great strength to transform even the tallest mountain while being gentle, soft, and flexible; and
- *siwʔkʷ* will always find a way around obstructions: under, over and through. It teaches us that anything is possible.

The *Syilx* Nation *Siwʔkʷ* Declaration was endorsed by the *Syilx* Nation at an Annual General Assembly in Spaxomin on July 31, 2014. Since then, it has been presented at a number of forums as an affirmation of the intrinsic rights, responsibilities, relationship and vision that the *Syilx* People have with *siwʔkʷ*.

Syilx Water Responsibility Planning Methodology

As an outcome of the *siwłk*^w Water Declaration, the *Syilx* People have been exploring opportunities to develop and lead new governance approaches that are based on *Syilx* ecological knowledge and laws. One of these opportunities has been the development of a methodology for applying *Syilx* ecological knowledge in both existing, established watershed governance and management processes, and new, *Syilx*-led water governance processes.³²

Syilx knowledge holders and communities retain inherent rights to their knowledge, and control over its collection, interpretation and implementation.³³ The methodology was developed through *Syilx* knowledge keeper workshops and a review of literature and case studies, and with contributions from the Centre for Indigenous Environmental Resources, POLIS Project on Ecological Governance at the University of Victoria, and the En'owkin Centre. The methodology development was guided and supported by the *Syilx* Natural Resources Council and *Syilx* knowledge keepers and academics and was approved by the CEC in March 2018.

The core premise of the methodology is that a strong foundation of *Syilx* knowledge (e.g., *Syilx siwłk*^w Declaration, *nsyilxcən*) is the starting point for shaping watershed management processes and initiatives that align with *Syilx* water laws, principles and practices, and for assertion and practice of *Syilx* Title, Rights and authority. The foundation of *Syilx* water knowledge can be imagined as threads that are interwoven amongst activities, tools, processes, solutions, partnerships, and dialogue with external governments and stakeholders. The methodology involves four stages, each of which include actions:

- **Stage 1** seek out local *Syilx* water leaders;
- **Stage 2 and 3** focus on producing a watershed/sub-watershed *Syilx* Vision and associated laws, practices, interactions, and responsibilities;
- **Stage 4** focuses on applying the Vision to ensure interactions with the water are consistent with responsibilities.

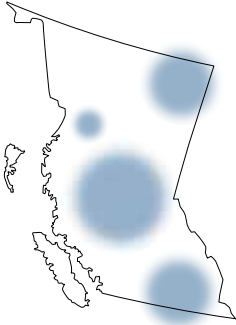


Water Monitoring: Gateway to Governance

CASE STORY 3

CASE STORY 3

Water Monitoring: Gateway to Governance



“By developing our own baseline data collection and monitoring systems, we are getting out in front of development to better position the Fort Nelson First Nation to protect our values in the future.”

— Community Summary — Year 1 State of the Knowledge Report,
Fort Nelson First Nation Liard Basin Monitoring Initiative (2017)

AT A GLANCE



Water monitoring is a critical component of effective water governance: it informs decision making, fills knowledge gaps, builds technical capacity in communities, and enables better management and restoration of aquatic habitats. It can also provide meaningful land-based employment. Monitoring initiatives led by First Nations across BC range from tracking a few sensitive creeks to measuring multiple nodes that span an entire watershed and several territories.

Gitanyow Nation: Water Monitoring to Mitigate Forestry, Beaver and Climate Change Impacts

The Gitanyow Nation *Lax'yip* (Territory) spans the middle of the Nass River and the upper Skeena River watersheds in northwestern BC. Since the 1900s, this region has undergone intensive clear-cut logging with resultant damage to local waterbodies, including Meziadin Lake and its outflow creeks, which contain prime spawning habitat for about 75 percent of Nass River sockeye salmon.³⁴ With limited historical data available for these waters, the Gitanyow Fisheries Authority³⁵ started collecting real-time water flow monitoring data to address impacts from unsustainable forestry practices (e.g., high flow events moving a lot of sediment), a large beaver population (e.g., roads flooding due to beaver dams) and climate change (e.g., changes to sockeye salmon spawning habitat).

Office of the Wet'suwet'en: Establishing Baseline Water Quality Data to Detect and Tackle Changes

The upper Bulkley and upper Morice watersheds provide habitat for salmon, which hold cultural significance for the Wet'suwet'en People. The upper Bulkley is subjected to pressures from agricultural and community water uses, while the headwaters of the Morice are experiencing increasing industrial pressures, mainly from forestry and mining.³⁶ The Office of the Wet'suwet'en collects water quality data at various locations to identify and address water quality changes due to these activities, and if necessary, to hold the Crown accountable for impacts of unsustainable land-use decisions. The focus on the upper Morice watershed, considered the heart of the Wet'suwet'en traditional territory, led to the development of the Morice Water Management Area (MWMA), where water quality and quantity monitoring are coordinated by the Morice Water Monitoring Trust,³⁷ a collaboration between the Office of the Wet'suwet'en and the Bulkley Valley Research Centre.



L-R: Moricetown Canyon, by Walter Joseph; Water monitoring site, by Okanagan Nation Alliance.

Okanagan Nation Alliance: Leveraging Water Data, Good Relationships and Technical Expertise

As an especially dry region of the province with a growing population, the Okanagan Basin is under extreme pressure for limited water supplies. The Okanagan Nation Alliance (ONA) Fisheries Program is particularly concerned about determining and ensuring adequate water flows for healthy fish populations and aquatic habitats within the region. To gather data about water flow needs, the ONA partnered with the Okanagan Basin Water Board and the BC Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD) on a project funded by Environment and Climate Change Canada. Part of the project involved installing water monitoring stations³⁸ in 11 streams with critical flow-dependent fish habitat features.³⁹ As well as building the ONA's technical capacity and producing water flow data, this collaborative project has resulted in good relationships between the partners. For example, in 2016 when ONA staff discovered dead fish in the almost-dry Shuttleworth Creek, FLNRORD staff responded the same day, contacted the creek's water users and had more water released to the creek.

Fort Nelson First Nation: Growing a Community-Based Water Monitoring Network

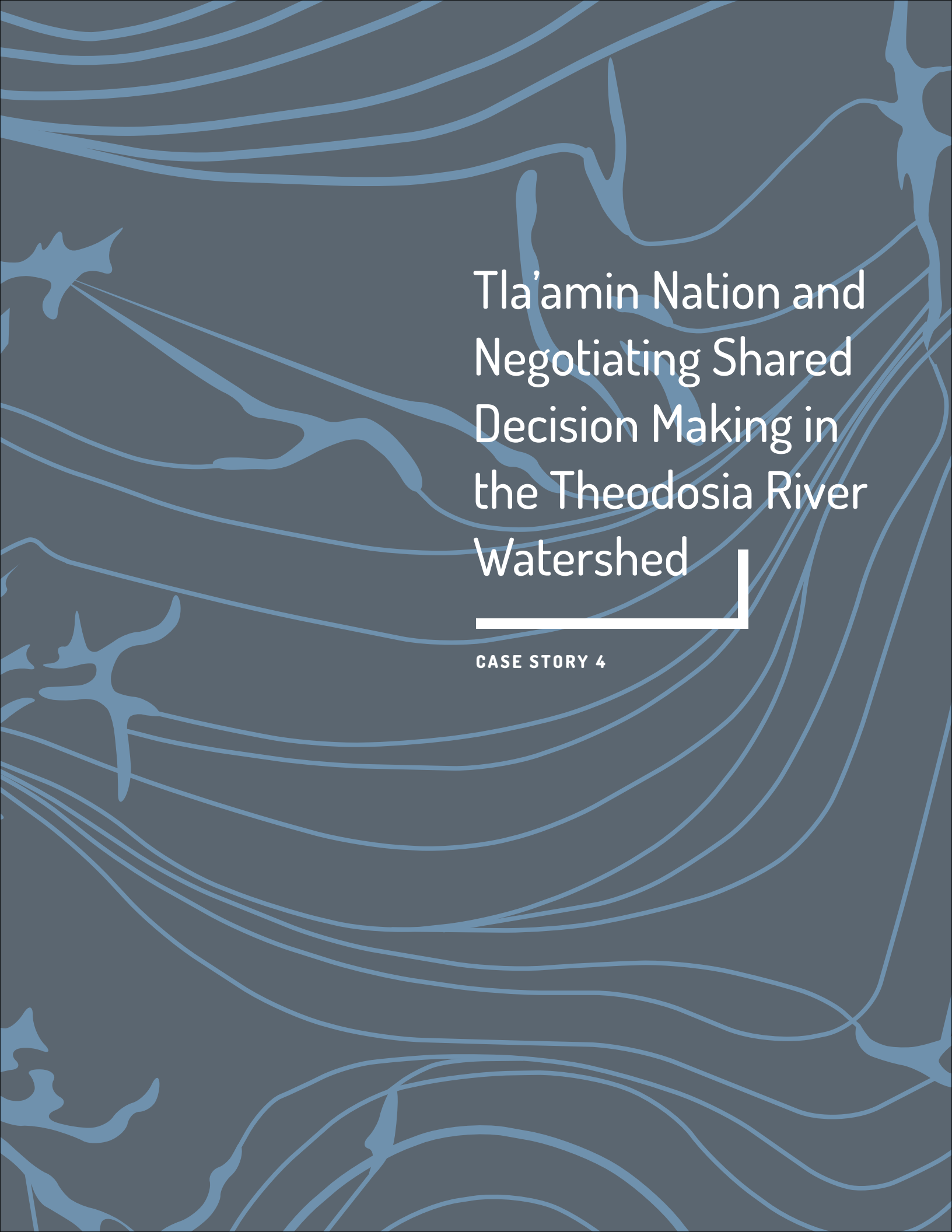
The Dene and Cree of the Fort Nelson First Nation (FNFN) live in the Liard River watershed in northeastern BC, where their reliance on bush foods, fish and water have been disrupted by colonization and even more so by recent oil and gas industrial activities. Elders have observed how unsustainable water use has decreased water levels in many of the territory's rivers, lakes and aquifers, and how destructive waste management practices have led to unsafe drinking water.⁴⁰ In 2012, these impacts spurred FNFN Elders and community members to work together to establish baseline data collection in the Liard watershed and the Horn River watershed, which drain into Mackenzie River in the Northwest Territories. FNFN has since established one of the most advanced Indigenous-led freshwater monitoring programs in the country with 11 planned monitoring sites and growing capacity within the Nation to maintain this network. One notable feature of FNFN's initiatives is partnerships with a range of organizations, including GeoScience BC (a non-profit), Apache Corporation (an oil and gas exploration and production company) and the University of Victoria's Water and Aquatic Sciences Research Laboratory.⁴¹

Upper Fraser Fisheries Conservation Alliance: Creating a Nested Monitoring Network and Building Local Capacity

In the Upper Fraser watershed, small streams provide critical fish habitat for populations that are significant to Upper Fraser First Nations. The central interior has experienced numerous changes due to climate change and landscape-level effects that include altered runoff patterns and related water quality and habitat impacts. Understanding these changes is important for identifying effects on fish habitat and other aquatic resources and for making appropriate land and water use decisions. In partnership with Upper Fraser First Nations, the Upper Fraser Fisheries Conservation Alliance has coordinated an extensive water quality and quantity monitoring program. Partnering First Nations organizations including Carrier Sekani First Nations, Lheidli-T'enneh and Yekooche, prioritized systems for monitoring and installed 21 hydrometric stations on 15 systems to collect continuous data for key parameters (flow, temperature, dissolved oxygen, conductivity) and regular in-situ measurements on a broader suite of parameters. This work integrates with other existing water quality and flow management programs. A highly trained First Nations technical crew conducts the data collection year-round.



L-R: Liard River, by Fort Nelson First Nation; Industry road in Liard basin, by Fort Nelson First Nation.

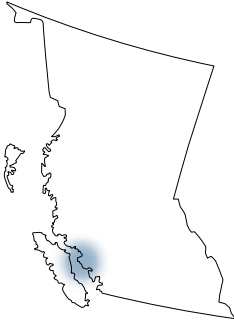


Tla'amin Nation and Negotiating Shared Decision Making in the Theodosia River Watershed

CASE STORY 4

CASE STORY 4

Tla'amin Nation and Negotiating Shared Decision Making in the Theodosia River Watershed



“Those are the people that lived up there and lived off the land, lived off the water, lived off the forest and berries. You know, that was their territory. That’s where they made their living, their livelihood because they lived right there. There really was not a need to be going to the store. Everything they had was right there from the land.”

— Elsie Paul, Tla'amin Elder, speaking about the Theodosia watershed (2012)

AT A GLANCE



In an effort to address serious environmental damage in the Theodosia River watershed, the Tla'amin Nation negotiated a Treaty that includes a unique provision for shared decision making specific to a watershed. Although the details of this separate agreement are still under negotiation, the provincial government's commitment to shared decision making on a watershed scale sets an important precedent.

Tla'amin Nation on the south coast of BC has historically been intimately connected to the Theodosia River watershed, where abundant chum and coho salmon runs used to thrive. Elders recount stories of travelling into the watershed during the fishing season, setting up smokehouses and harvesting winter supplies of food. In the 1920s, the first forestry companies rolled into the Theodosia watershed, and during the next several decades, the Tla'amin People were progressively moved out of the valley. In 1956, a diversion dam was installed along the Theodosia River to feed a bigger hydroelectric dam for the Powell River paper mill. Approximately 80 percent of river flow was diverted through Olsen Lake and into Powell Lake, resulting in a major decrease of salmon returns.



Both pictures: Theodosia Watershed, by Tla'amin Nation.

Tla'amin Nation entered the BC treaty process in 1994 with the aim of obtaining co-management of the watershed. The Tla'amin People were concerned the valley was being subjected to unsustainable logging practices. To underscore their concern, extensive erosion from logging led to a landslide in 1995, damaging fish and wildlife habitat and impacting about 30 percent of one of the former Tla'amin reserves. Financial compensation was paid to some property owners and users upstream from Tla'amin Nation, prompting the Nation to sue the federal and provincial governments, as well as Merrill & Ring Timberlands, the forestry company responsible for logging in the watershed. Eventually, the provincial government stated that the treaty negotiations could not go on with a pending lawsuit, so the treaty negotiation parties agreed to create a Theodosia Stewardship Roundtable (see Box 8). Tla'amin Nation received \$50,000 in pre-treaty funds from the federal government to support the Roundtable for one year. The Nation reluctantly dropped the suit.

Negotiating for Shared Decision Making in Tla'amin Treaty

During the treaty process, Tla'amin Nation initially asked for co-management of the Theodosia River watershed. Eventually, the Nation settled on an agreement for future shared decision making with the Province, because the Tla'amin wanted to ensure they had a meaningful say in the governance and management of the watershed. After more than 15 years of treaty negotiations, Tla'amin Nation, Canada and BC signed the Final Treaty Agreement in October 2011.⁴² Tla'amin Nation is now self-governing and no longer operates under the *Indian Act*. In the Final Agreement, Chapter 12 paragraph 4 states that “Prior to the Effective Date [of April 5, 2016], BC and the Tla'amin Nation will negotiate and attempt to reach agreement on a shared decision-making agreement with respect to the Theodosia River watershed.” This is the first instance of a provision for shared decision making specific to a watershed being included in a treaty or government-to-government agreement in BC.

Negotiations between Tla'amin Nation and the provincial government on shared decision making have been difficult, and an agreement that details the precise provisions has yet to be reached. The Province prepared an initial draft of the shared decision making agreement and presented it to Tla'amin Nation in fall 2015, but the Nation did not agree with much of it. In particular, the Province maintains its position as the statutory decision maker, effectively having the final say in decisions, which conflicts with the concept of shared decision making. The Province also did not commit to provide funding to the Tla'amin to participate in shared decision making. Tla'amin Nation is currently developing revisions to the draft by drawing on other government-to-government agreements in BC that include some form of shared decision making (e.g., Haida Protocol, 2009; Nanwakolas Framework Agreement, 2009; Coastal First Nations Agreement, 2015). Negotiations continue, and the last meeting was held in Victoria in March 2017, where the Province presented a revised draft that still does not provide for shared decision making or implementation funding.

BOX 8

Theodosia Stewardship Roundtable

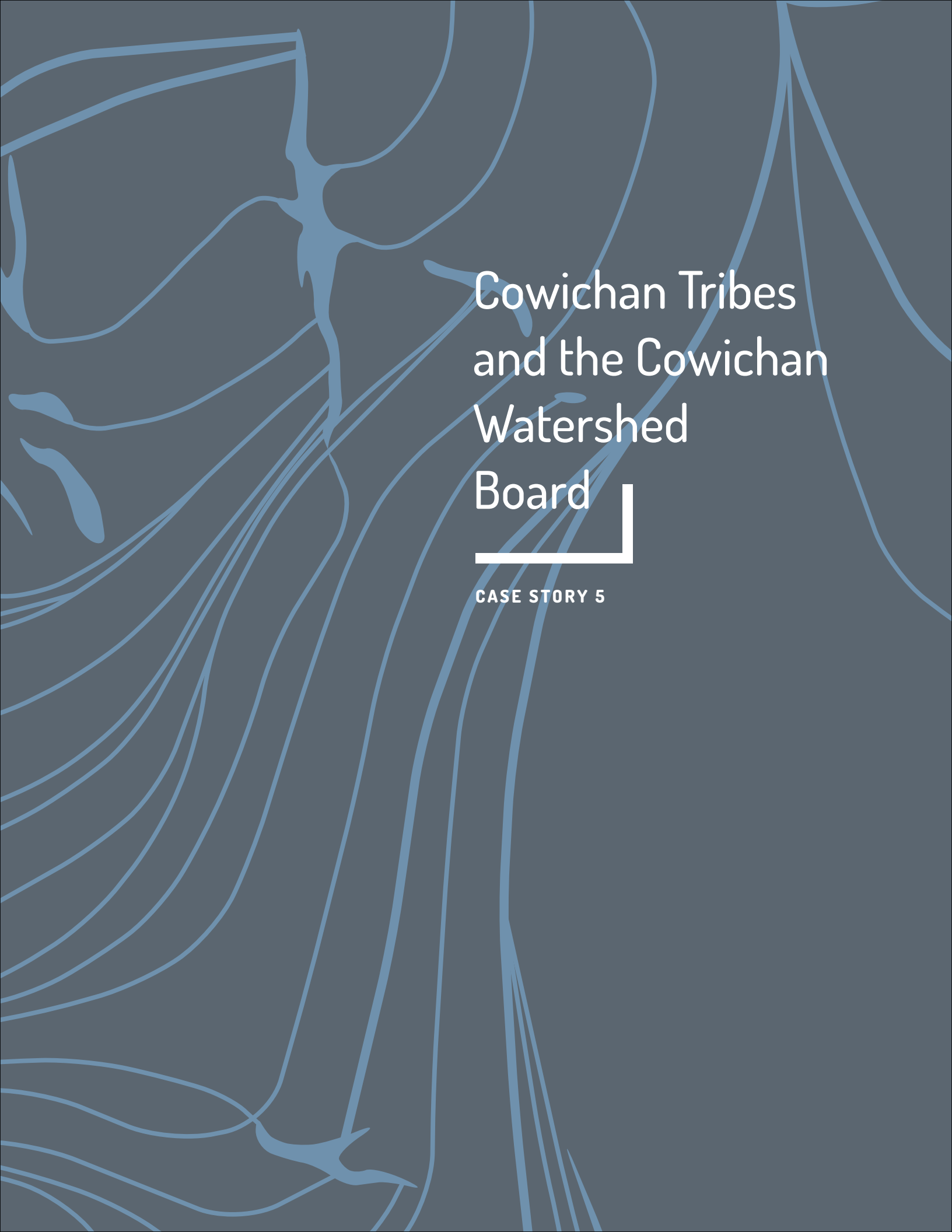
As part of the Treaty process, in 2009, Tla'amin Nation partnered with Living Rivers – Georgia Basin/Vancouver Island to launch and lead the Theodosia Roundtable. Its purpose was to bring rights holders and stakeholders together to work toward a healthy and diverse watershed ecosystem, sustainable fish and wildlife populations and a healthy community supported by shared responsibility and stewardship. The Roundtable brought in many non-Indigenous partners including Fisheries and Oceans Canada, BC Ministry of Environment, BC Forest Service, Powell River Regional District, City of Powell River, Powell River Salmon Society, Powell River Parks and Wildlife Society, Powell River ATV Club and a few local forestry and hydroelectric companies. A significant achievement of the Roundtable was the development of the 2012 *Theodosia Watershed Climate Change Impacts and Adaptations Plan*.⁴³ The plan brought to light the realities of climate change: drier summers, very low water flow in Theodosia and the impact on fish survival. Despite this and some other successes, the Roundtable eventually became too difficult to maintain in the absence of sustained funding, and it folded in 2012.



L-R: Klehwahnohm bay, by Tla'amin-SFU Heritage and Archaeology Project; 2014 Signing Ceremony of Tla'amin Final Agreement, by Tla'amin Nation.



L-R: Cedar bark, by Tla'amin-SFU Heritage and Archaeology Project; Theodosia Watershed, by Tla'amin Nation.

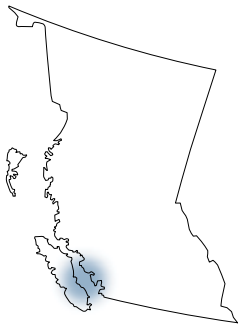


Cowichan Tribes and the Cowichan Watershed Board

CASE STORY 5

CASE STORY 5

Cowichan Tribes and the Cowichan Watershed Board⁴⁴



“It is anticipated that as the province adopts water management reforms, the Cowichan Watershed Board model will co-evolve and could potentially receive some form of delegated authority to make some local water management decisions.”

— Cowichan Watershed Board Governance Manual (revised Oct. 31, 2016)

AT A GLANCE



Extreme low flows in the Cowichan River, in part due to the provincial government’s inability to manage a weir between the river and Cowichan Lake, prompted the creation of the Cowichan Water Board in 2010. The 14-member board is a unique example of a collaborative watershed entity: it is co-chaired by the Chief of Cowichan Tribes and the Cowichan Valley Regional District Chair and uses a consensus-based approach to make recommendations to regional decision makers.

The Cowichan People, inhabiting a vast territory from the Cowichan and Koksilah watersheds on eastern Vancouver Island to the shores of the Salish Sea, recognize water as being at the centre of many of their cultural, social and economic practices. The livelihoods of the Cowichan People continue to rely on the chum, Chinook and coho salmon that migrate to these watersheds every year. With great respect for the lands and waters, Elders sustainably managed the capture of salmon, a gift from the Creator, with the use of fish weirs.

As in other areas, colonization had devastating impacts on the Cowichan Nation, which was divided when the federal government imposed the creation of reserves under the 1876 *Indian Act*. At that time, seven Cowichan cultural groups came together to create Cowichan Tribes as one band.⁴⁵ Cowichan Tribes have always asserted their inherent Indigenous rights and responsibility for governance and institutions, and because they didn’t sign a treaty, they affirm to this day that rights and title of their traditional lands were never relinquished. Cowichan Tribes did enter the BC Treaty Process in 1993 and joined other Nations on Vancouver Island to create the Hul’qumi’num Treaty Group⁴⁶ in 1994.



L-R: Field trip at Catalyst Weir on Lake Cowichan, by FNFC; Cowichan Bay, by FNFC.

Cumulative Impacts, Climate Change and Divided Jurisdiction over Water

Since colonization, forestry, industrial development, urbanization, transportation, agriculture and other activities have had increasingly severe impacts on the Cowichan watershed and the livelihoods of the Cowichan People. Today, high demands for water combined with low precipitation and water storage equate to insufficient water to meet the needs of fish and all the human demands, especially from late summer to early fall. The complex and divided jurisdiction and responsibilities over fresh water have hindered efforts toward sustainable watershed management such that crisis management has become the norm for the Cowichan watershed.

In 2013, community opinion leaders including Cowichan Tribes members identified five factors⁴⁷ that are leading the watershed closer to a breaking point:

1. Unsustainable land and water use decisions by the Crown;
2. More frequent and extreme drought and winter storms/ flooding events⁴⁸ due to climate change;
3. Increases in population⁴⁹ and water demands;
4. Decreasing budgets and capacity of government agencies with the mandate to protect and manage ecosystems; and
5. Unresolved issues regarding First Nations' Rights and Title, property rights and clean water rights.

Collaborative Watershed Governance in Practice

Two initiatives demonstrate collaborative governance in the Cowichan watershed. The first was triggered in 2003 by an extreme summer drought that led to Cowichan River water flows diminishing to critical levels, making it impossible for Chinook salmon to swim upstream to spawn and temporarily closing a pulp and paper mill. Cowichan Tribes and others in the watershed realized that a proactive and formal approach to governance and management was crucial to balance water supply and demand and increase the watershed's resilience. As a result, Cowichan Tribes, together with the Cowichan Valley Regional District, the BC Ministry of Environment, Fisheries and Oceans Canada, Catalyst Paper and the Pacific Salmon Commission, contracted Westland Resource Group Inc. to develop the *Cowichan Basin Water Management Plan* in 2007.⁵⁰

The second initiative occurred with the founding in 2010 of the Cowichan Watershed Board (CWB), whose purpose was to interface with various levels of authority in the watershed and implement the *Cowichan Basin Water Management Plan*. The 14-member CWB is co-chaired by Cowichan Tribes and the Cowichan Valley Regional District. Decisions are made by consensus, an approach favoured by Cowichan Tribes from the beginning because it resonates with their governance system. With a clear mandate to best serve the watershed's inhabitants, the CWB's co-governance structure has been essential for building legitimacy and credibility both internally and externally. The CWB currently acts as an advisory body and makes recommendations to government agencies about proactive water management decisions. However, the Board is also exploring decision making authority, potentially through provisions through the *Water Sustainability Act* (e.g., delegated authority and water sustainability plans).

Outcomes of Improved Governance

The CWB's presence and work have improved relationships between local government and Cowichan Tribes, stimulated more balanced and open dialogue and motivated willingness and commitment to collaborate on watershed issues. For example:

- ▶ More knowledge and science now inform watershed management and governance, such as with the partnership of Cowichan Tribes and Fisheries and Oceans Canada to collect data on Chinook salmon habitat, and with the Cowichan Tribes' successful request to the Province to determine environmental flows in the Koksilah watershed.
- ▶ Controversial and complex issues are better debated, understood and advanced, such as the current public consultation being led by the CWB to discuss lake storage and the weir on Cowichan Lake.
- ▶ Increased funding is being sought for watershed stewardship projects and studies, such as the joint \$4-million proposal for coastal shoreline restoration submitted by Cowichan Tribes, stewardship groups and governments with facilitation by the CWB.

Despite these successes, the CWB does have some challenges, including uncertainty with long-term sustainable funding and the ongoing need to achieve reconciliation between First Nations and non-First Nations.



L-R: Field trip at Skutz Falls and fish ladder, by FNFC; Skutz Falls, by FNFC.

Conclusion

The First Nations featured in these case stories are asserting rights, jurisdiction, and in some cases their own laws, to advance governance and decision making processes and structures that will determine the future of fresh water. These initiatives will have lasting benefits for their communities, and for all inhabitants of their territories. They also provide important lessons for First Nations communities that are in the early stages of embarking on freshwater protection strategies.

MOVING FROM MANAGEMENT TO GOVERNANCE

First Nations' governance over resources in their territories – including fresh water – is critical to both protecting fresh water for future generations and to asserting and advancing Indigenous rights and authorities. As the case stories show, approaches to freshwater protection that are focused on planning and governance offer an opportunity to move away from status quo management systems that are flawed, lack decision-making power, crisis-driven, and unresponsive to the needs, values, and rights of First Nations. The case stories also demonstrate that strength and influence lie in using a variety of strategies and approaches in parallel. Regardless of what the end goal of a community might be (e.g., restoration of a fishery, assertion of water rights or title, or co-governance), multiple tools can be used simultaneously to get there.

...TO COLLABORATIVE GOVERNANCE?

While many First Nations agree on the value of a collaborative approach to managing freshwater with other neighbours and partners in the watershed, it is also generally understood that effective shared decision making processes must be co-designed to meet Nations' specific needs.⁵¹ For First Nations that are considering entering into formal collaborative governance arrangements⁵² with other orders of government, a critical first step is to reconcile First Nations jurisdiction and authorities with those asserted by the Crown – a major challenge. Importantly, co-governance of fresh water between Indigenous and non-Indigenous governments is not necessarily a desirable outcome for all First Nations communities, who may instead opt to lead, rather than co-lead, management and/or governance initiatives in their traditional territories.⁵³ Some First Nations consider co-governance to be an interim step to achieving the ultimate goal of full title and jurisdiction.

OPPORTUNITIES

Most First Nations in BC have a collective interest in pursuing a range of governance and alternative decision-making structures over fresh water, and for concrete and sustained opportunities to work together. Three key immediate opportunities for BC First Nations pursuing freshwater protection strategies for their territories include:

- **Working together.** Many processes and institutions exist for federal, provincial, and territorial governments to cooperate and work together, yet there remains an entrenched attitude in Crown governments that First Nations “aren’t ready” for governance, and First Nations are often excluded from these high-level decision making and policy-setting discussions. Many First Nations recognize the value of and the need to continue to self-organize, collaborate, and determine paths forward together, in order to work with the Crown and other partners - or not - on their own terms.
- Continue to build a **First Nations Water Governance Network** in BC. Long-term, structured and consistent strategic spaces are important for First Nations to be able to share, collaborate and advance solutions related to freshwater planning and governance initiatives in their territories and beyond. A network can also support coordination amongst First Nations to move away from fragmented voices and toward a more cohesive message and vision for First Nations engagement in freshwater planning and governance.
- **Where necessary, use Crown tools to strategically advance priorities.** While no statutes in Canada or BC definitively recognize First Nations’ jurisdiction and authorities, many have the potential to impact Aboriginal and Treaty Rights related to fresh water. For example, BC’s new *Water Sustainability Act* (WSA) contains several potentially useful provisions that First Nations can use to protect their waters, including protection of water for fish through adequate environmental flows.⁵⁴ There is also potential to ensure that the development and implementation of new WSA regulations and tools is co-led with First Nations [e.g., the announcement in March 2018 of a new MOU on water governance between the Nicola First Nations and the BC provincial government].⁵⁵

Underlying all of these opportunities is the urgent need to identify and “unlock” sustainable funding sources and mechanisms to support the capacity of BC First Nations communities and organizations to fully participate in freshwater planning and governance activities within their territories and beyond.

STEPS ALONG A PATH

The paths of BC First Nations have been and will continue to be different. Each community faces different challenges and opportunities that determine how they make decisions about how they and others use their waters, lands and resources. But what is common to all BC First Nations communities is that they will face complex water challenges that will shape their future — and many are already experiencing drastically changing waterscapes.

First Nations have led innovative approaches to sustainably managing resources for thousands of years. In order to find the best path forward for fresh water, communities and leadership need to continue to make decisions that respect traditions, protect and advance rights, and recognize First Nations' governance of waters as one step along a bigger path to self-determination.



L-R: Barriere River fence, Simpcw First Nation, by Tina Donald; Spawning Sockeye on Tahtlan Lake, by Kerry Carlick.

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- 2 For example, the Simpcw Water Declaration (2010); *Syilx* Nation *Siw4k** (Water) Declaration (2014); Yinka Dene 'Uza'hné Water Declaration (2016).
- 3 First Nations Leadership Council. (2013). Draft BC First Nations Water Rights Strategy. p.3.
- 4 Royal BC Museum. The Fort Victoria and Other Vancouver Island Treaties, 1850-1854. BC Archives MS-0772. <https://royalbcmuseum.bc.ca/assets/FortVictoriaTreaties.pdf>.
- 5 Duhamel, R. (1966). Treaty No. 8 Made June 21, 1899 and Adhesions, Reports, Etc. <http://www.aadnc-aandc.gc.ca/eng/1100100028813/1100100028853>.
- 6 For example, the Nisga'a Treaty includes a water reservation of 300,000 cubic decametres of water per year.
- 7 United Nations. (2018). United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). www.un.org/esa/socdev/unpfi/documents/DRIPS_en.pdf.
- 8 See Gray, B. (2016). Building Relationships and Advancing Reconciliation through Meaningful Consultation. Report to the Minister of Indigenous and Northern Affairs. www.aadnc-aandc.gc.ca/eng/1498765671013/1498765827601.
- 9 Indigenous Law Research Unit (ILRU). www.uvic.ca/law/about/indigenous/indigenoulawresearchunit/index.php.
- 10 For more detailed information on this research methodology, see Friedland, H. and V. Napoleon. (2015). Gathering the Threads: Developing a Methodology for Researching and Rebuilding Indigenous Legal Traditions *Lakehead Law Journal* 1(1):16-44. Other initiatives using this methodology include the University of British Columbia's Decolonizing Water project and West Coast Environmental Law's Revitalizing Indigenous Law for Land, Air and Water initiative (RELAW).
- 11 See the Project Report and Secwepemc Lands and Resources Law Summary: www.skeetchestn.ca/files/documents/Governance/secwepemc-lands-and-resources-law-analysis-summary.pdf and shuswapnation.org/wordpress/wp-content/uploads/2017/04/Secwepemc-Land-Laws-1.pdf.
- 12 RELAW opens its application process to BC First Nations once per year and uses the ILRU methodology. For more information see www.wcel.org/our-work/relaw-revitalizing-indigenous-law-land-air-and-water.
- 13 See West Coast Environmental Law at www.wcel.org/program/sharing-stories/water.
- 14 This work is funded by a three-year, \$350,000 grant from the Social Sciences and Humanities Research Council of Canada and Real Estate Foundation of BC. <https://www.uvic.ca/law/home/news/archive/waterlawfunding.php>.
- 15 West Coast Environmental Law. www.wcel.org/program/sharing-stories/water.
- 16 See Media Release: World's First Indigenous Law Degree to be Offered at UVic" February 21, 2018. <https://www.uvic.ca/news/topics/2018+jid-indigenous-law+media-release>.
- 17 The argument is based on previous cases: *R v Sappier*; *R v Grey*, 2006 SCC 54 ("*Sappier & Grey*"); *R v Adams* [1996] 3 S.C.R. 101; *Saik'uz First Nation and Stellat'en First Nation v Rio Tinto Alcan Inc*, 2015 BCCA 154 ("*Saik'uz*").
- 18 The argument is based on previous cases: *Sappier & Grey*; and *Halalt First Nation v. British Columbia (Environment)*, 2011 BCSC 945 ("*Halalt*").
- 19 *Mitchell v. Minister of National Revenue* (2001), 2001 SCC 33 [S.C.C.].
- 20 *R v Nikal* [1996] 1 SCR 1013 ("*Nikal*") and *R v Lewis* [1996] 1 SCR 921 ("*Lewis*").
- 21 *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44 ("*Tsilhqot'in*") para 9.
- 22 *Burrard Power Co v The King*, [1910] SCR 27.
- 23 Two Supreme Court of Canada cases specifically state that the provincial government has possession of all navigable rivers on reserve: *R v Nikal* [1996] 1 SCR 1013 ("*Nikal*") and *R v Lewis* [1996] 1 SCR 921 ("*Lewis*").
- 24 Government of Canada. Report to Parliament 2015 to 2016: Canada Water Act: chapter 2. www.canada.ca/en/environment-climate-change/corporate/transparency/corporate-management-reporting/reports-parliament/canada-water-act-2015-2016/resource-management.html.
- 25 See West Coast Environmental Law. (2017). Between Law and Action: Assessing the State of Knowledge on Indigenous Law, UNDRIP and Free, Prior and Informed Consent with Reference to Fresh Water Resources. <https://www.wcel.org/publication/between-law-and-action-assessing-state-knowledge-indigenous-law-undrip-and-free-prior>.
- 26 Notes for an Address by the Honourable Jody Wilson-Raybould Minister of Justice and Attorney General of Canada. (2016). Assembly of First Nations Annual General Assembly. Niagara Falls, Ontario. <https://www.canada.ca/en/department-justice/news/2016/07/assembly-of-first-nations-annual-general-assembly.html?wbdisable=true>.

- 27 The meetings took place in January 2017 and were run by MESL and Source Environmental Associates. Participants also had the opportunity to share input on the development process of water quality standards.
- 28 Seven of these communities are in Canada and one is in the US. *Syilx* Territory spans over 69,000 km² with its northern boundaries located near Mica Creek, BC north of *snk̓w̓yk̓ntn* (Revelstoke), BC; its eastern boundaries reach to Kootenay Lake; its western boundaries into the Nicola Valley and its southern boundaries to Brewster, Washington.
- 29 Resident fish, mollusks and other invertebrates were also impacted due to massive changes to their habitat/hydrology. The damming of the rivers also resulted in the critical losses of sacred, spiritual, ceremonial and burial sites.
- 30 The Okanagan Nation Alliance (ONA) was formed in 1981 as the inaugural First Nations government in the Okanagan which represents the 8 member communities, including: Okanagan Indian Band, Upper Nicola Band, Westbank First Nation, Penticton Indian Band, Osoyoos Indian Band and Lower and Upper Similkameen Indian Bands on areas of common concern. Each community is represented through the Chiefs Executive Council by their Chief or Chairman. In 1987, the *Syilx* Nation signed the *Okanagan Nation Declaration* that reaffirmed their commitment to uphold the fundamental Okanagan principles and values and continue to work towards being a strong, unified Nation and Government in the best interests of their members. Under the Declaration, the *Syilx* People declare that: “*We are the unconquered aboriginal peoples of this land our mother; The creator has given us our mother, to enjoy, to manage and to protect; We the first inhabitants, have lived with our mother from time immemorial; Our Okanagan Governments have allowed us to share equally in the resources of our mother; We have never given up our rights to our mother, our mother’s resources, our governments, our religion; We will survive and continue to govern our mother and her resources for the good of all for all time.*” Refer to the declaration: https://www.syilx.org/wp/wp-content/uploads/2017/01/ON_Declaration.pdf.
- 31 See https://www.syilx.org/wordpress/wp-content/uploads/2012/11/Okanagan-Nation-Water-Declaration_Final_CEC_Adopted_July_31_2014.pdf.
- 32 Although indigenous ecological knowledge is increasingly recognized internationally, nationally, and in BC as having an essential role in equitable governance, there remains considerable misunderstanding in non-Indigenous institutions about what indigenous ecological knowledge means and how it can be meaningfully involved in decision-making processes. Western knowledge systems tend to emphasize sharing and testing of knowledge; often through adversarial processes in which knowledge is accepted only if it cannot be proven false. Research methods often aim to “explain and predict” results, while common sense – and spirituality – is rejected.
- 33 It is up to the community to decide what knowledge should be shared, with who, how, and when; and what knowledge is privileged and private. Indigenous ecological knowledge has been, and continues to be, expropriated, misused, and/or misinterpreted by people and agencies outside of the Indigenous communities. Developing rules, or protocols, for research or processes that involve indigenous ecological knowledge is one way to ensure control of knowledge remains with the Nation in watershed planning/decision-making or monitoring processes. Protocols enable knowledge holders to identify culturally appropriate uses of information, and ways to avoid exploitation of the information by outside organizations.
- 34 <http://www.gitanyowfisheries.com/m/projects/kitwanga-river-salmon-enumeration-facility>.
- 35 The Gitanyow Fisheries Authority (GFA) is the technical arm of the Gitanyow Hereditary Chiefs (GHC) and provides fisheries, wildlife and overall environmental expertise and services. See www.gitanyowchiefs.com/programs/fisheries.
- 36 There are also two proposed natural gas pipelines that would pass through the Upper Morice watershed.
- 37 Morice Water Monitoring Trust. moricetrust.ca/about.php.
- 38 Around 24 hydrometric stations, including two real-time stations, were installed. See Okanagan Nation Alliance. McIntyre Dam Fish Passage Efficiency. www.syilx.org/projects/mcintyre-dam-fish-passage-efficiency/.
- 39 This field method does not provide a full-scope habitat analysis, but simply focuses on and analyzes critical habitat elements that vary with flow: 1) riffles, which are critical for juvenile fish rearing and insect production, and 2) glides, which are critical for juvenile fish rearing and spawning.
- 40 Fort Nelson First Nation. Tu No Tthé – We Need the Water (short documentary film). See www.youtube.com/watch?v=6of6SAvFSvg.
- 41 Elsewhere in Treaty 8 territory, the Decolonizing Water project is focused on the intersection of water monitoring, governance and Indigenous law. The project’s ultimate goal is “to create a self-sustaining water and ecological monitoring program that will enhance protection of water resources and fulfill the promise of Indigenous water governance.” The research approach is Indigenous-led, collaborative and interdisciplinary, and team members are dedicated to engaging in mutually respectful and beneficial community-based research with First Nations. See <http://decolonizingwater.ca/>.
- 42 Treaty negotiations concluded when Canada, British Columbia and Tla’amin Nation initialled the Final Agreement on October 21, 2011. Tla’amin members approved the Final Agreement through a community vote on July 10, 2012. On March 14, 2013, the *Tla’amin Final Agreement Act*, British Columbia’s legislation ratifying the Final Agreement, received Royal Assent. On June 19, 2014, the *Tla’amin Final Agreement Act*, Canada’s legislation ratifying the Final Agreement, received Royal Assent. See www.aadnc-aandc.gc.ca/eng/1397050017650/1397050094605.
- 43 Little, P. (2012). Theodosia Watershed Climate Change Impacts and Adaptations Plan. Prepared for the Theodosia Stewardship Roundtable. www.powellriverrd.bc.ca/wp-content/uploads/Theodosia-Watershed-Climate-Change-Impacts-and-Adaptations-Plan_reduced.pdf.

- 44 The FNFC would like to acknowledge additional research for this case story courtesy of Natasha Overduin and Hunter, R et al. (2014). The Cowichan Watershed Board: An Evolution of Collaborative Watershed Governance. POLIS Project on Ecological Governance. poliswaterproject.org/files/2017/06/CWBCaseStudy_WebFINAL_o.pdf.
- 45 Other First Nations on Vancouver Island are also descendants of the historic Cowichan Nation including Stz'uminus (Chemainus), Penelakut, Halalt, Lyackson and Hwlitsum.
- 46 The Hul'qumi'num Treaty Group brings together Cowichan Tribes, Halalt, Lyackson, Penelakut, Lake Cowichan and Chemainus.
- 47 Adapted from Hunter, R. et al. (2014). The Cowichan Watershed Board: An Evolution of Collaborative Watershed Governance. POLIS Project on Ecological Governance. poliswaterproject.org/files/2017/06/CWBCaseStudy_WebFINAL_o.pdf.
- 48 Dikes have been installed on different occasions. In 2009, the CVRD hired a consulting firm to develop the Integrated Flood Management Plan, which identified some infrastructure issues of high concern. The following year, a multi-phase federal-provincial infrastructure aid program was put in place to allow the CVRD and Cowichan Tribes to implement some of the plan priorities.
- 49 The population in the Cowichan watershed has gone from 2,000 people in 1871 to approximately 83,000 today. See www.cowichanwatershedboard.ca/content/supply-and-demand.
- 50 For more information on the Plan and how it was developed, see Hunter, R. et al. (2014). The Cowichan Watershed Board: An Evolution of Collaborative Watershed Governance. POLIS Project on Ecological Governance. poliswaterproject.org/files/2017/06/CWBCaseStudy_WebFINAL_o.pdf.
- 51 See First Nations Fisheries Council and the Centre for Indigenous Environmental Resources (2016). Indigenous Watershed Initiatives and Co-Governance Arrangements: A British Columbia Systematic Review.
- 52 One of many commonly accepted definitions of collaborative governance (or co-governance) is "when two or more self-governing jurisdictions agree to share authority to make and enforce decisions. Co-governance is very different from co-management, which allows one jurisdiction to hold all decision-making power and merely delegate prescribed administration activities to the others. Decision-making power or authority means the legal capacity to make and impose choices." From Peigi Wilson (2014). *The Blue Paper: Water Co-Governance in Canada*. Forum for Leadership on Water.
- 53 See Summary Report & Next Steps: BC First Nations Water Governance Roundtable. June 18th & 29th, 2017. http://www.fnfisheriescouncil.ca/wp-content/uploads/2015/09/Summary-Report-First-Nations-Water-Governance-Roundtable_June-2017_FINAL.pdf.
- 54 BC's new *Water Sustainability Act* (WSA) introduces several new potentially useful provisions that First Nations can use to protect water including water for fish through adequate environmental flows. These include the new requirement for statutory decision makers who "must consider" the flow needs of a stream when determining whether to issue a new surface or groundwater license (s.15); "sensitive stream" designations that ensure water use applications that would have adverse impacts on the stream have mitigation or other compensatory measures (s.17); a temporary Ministerial declaration of "significant water shortage" (s.86) allows the Comptroller to make a "Critical Environmental Flow Protection Order" to determine the volume of water flow in the stream below which significant or irreversible harm to the aquatic ecosystem of the stream is likely to occur (s.87). This volume of water is known as the "critical environmental flow threshold" and takes precedence over all water use licences issued under the WSA, regardless of when they were issued (s.22[9]); If the water flow in a stream is or is likely to become so low that it threatens the survival of fish in that stream, the Minister may make a Fish Population Protection Order that controls the diversion of water in that stream or hydraulically connected aquifer regardless of which water licence is older or takes precedence (s.88); finally, Water Sustainability Plans (WSPs) are intended to be agreements between various governments and stakeholders in a particular watershed, which can be made into legally binding regulations. WSPs can include a broad variety of terms, including those that could protect environmental flows by reducing the volume allocated under water licences in response to specific ecosystem or community conditions (s.79).
- 55 See News Release: MOU to Address Water Governance in the Nicola Watershed. BC Ministry of Environment and Climate Change Strategy. March 23, 2018. <https://news.gov.bc.ca/releases/2018ENV0012-000484>.



L-R: Seton River Chinook smolt, by Dave Levy; Nakina River bear and chinook, by Mark Connor.

FIRST NATIONS FISHERIES COUNCIL OF BRITISH COLUMBIA

Ratified by the participants at the 2009 Fall Fisheries Assembly in Nanaimo BC, and endorsed by resolution of the BC Assembly of First Nations, the Union of BC Indian Chiefs and the First Nations Summit, the mandate of the FNFC is as follows:

The First Nations Fisheries Council works with and on behalf of BC First Nations to protect and reconcile First Nations Rights and Title as they relate to fisheries and the health and protection of aquatic resources. The Council achieves this mandate by working to:

- > Advance and protect First Nations Title and Rights related to fisheries and aquatic resources, including priority access for food, cultural and economic purposes;
- > Support First Nations to build and maintain capacity related to fishing, planning, policy, law, management, and decision-making at a variety of scales (local, regional, national and international); and
- > Facilitate discussions related to the development of a British Columbia-wide First Nations-based collaborative management framework that recognizes and respects First Nations jurisdiction, management authority and responsibilities.

FRONT AND BACK COVER AND DIVIDER PAGES

By Darlene Gait. "Spirit Water Woman", 2018. This illustration shows water as a connector and lifeblood of the land, fish, animals, and people.

Artist Darlene Gait is a member of Esquimalt Nations of Vancouver Island, BC. She has been actively involved in the arts, for over 30 years. Many of her designs can be seen throughout Victoria, schools, resorts, children's books, coin illustrations, original paintings and BC Ferries. Her love of Nature, culture and history, reflect creatively through all her work.

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May 2018

