

First Nations Drinking Water

Position Paper

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Version 5

Summary

Background

First Nations communities are facing a continuing struggle to produce safe drinking water. Though specific data on the state of First Nations drinking water is lacking, several major government reviews and studies have recognized the deficient state of First Nations drinking water. There have been documented issues within all stages of water treatment including conception, funding, design, construction, training, management, and maintenance.

Issues

Currently, many First Nations communities cannot meet all 56 health parameters of the Canadian Drinking Water Quality Guidelinesⁱ, and many have difficulties meeting the 5 that Health Canada (HC) routinely tests for. At present, there is no legislation that specifically regulates First Nations drinking water. Instead, Indian and Northern Affairs Canada (INAC) and HC have created a framework of administrative rules, but these lack legal authority. This framework has also created a number of issues that contribute to First Nations' poor access to safe drinking water:

- Government agencies face a conflict of interest when evaluating their own performance, which create incentives to set lower standards for water quality and to under report unsafe drinking water.
- Water providers who meet operational standards do not necessarily produce drinking water that meets water quality guidelines.
- Water quality guidelines are not legally enforceable.
- Water providers who do not meet guidelines are not being reported or are under reported.
- Chief and Council are considered responsible for the production of safe drinking water, while INAC and HC make the funding, design, and testing decisions.

Solutions

Any effective solution must have three basic elements:

- A regulatory body who sets national standards, which is monitored and upheld by First Nations, and is independent of the government agencies it evaluates. These standards must meet or exceed the Canadian Drinking Water Quality Guidelines.
- A set of national operational standards that are both adapted to and apply to all First Nations.
- A specific, time-bound commitment to properly estimate the cost of upgrading present systems to the regulated national standards and a further time-bound commitment to follow through on the upgrades with associated resources such as training.

How to Get There

The government has proposed a consultation process to introduce a new regulatory system as recommended by the Expert Panel in 2006ⁱⁱ. This will be a forum for First Nations

communities to voice their concerns and issues as well as contribute input as to how new management regimes should be designed. While the consultation process is an important opportunity to move forward, there remain considerable challenges. The short consultation timeline will make it difficult for First Nations to find a common voice and there exists a serious lack of specific information on the current state of water systems. These consultations offer a window of opportunity to improve First Nations drinking water, but this is only a first step in a comprehensive process that must involve First Nations from start to finish.

Background

First Nations are currently in a crisis with their drinking water which represents a real threat to public health in the majority of their communities. The problems have been documented for over ten years by government reports and internal reviews. In 1995, INAC conducted a review which indicated that 25% of First Nations water systems were not properly functioning and potentially dangerous to the communities who used themⁱⁱⁱ. INAC committed \$650 million over the next six years to system upgrades, operations, and maintenance in order to decrease the number of First Nations water systems that do not function properly.

Unfortunately, the national assessment conducted by INAC in 2001-2002^{iv} found that the number of potentially harmful on-reserve water systems had increased to 30%^v. In 2003 HC and INAC developed the “First Nations Water Management Strategy”^{vi}, a five year strategy using a seven point multi-barrier approach applied from the source to the tap to protect drinking water. This process was also used to rank water treatment facilities as low, medium, or high risks to the community. The assessments were based on an on-site inspection of each facility and recent drinking water quality and wastewater effluent quality data. This initiative was supported by investments of \$1.6 billion over five years and is aimed at addressing all “high risk” communities by early 2008.

In 2005, the Office of the Auditor General released chapter five of the Report of the Commissioner of the Environment and Sustainable Development entitled “Drinking Water in First Nations Communities”^{vii}. This report called attention to the severe obstacles to providing safe drinking water which were going largely unaddressed by the government’s current strategy. Investigators found serious deficiencies within the governing framework, program management, and parliamentary reporting of results. The report made several key recommendations including the implementation of an independent regulator, the introduction of a new management regime, clarification of codes and standards, proper monitoring and follow-up, and the establishment of capacity building institutions. The report also emphasized increased parliamentary reporting to provide more accurate descriptions of problems and progress.

Both INAC and HC agreed with the Commissioner’s recommendations and in early 2006 INAC presented its “Plan of Action for Drinking Water in First Nations Communities” which was aimed at addressing the recommendations made by the Office of the Auditor General. The plan committed INAC to having clear protocols for water quality standards, ensuring mandatory training, having certified operators, and creating an expert panel to provide regulatory regime options and regular progress reports on their activities^{viii}.

Late in 2006, the Expert Panel on Safe Drinking Water for First Nations released their report regarding the current state of First Nations water treatment.^{ix} It emphasized that further regulation would only be successful if coupled with the provision of adequate human and investment capital. The 2006 Expert Panel^x proposed three viable options for creating a new system to regulate drinking water in First Nations communities.

- Parliament could enact a new statute setting out uniform federal standards and requirements;
- Parliament could enact a new statute referencing existing provincial regulatory regimes; or
- First Nations could develop a basis of customary law that would then be enshrined in a new federal statute.^{xi}

In 2007, federal government budgets committed funding to develop a regulatory regime based on the Expert Panel recommendations^{xii}. The Senate Standing Committee on Aboriginal Peoples then issued a report^{xiii} on the proposed regulatory options. The Senate agreed that resource gaps must be met based on independent assessments of the state of water systems (expected in 2009) and that comprehensive consultations must be held as steps towards a regulatory regime. While INAC representatives indicated that they expected to adopt the provincial option^{xiv}, the Senate Report was critical of this preference in the face of opposition from both the Expert Panel and First Nations.^{xv}

Examples of the continued failure of INAC's and HC's efforts to provide First Nations communities with safe drinking water can be found across the country.

- In Landsdowne House, Ontario, there have been boil water advisories on and off for the last thirteen years. In 2004, the water system was shut down completely because it had been contaminated with gasoline and other chemicals. People couldn't even use boiled water and the school was closed. The system was turned on again when the gasoline was taken out of the water, but the other chemicals have remained ever since.
- In Saddle Lake, Alberta, HC disagreed when the Band Council imposed a boil water advisory (BWA), initially HC tried to dictate that the Band remove the advisory. However, HC eventually also issued a BWA although nothing had changed in the system. Later, HC told Saddle Lake Band Council to remove the BWA, again Chief and Council refused because of loss of chlorine residuals in the distribution system and the BWA remains to this day. Health Canada, did, however, lift its BWA in December 2007 (although nothing had changed), but the manufacturer of Saddle Lake's water treatment equipment recommended in writing that the BWA be continued due to equipment failures. INAC's Alberta office has supported work on solving the water quality problems at Saddle Lake by funding an extensive pilot study of treatment options.
- In Gordon First Nation, Saskatchewan, at least three engineering companies over fifteen years had been paid to upgrade the water treatment plant, but it still could not produce safe drinking water. It was shown in 2004 that the engineered "solutions" were not realistic either in theory or in practice. INAC's Saskatchewan's office supported the resolution of George Gordon's water treatment problems by funding science-based solutions.

- Over the past eight years, Six Nations, Ontario, conducted three assessments, all of which showed the need for a new water treatment plant. However, it still has not received the funding necessary for this plant and the cost of the plant has nearly doubled.
- Yellow Quill, Saskatchewan, had a boil water advisory from 1995-2004. Several attempts to use conventional treatment processes proved that these methods were inadequate and generated repeated failures. Finally, the Safe Drinking Water Foundation (SDWF) completed two years of research to develop a new innovative biological technology so that Yellow Quill now has some of the highest quality of drinking water in Canada. The piloting of the developed R&D solutions was supported by INAC's Saskatchewan office.

It is easy to understand frustrations of First Nations communities with regards to the disparity felt between rural and urban water provision and treatment. Chief Moonias of Landsdowne House wondered "*How different the response would be if the residents in Toronto were without access to water?*" The efforts of some INAC offices to help find sustainable solutions should be commended and used as examples of how the federal government can move forward and solve even the most challenging of water quality problems.

Issues

There is currently no legislation that specifically regulates First Nations drinking water. Instead, INAC and HC have created a framework of administrative rules over time to regulate various elements of water provision. However, these rules have been written without formal consultations with First Nations and they are administrative regulations rather than legally binding legislation. This framework has been designed piece by piece in the past decade as different problems came to light.

As a result, the system is not fully comprehensive and faces a number of key issues and obstacles. Roles and responsibilities remain unclear because a number of key areas are not regulated by the current framework or are divided between too many stakeholders. This confusion is compounded by the fact that these specific roles and responsibilities are not defined in legislation. This framework makes it increasingly difficult for information to be shared and for any party to establish how effectively any water system is performing.

The federal government has an excellent opportunity to determine raw and treated water quality in First Nations communities across the country. This information could then be compared with the treatment systems that generated the treated water and evaluations could be made of the effectiveness of different processes, which could be used to guide the approval process for future water treatment plant retrofits and new construction. This opportunity has, however, never been used. The SDWF has, over the years, encouraged federal agencies to take constructive steps towards solutions and while INAC's Saskatchewan's office has been the most forward thinking, this office too subscribes to the notion that it only needs an engineering stamp to proceed with any treatment plant no matter how inadequate the engineering assessment or proposed process.

There is also a significant imbalance between the distribution of responsibility within First Nations water treatment. First Nation Chiefs and Councils currently have sole responsibility

for drinking water quality, although the greater majority is unaware of this. Responsibility was devolved from INAC and HC without any public notice or formal recognition by the government via their 2007 contribution agreements. While First Nation leaders are responsible for water quality they have not been given the corresponding decision making power and resources to follow through on this responsibility. It is problematic for First Nation chiefs and councils to be held accountable for providing drinking water when INAC controls all aspects of funding, design, approval tendering, construction, and training.

Current performance indicators do not show whether water treatment systems are functioning properly or how many First Nations communities lack access to safe drinking water. Performance is judged by counting the number of boil water advisories and through a risk assessment index created by INAC. This risk index does not directly test whether water systems actually produce (or are capable of producing) water that is safe to drink. The index also excludes the significant number of people who drink water from private wells or who simply drink untreated water.

These practical issues could be solved with three basic provisions within the current system, the lack of which currently prevents First Nations water treatment from meeting the Canadian Drinking Water Quality Guidelines:

- First, legally enforceable drinking water quality standards should be adopted that are uniform across Canada, and meet or exceed the Canadian Drinking Water Quality Guidelines^{xvi}.
- Second, a national independent regulatory body should be assigned to uphold the new regulations. A grace period should be provided for the training of water treatment operators and First Nation Leaders as well as for HC and INAC representatives. This regulatory body should assign FN representatives to act in the best interest of each First Nation community and actively participate in each project meeting. A national regulatory body should also have some jurisdiction over source water protection as it relates to First Nations drinking water supply. The regulatory body should also have the capacity to determine adequate funding for the implementation of these regulations and, in particular, the provision of adequate funding for water treatment facilities.
- Third, the regulatory body should request analyses of all 56 health parameters of the Canadian Drinking Water Quality Guidelines to accurately determine if each First Nation community has a water treatment process capable of effectively producing truly safe drinking water and to establish the necessary steps and costs to achieve that result.

Only when each of these three steps has occurred can Chief and Council of each First Nation community accept full responsibility for their community's drinking water quality.

Obstacles

Flawed Fundamentals

Within standard provincial drinking water systems there are three basic roles. First, water providers operate water systems to provide residents with safe drinking water. Second, a

government agency often provides technical assistance to water providers, with funding and expertise. Third, a regulator needs to set the standards and then ensure that water providers comply with those standards. In Saskatchewan, for example, municipalities act as water providers and Saskatchewan Environment and Health regulate municipal and semi-private systems respectively.

The Saskatchewan government has purposely set guidelines at high levels for certain compounds, such as Total Dissolved Solids (TDS) and arsenic, knowing that conventional water treatment systems cannot achieve lower levels. This way, provinces can still report being “above” provincial water quality guidelines but, in reality, rate much lower when compared to national guidelines. However, First Nations communities are under federal, rather than provincial, jurisdiction and lack of acceptance of provincial guidelines in Saskatchewan’s First Nations communities has led INAC to move towards Canadian Guidelines even in Saskatchewan.

One reason why provincial guidelines cannot be referenced is because they vary across Canada. Should, however, the federal government decide to follow provincial guidelines that are more stringent than the Canadian Guidelines this would open up the possibility that the federal government could accept the leadership of a specific province.

Currently INAC and HC are both providing technical assistance and acting as self regulators. This creates a conflict of interest because the goal of technical assistance is for water providers to reach set guidelines (that hopefully one day will become standards and enshrined in law) while the goal of regulators is to inspect water providers to ensure that they are reaching the guidelines. In the present system, government agencies have incentives to under report problems with drinking water quality because problems would indicate a failure on their part to provide adequate technical assistance.

The current system creates two troubling results. First, the government faces adverse incentives to write guidelines for itself that are easily reached rather than guidelines that are effective in producing safe drinking water. For example, HC’s water quality monitoring standards require comprehensive testing only once per year and the results are not openly published or publicly distributed. Second, providers who do not meet guidelines are not reported as often or as aggressively as they should be. INAC and HC have reported “*significant progress*” despite the fact that 116 First Nations communities remain categorized as at-risk from unsafe drinking water^{xvii} and there are many other communities that probably should also be included in this category.

A system where technical assistance and regulation are implemented by separate and independent bodies would remove these incentives. This would also allow federal agencies to focus on their provisional responsibility and not divert time and resources to evaluating their own work. This would address a number of the causes of management challenges, including the implementation gaps described below.

Inadequate regulations

While current Canadian Drinking Water Quality Guidelines^{xviii} would be acceptable if they became regulations enforceable by law (i.e., the current guidelines would then become standards), the operational standards for First Nations drinking water are not comprehensive enough to protect the health of the communities. Operational standards are not backed by legislation, meaning there is no legal enforcement or punishment if they are broken or ignored. The most government agencies can do is to suspend funding or take over the operation of a water treatment system. Within this system, HC and INAC have no incentive to implement their own rules and policies properly because there are no legal obligations to do so. As a result, providers can meet current operational standards set out by federal agencies but still not produce safe drinking water. While this is a challenge that affects many different issues in safe drinking water, it is most clearly seen in water treatment system design and water quality monitoring.

Water system design

In the past, INAC has repeatedly approved the construction of water treatment plants that are not capable of providing safe drinking water. In 2006, the Expert Panel received numerous expert testimonies attesting to a number of instances where “*facilities that could not meet regulatory standards because the design did not meet current needs.*”^{xix} Given current funding deficits, it is unacceptable that millions of dollars are invested in water treatment plants that are not capable of providing safe drinking water from their inception.

In the current system, INAC and HC approve each proposed design by consulting with its technical experts and taking into consideration the amount of funding available. However, these government agencies tend to rely on a number of conventional technologies that are not effective on poor quality source water. As a result, the communities that have the worst quality source waters receive water treatment plants that are ineffective and require high maintenance yet are still not able to meet guidelines

A new regulatory system must address water system effectiveness. A licensing system for new water systems would ensure that the consulting companies that design plants and the construction companies that build them deliver effective water systems that are appropriate for the communities they serve. This would also ensure that they state in their proposals a guaranteed quality of treated water. As well, government agencies and First Nations communities should develop greater technical knowledge and constantly strive to find systems that are more effective in communities with poor quality source water.

Water Quality Monitoring

The operational standards defined by Health Canada only require water operators to regularly test water for five different parameters which are, total coliforms, E. coli, nitrate, and free and total chlorine residuals. However, this leaves a wide variety of chemical, radiological and microbiological (including parasites) contaminants that are a risk to public health. Out of the 56 health parameters, 45 are potentially dangerous to humans. HC only tests for thirty-five parameters once a year. Combine this dismal assessment process with the fact that depending on geographic locations, for example the Alberta tar sands, compounds which can be

extremely toxic and/or threatening to human health exist in the source waters, yet they are not even included in the present guidelines. For example, there have been no permits issued to release wastewater from the tar sands due to the toxic nature of the waste. Instead, pond after pond is built to contain the wastewater until some day somebody figures out a way to detoxify the waste. Compounds included in this mix are naphthenic acids.

However, annual testing is not frequent enough to ensure safe drinking water. Seasonal changes in water quality occur, particularly in spring when excess runoff can contaminate drinking water sources. Water monitoring schedules need to incorporate appreciation for the cyclical variance of water content and should always be taken when compounds are expected to be at their highest rather than their lowest which is presently often the case. More frequent testing could be used to elicit patterns in the seasonal changes of water composition as well as safe guard against accidental or random contamination. Increased testing can also act as a measure of water facilities' effectiveness and call attention to any deficiencies within the system to providing safe drinking water.

Current performance indicators focus on a risk index that shows whether certain procedures are followed rather than testing actual water quality. The lack of publicly available water quality data makes it impossible to determine whether boil water advisories are needed in more communities. **Without information about water quality, there is no clear picture of the scale of the challenges facing First Nations communities.**

In addition to water system design and water quality monitoring, there are other challenges that are not addressed by the current system. In reviews sent to Parliament, INAC has reported increases in the access to safe water for First Nations communities. Although these increases cannot be supported or verified, what has not been mentioned is that this "increase" only applies to those homes connected to piped systems. Any non-piped systems or individual wells, even if installed and/or commissioned by INAC, are considered the sole responsibility of the land owner. As the Commissioner of the Environment and Sustainable Development iterated in her 2005 report: "*Although access to drinking water has improved, the design, construction, operation, and maintenance of many water systems is still deficient.*"^{xx} But these realities do not appear within INAC performance reviews.

Annual inspections of water systems are not comprehensive enough to identify problems. There is no information released to the public regarding whether water systems meet guidelines or how much money has been spent in each community. A new regulatory system must improve operational standards so that they address the specific challenges facing First Nations communities.

Implementation gaps

Providers are not meeting the current guidelines and are not being aggressively reported. There is significant anecdotal evidence from water operators who had never heard of some of the regulations that they are meant to uphold. For example, HC's yearly testing of a more extensive set of parameters is commonly not shared with the water plant operator or indeed with INAC. SDWF pressure to get HC to share this information with operators and INAC is starting to bear fruit. HC SK provided INAC with more than 7,000 pages of water test data 1.5 years ago and INAC promptly shared that information with the SDWF.

Much of the INAC training program for water operators is dedicated to the day-to-day physical requirement of water facilities such as fixing pumps or maintaining equipment. There is little focus on issues of protecting public health, water quality, water testing procedures, reading the analytical reports or the significant health risks associated with unsafe drinking water.

An internal review by INAC and HC^{xxi} in 2007 showed that less than half of First Nations communities monitored their water every week as they are required. Given that water quality monitoring rules are already not enough to protect consumers, this poses an increased threat to public health. There needs to be enough resources given to First Nations so that water providers are able to do their job and protect public health.

The same internal evaluation found that HC did not test almost half of the communities' treated water for trihalomethanes (THMs) every three months and 23 percent were not tested for various other chemical contaminants every year. INAC also did not annually inspect all water treatment systems according to their own organizational policies.

*Implementation gaps by numbers**

- Only 43 percent of First Nations providers tested the water weekly
- Only 37 percent of First Nations water operators were certified
- Health Canada only tested 77 percent of water system for chemicals annually
- Health Canada only control water quality properly in approximately 45 percent of communities

*Figures taken from the Summative Evaluation of the First Nations Water Management Strategy Project 06/13 December 2007

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Lack of safe drinking water for First Nations communities has many causes including operational standards that are not being met. Even where standards and practices are followed, they are often not comprehensive enough to ensure safe drinking water.

Solutions

The regulatory system for First Nations drinking water needs to change the basic elements of the current regime. While the specific rules will have to be worked out over time and in consultations with First Nations, any effective solution must have three basic elements: a capable and independent national regulator, enforceable national standards, and adequate resources to fulfill all requirements.

An Independent National Regulator

Any new drinking water system should be upheld by creating a national independent regulator who sets standards and monitors performance, staffed by First Nations members with appropriate qualifications. In the current system, government agencies set the standards, help people meet those standards, and then check to make sure those standards are met. This creates a conflict of interest where the government has an interest in not reporting unsafe water as often or as aggressively as they should.

The Expert Panel^{xxii} proposed to set up a First Nations Water Commission that would serve this purpose. It is crucial that this Commission be staffed by First Nations, have enough resources and expertise to do its job properly and to be financially independent from the government agencies involved in drinking water.

Enforceable National Regulations

Current Canadian Drinking Water Quality Guidelines could significantly improve the state of First Nations water quality if they were legally enforceable and rigidly followed. There is a distinct need for such regulation as well as a punitive framework to be put in place to ensure that all contributors to First Nations water quality are responsible for their actions and accountable for their failures. Current practices leave little to no recourse for communities which have received substandard services.

The introduction of licensing systems with regards to construction and functioning of facilities could be introduced to ensure that engineers and other associated professionals are accountable for the successful functioning of their product. Establishing a national certification standard that includes considerations for testing methodology, public health concerns, and preventative measures with regards to water safety would enable water operators themselves to take part in safeguarding their community. Currently, training programs primarily focus on the physical maintenance of water facilities, such as fixing pumps and changing equipment, and do not incorporate these issues. Enforceable standards of inspection and testing could ensure the timely monitoring of all First Nations drinking water. Combining these standards of inspection with effective water treatment processes would significantly decrease the incidence of contamination and minimize health risks to the community. Strict and enforceable regulations for government agencies could also provide incentives for such agencies to increase the quality and quantity of their services while alleviating them from constant internal monitoring. Making these standards mandatory instead of elective would act as a first step toward bringing First Nations water quality to where it should be and act as a necessary **precursor** to successful First Nations water quality management.

Increased Commitment

Finally, we need a specific, time-bound commitment to properly estimate the cost of bringing effective systems to compliance with the standards and to decide how to provide those resources. First Nations currently lack the funding to provide safe drinking water and they also lack the decision making power to ensure that funds are well spent and to oversee developments.

Although improved operational standards will help the current situation, communities like Six Nations have said that the main problem is the lack of funding for treatment plants and proper maintenance. As Six Nations Director Dayle Bomberry said, if regulations are imposed “*without proper funding, all First Nations will be worse off than they are now.*”

The Atlantic Policy Congress of First Nation Chiefs echoed similar concerns in their response to the Expert Panel’s report “*Do not put the cart before the horse in implementing a regulatory regime [since] that would leave First Nations communities in a bad or worse position.*”^{xxiii} This assurance of continued financial support was also a major focus of the

2007 Senate Report^{xxiv} conclusions “Sustained investment in the capacity of First Nations community water systems, and of those running the systems, is absolutely essential to ensure First Nations people on-reserve enjoy safe drinking water. Without this investment, we risk introducing a regulatory regime that burdens communities and does little to help them meet legislated standards.”

With this in mind, however, based on past records, there is no indication that simply putting more money into a broken system will improve the situation. Indeed, a primary finding of all of these reports found that an absence of an effective regulatory framework is also an issue. It is SDWF’s position that this cannot be an “either/or” situation – adequate funding and effective regulations must go hand in hand if the drinking water situation in First Nations communities is to be resolved.

Recommendations

Due to lack of data, there is not a clear picture of the current state of First Nations water treatment or an estimate of the resources needed to fix the situation. It is clear that First Nations require significantly more resources (financial and informational) than they have received to date.

Safe Drinking Water Foundation’s Recommendations for a New Regulatory System
<ol style="list-style-type: none">1. The regulatory regime should invoke national regulations, enforceable by law, that meet or exceed the current Canadian Drinking Water Quality Guidelines.2. An independent regulator must be created which is financially independent from the agencies it regulates, has sufficient technical expertise, and represents the best interests of all First Nations. It must also have the capacity to monitor the provision of adequate funding for water treatment plants.3. The regulator must report publicly, have a transparent decision-making process and have the power to legally uphold all federal departments as well as First Nations communities.4. Any regulatory regime should be implemented with a commitment to address all pre-conditions. This commitment must be specific, time-bound and arbitrated by the future Water Commission.5. Regardless of the regulatory regime chosen, key performance indicators must be changed to better measure access to safe drinking water and redirect its funding targets accordingly.6. Any new regulations must be phased-in as pre-conditions are fulfilled, while protecting First Nations from liability until all First Nation community water treatment processes have been proved to be capable of meeting all parameters of the regulations.7. The new regulations must allow for a shift towards a framework for self-

government.

Source: Safe Drinking Water Foundation (2008) *First Nations Drinking Water Options Paper*.

How to Get There

Based on the options proposed by the Expert Panel^{xxv} in 2006, the government will hold a series of consultations to discuss the legislation and regulations that will make up the new regulatory system in Fall 2008 and Spring 2009. At present, this will be the only opportunity open to First Nations to state clearly how they want drinking water to be regulated in their own communities.

Given the state of First Nations drinking water, reform is a complex and challenging issue. As described above, there is no comprehensive data on the number of First Nations communities that lack access to safe drinking water. It is also not known whether current water systems meet water quality standards.

When proposing options for regulatory reform, the Expert Panel^{xxvi} specifically emphasized the need to meet certain conditions before introducing a new system. While recognizing that First Nations would benefit from better rules, the Panel also recommended that government address the significant resource gaps in communities threatened by unsafe drinking water before establishing new systems and practices.

While a comprehensive assessment is planned after the consultations, it is clear that these conditions have effectively remained unmet. Accordingly, it is crucial for the new system to be introduced gradually and with a government commitment to provide the resources to address unsafe water in the short-term.

Although the consultations remain an important opportunity to move forward, the proposed conditions also make it challenging to have real and substantial consultations as no official information about the format of the consultations or the government's position have been released.

First Nations communities are entitled to an effective water treatment system that can ensure that their drinking water is safe. It is important that these consultations move forward, but they are only initial steps in a comprehensive process that must involve First Nations from start to finish.

ⁱ Federal-Provincial Subcommittee on Drinking Water of the Federal-Provincial *Guidelines for Canadian Drinking Water Quality Sixth Edition* Prepared by the Committee on Environmental and Occupational Health Published by authority of the Minister of Health Copyright 1996

ⁱⁱ INAC, *Report of the Expert Panel on Safe Drinking Water on Reserve, Volume 1*, November 2006, Website accessed Aug 12th 2008 at: http://www.eps-sdw.gc.ca/index_e.asp.

ⁱⁱⁱ INAC and HC, *Summative Evaluation of the First Nations Water Management Strategy* Project 06/13 December 2007 Accessed August 4th 2008 on the INAC website at: http://www.ainc-inac.gc.ca/ckcctr_lcgxlr_vdudex_lgtpy2:lgtpy2:/gpi0ur

^{iv} INAC, *National Assessment of Water and Wastewater Systems in First Nations Communities Summary Report*, Ottawa, February 2003. Accessed on Cwi wuv 24pf 2033 on t he INAC website at: http://www.ainc/inac.gc.ca/gptly_vlr_vduly_cwy_ly_cwy/gpi0ur

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- ^v INAC and HC, *Summative Evaluation of the First Nations Water Management Strategy* Project 06/13 December 2007 Accessed August 44th on the INAC website at: http://www.ainc-inac.gc.ca/ckctr_lcxlr_wdulx_lghpy_2:lgpy_2:/gpi_0ur
- ^{vi} INAC, *Uwo o cixkg'Gxcrcwkp'qhl'j g'Hk'iw'Pc'vqpuY cvgt'Ocpci go gpv'U'rcvgi { : Roles and Responsibility*, December 2003. Accessed on August 42nd, 2008 on INAC website at: http://www.ainc-inac.gc.ca/ai/arp/aev/pubs/ev/efnw08/efnw08-eng.asp#sub1_2
- ^{vii} Office of the Auditor General. *Report of the Commissioner of the Environment and Sustainable Development*. 2005 Ottawa. Website accessed July, 30 2008. <http://www.oag-bvg.gc.ca/internet/docs/c20050905ce.pdf>
- ^{viii} INAC, *Plan of Action for Drinking Water in First Nations Communities Progress Report* December 7, 2006. Accessed on August 22nd 2008 on the INAC website at: <http://www.ainc-inac.gc.ca/enr/wtr/pubs/prpf/pad06/pad06-eng.asp>
- ^{ix} INAC, *Report of the Expert Panel on Safe Drinking Water on Reserve, Volume 1*, November 2006, Website accessed August 12th 2008 at: http://www.eps-sdw.gc.ca/index_e.asp.
- ^x INAC, *Report of the Expert Panel on Safe Drinking Water on Reserve, Volume 1*, November 2006, Website accessed August 12th 2008 at: http://www.eps-sdw.gc.ca/index_e.asp.
- ^{xi} INAC, *Report of the Expert Panel on Safe Drinking Water on Reserve, Volume 1*, November 2006, Website accessed August 12th 2008 at: http://www.eps-sdw.gc.ca/index_e.asp.
- ^{xii} INAC, *Report of the Expert Panel on Safe Drinking Water on Reserve, Volume 1*, November 2006, Website accessed August 12th 2008 at: http://www.eps-sdw.gc.ca/index_e.asp.
- ^{xiii} The Standing Senate Committee on Aboriginal Peoples, *Safe Drinking Water For First Nations Final Report* May 2007 Website accessed August 12th 2008 at: <http://www.parl.gc.ca/39/1/parlbus/commbus/senate/com-e/abor-e/rep-e/rep08jun07-e.htm>
- ^{xiv} Testifying before the Senate Standing Committee on Aboriginal Peoples on May 2, 2007, Ms. Cram stated "Because the legislative approach that we expect to be following is one of adopting provincial regulatory regimes, then they will be potentially different province by province. We would need to work with the systems in each of the provinces to bring them up to the appropriate level... As I described, the preferred approach is that of adopting provincial regulations by reference."
- ^{xv} The Standing Senate Committee on Aboriginal Peoples, *Safe Drinking Water For First Nations Final Report* May 2007 p. 6 Website accessed August 12th 2008 at: <http://www.parl.gc.ca/39/1/parlbus/commbus/senate/com-e/abor-e/rep-e/rep08jun07-e.htm>
- ^{xvi} Federal-Provincial Subcommittee on Drinking Water of the Federal-Provincial *Guidelines for Canadian Drinking Water Quality Sixth Edition* Prepared by the Committee on Environmental and Occupational Health Published by authority of the Minister of Health Copyright 1996
- ^{xvii} INAC, *Plan of Action for Drinking Water in First Nations Communities Progress Report* December 7, 2006. Accessed on August 22nd 2011 on the INAC website at: <http://www.ainc-inac.gc.ca/enr/wtr/pubs/prpf/pad06/pad06-eng.asp>
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