



ENGAGEMENT SESSION ON THE DEVELOPMENT OF
A PROPOSED FEDERAL LEGISLATIVE FRAMEWORK FOR
DRINKING WATER AND WASTEWATER IN
FIRST NATION COMMUNITIES

SUMMARY REPORT – ALBERTA REGION

**Prepared by Laura Mitchell and John Graham
Institute On Governance
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For further information, please contact:

John Graham or Laura Edgar
Institute On Governance
122 Clarence Street
Ottawa, Ontario, Canada K1N 5P6
tel: 1 (613) 562-0090
fax: 1 (613) 562-0097
info@iog.ca

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Location: Edmonton, Alberta

Date: Thursday March 10, 2009

Opening Prayer & Introduction:

Denise Verrault opened the session by welcoming all of the participants and inviting Elder Tony Alexis, from Alexis Nakota Sioux Nation, to give the opening prayer.

Elder Tony Alexis began by speaking about his father, on whose behalf he was attending the session. He then spoke about the nature and meaning of water and offered a song to open the session. Water is like a spirit; for Native people it is something that is very sacred. It is called upon as a helper and a worker, in guidance by the creator. First Nation communities maintain those water customs today.

Elder Alexis spoke about the water at all of the tables in the room, and the tobacco that was being blessed during the opening ceremony. He asked all of the people present at the session to take some tobacco, look on it in a sacred way, and take it home to their communities. The tobacco will bring prayers and healing to the communities and help guide the minds and the spirits of First Nations people.

According to the Elder, some research suggests that clean drinking water may be gone in 50 years. If that statement is accurate, it is something that should be shared with the youth, the warriors. He spoke about the honour he felt to be among Chiefs and Elders and the visitors from INAC. He prayed that participants could come together in one mind, one spirit and one heart.

Following the opening prayer all federal and provincial government representatives were asked to leave the room, along with the two facilitators from the Institute On Governance (IOG) to allow First Nations participants an opportunity to have their own internal session.

Opening Remarks:

After a short recess, government representatives and the IOG facilitators were invited to return to the room. Denise Verrault invited Grand Chief Weaselhead to the podium to offer opening remarks.

Grand Chief Weaselhead began by reminding participants they were allowed to voice their concerns at any time throughout the session. He offered thanks and acknowledged

the Elder who had provided the opening prayer and the drumming, and the First Nations communities, Chiefs, council and technicians who had taken time to attend the session as well as the representatives from INAC.

Engagement sessions have been occurring over the last 2 years between First Nations and the government. Water, source water and headwaters have been part of the ongoing discussion for First Nation communities. Chiefs get their mandate from the communities they serve. For Chiefs, these discussions are not a matter of policy, they are discussions undertaken with the mandate of their people. First Nation people have been struggling with consultation for a long time. In Alberta, communities have rejected consultation outright. The people here have been struggling with securing meaningful consultation and it is not happening again. Consultation cannot occur unless it begins with equal input.

The Grand Chief then spoke about his concerns regarding the amount of time set aside for consultation. Consultation is not the responsibility of technicians, it the responsibility of leaders. There are tribes in Alberta that have expressed concerns but who are not represented here today and have told other First Nation leaders present that they cannot speak on their behalf. These sessions do not represent consultation or engagement from the perspective of First Nations people. Further, Grand Chief Weaselhead took issue with the budget set aside for these consultations.

He stated that INAC did not properly initiate the process; there is a legal obligation to consult that is not being addressed. INAC has already decided the type of legislation that will be used in this process. The mandate of the Chiefs, who are meant to represent their people, is being undermined by the government's move to institute a piece of legislation without adequate involvement of or consultation with First Nations people.

Grand Chief Weaselhead stated that he was prepared to enter into good faith bargaining and consultation. Water is an issue that must be addressed as it will affect everyone in Alberta. However, any change that may impact First Nation people or their traditional territories is something that must be discussed in good faith; legislation without consultation will not work. First Nation communities in Alberta will be adamant about not pursuing legislation of this nature.

For many years the government has failed miserably in taking care of First Nations people. The Grand Chief asked participants to reflect on the statistics; First Nation people are institutionalized; First Nations children are achieving the lowest education level; and First Nation people have the poorest health in Canada. First Nation people must be involved in making decisions that will affect them, because they know best the options to take.

The Grand Chief then asked that all First Nation people speak and that INAC listen. Water is not a matter of policy for First Nations people; legislation for safe drinking water is a matter of a treaty right. First Nation people will uphold the treaties. Treaty 7 peoples will not endorse this legislation; Treaty 7 can only endorse movement that is meaningful. He then thanked participants for listening.

Denise Verrault thanked Grand Chief Weaselhead and invited Chief Rose Laboucan to provide comments.

Chief Rose Laboucan opened by asking people in the room why it was full of mostly men? She noted that women, not men, were the real protectors of water. She thanked the Elder for his opening and then read from a document, the recorded testimony of the wife of a Chief. This woman had testified about the conditions in her community, about the lack of food for children and the subsequent illness that hunger brought. The woman spoke about the death of children in the community and the affect those deaths had on residents. The document was written in 1881 but is still relevant today.

When Chief Laboucan finished reading the passage, she reminded the participants that Driftpile had been under boil water advisories on and off for a 10 year period. She spoke about the negative repercussions that boiling water had on the community, and how many in the community were still not convinced that the water was safe, once the problem had been rectified. During the time of the boil water warnings, the people of Driftpile asked the government for help, and it seemed as if no one cared. Now, the government seems intent on developing legislation.

Chief Laboucan acknowledged the presence of her technician at the session, a very dedicated employee who would not have a pension after his years of service unlike the civil servants in the room. When talking about water legislation, INAC should be prepared to look after water issues, including issues that arise from seasonal flooding. If the department wants power and control over these things, they should ensure water issues are appropriately addressed and that legislation covers all water issues. This also means the department must ensure there is funding available in communities to deal with these issues.

This legislation, according to the Chief, is part of an attempt by the government to implement the Governance Act piece by piece, something she objected strongly to. She spoke about her time lobbying against the Act, mostly with other women. First Nation people can listen and be consulted, they should not be treated as children or as wards of Canada. Consultation must be undertaken in a meaningful way; it is not a term that should be thrown around lightly. Chief Labourcan questioned the process of engagement and stated that First Nation people were not being engaged. She stated that the process was not meaningful but was in fact degrading. As a Chief she wants to have meaningful engagement with her colleagues at INAC. What the government is doing with these engagement sessions is wrong. The government is being dishonest by not calling this process consultation. If the government does not undertake this process seriously and meaningfully, there will be much more than a group of women lobbying on the steps of Ottawa.

Chief Laboucan referred again to the excerpt she had read earlier, written in 1881, and noted that it was no different than her own cry when she was elected as Chief. She asked if in the hundred plus years since that statement had been recorded, had anything

changed? The current government needs to prepare a plan along with its First Nations colleagues so that consultation can occur properly

Chief Laboucan warned all of the participants to be careful to whom Canada offloads its responsibilities regarding First Nations. Water is important but more important is the reality that First Nation people are not children, they are leaders of this country. Chief Laboucan questioned the intent of the federal government, wondering if the government would still pursue legislation after all of the sessions were concluded and whether anything said at them would make a difference. She requested an immediate meeting with the Honourable Minister Strahl, as well as a meeting with the Prime Minister to allow him to hear first hand what the dilemmas are.

Chief Laboucan then reiterated her belief that the legislation was part of an attempt to implement the First Nations Governance Act. She spoke about the need to use media as a tool to help get information out to people and to help Canadians hear all sides of the story. She concluded by speaking about her hope that this engagement could lead to real, meaningful consultation. Chief Laboucan then thanked everyone for listening.

Denise thanked Chief Laboucan for her comments and invited Clayton Leonard, legal counsel for Treaty 6, 7 and 8 Grand Chiefs, to speak.

Mr. Clayton Leonard began his presentation by indicating that he had instructions from the Grand Chiefs to make the following points:

- The scope of these sessions is too narrow and does not involve rights-based issues. The Crown, which includes both the federal and provincial governments, is not willing to discuss treaty rights. While the federal government asserts that regulating drinking water does not affect Aboriginal or Treaty rights; the First Nations of Alberta disagree. Drinking water engages the treaty right to water both on and off reserve. Further, First Nations have an inherent right to govern drinking water matters on reserve. Section 81(l) of the Indian act also implies that first Nations have a right to govern water on reserve.
- According to case law, the Crown must address actual and claimed rights in any consultation process. By refusing to do so, the Crown can not assert that these sessions are part of a consultation process. The Crown must fully consult when actual or claimed rights are involved and must accommodate to minimize the impact on these rights before any action is taken.
- The Honour of the Crown must infuse the consultation process and this process doesn't meet this test because it appears that the Minister has already made up his mind. He has indicated that he has a preferred option and so he is not willing to fully consult First Nations.
- A one day session is simply not good enough to deal with all of our issues. For example, First Nations in Alberta have significant concerns about incorporation by reference of provincial regulations and this brings into play the difficult relationship they have with the Province. This issue could be avoided by pursuing other options.

- In sum, the federal government must radically alter this process so as to meet its legal obligations to First Nations.

Mr. Leonard concluded by stating that Alberta First Nations have indicated a persistent and genuine willingness to work with Canada as equal partners to address the issue of clean drinking water on reserves.

Following the statements made by Mr. Leonard, Andrew Bear Robe, the Executive Manager for Siksika Nation, made a statement. He had been asked to do so by Chief and Council of Siksika Nation.

Mr. Bear Robe began by describing his Nation. Siksika Nation is the second largest Indian reserve in Canada, with a population close to 7000 people. The affairs of the Nation are affected by a municipal government and the provincial government. Chief and Council of Siksika wish to categorically reject this process, as it is not consultation. A single day is not enough time for adequate consultation. All parties need to go back to the drawing board and come up with a more credible forum for dealing with this issue. INAC must realize that they are, on behalf of the Crown, a treaty partner.

Political leaders seem to suffer from ignorance of Aboriginal and treaty law, or they fail to recognize Aboriginal treaty rights. The MP for the constituency that includes the Siksika Nation came to the territory in a bid for re-election and he stated that he did not know anything about the treaties. This is an example of the problems with Harper government and all other governments; they ignore or are ignorant of those treaties. The original nation to nation relationship needs to be re-established.

Cases like “Campbell v BC Attorney General” have helped to define the purpose of Section 35 (1) of the Charter. Section 35 provides a framework to establish the prior rights of Aboriginal people, and ensure they are reconciled with the Crown. There are existing rights which have not been reconciled. Some rights have been reconciled through the treaties. The Crown must continue to respect the rule of law as stated by the Canadian courts. The proposed legislation is continuing the path of the ‘municipalization’ of First Nation governments.

Mr. Bear Robe spoke about the town of Strathmore releasing sewage into Bow River. As the trustee for First Nations people, where was INAC when this happened? The treaty right to water is real; despite this the province claims ownership of all water in the province: surface and underground. First Nations have a dispute with the province. First Nation people believe that when reserves were created and surveyed, water was included. Treaties were meant to make First Nation people farmers and ranchers, one of the essential requirements for that is water.

Mr. Bear Robe stated his belief that the sessions and subsequent discussions were redundant. He spoke about communications with the AFN, where the AFN representative spoke about the decision in Ottawa to go forward with the sessions without the support of the AFN. The government has to respect the First Nations political structures; the AFN

represents communities across Canada. The relationship must be mutually respectful and the proposed legislation must be beneficial to First Nation people.

First Nation people cannot agree to provincial jurisdiction. First Nations in Alberta have not sat down with the province, other than in the context of the ECRB, an Alberta government regulatory body. The communities do not have the resources necessary to undertake such discussion; they are underfunded by the trustee. To participate in such discussions the money must be taken out of community source revenues, which could be used more effectively in ways other than trying to stave off federal actions that are not in the best interests of First Nation communities.

Following remarks from Mr. Bear Robe, John Graham, a facilitator from the IOG, was invited to open the next session. He thanked everyone for their remarks. He introduced himself and the Institute, an independent, not for profit organization with charitable status hired by INAC to help by facilitating these sessions. For a session agenda, see Appendix 2.¹ John briefly introduced the objectives of the day's session.

Session Objectives

- To discuss with First Nations and regional First Nation organizations a proposed federal legislative framework for drinking water and wastewater in First Nation communities
- To better understand the possible impacts of developing federal regulations that are comparable to provincial or territorial regulatory regimes but are adapted to meet the needs of First Nation communities.
- To discuss and compare compliance options

John continued by asking all of the participants to introduce themselves and the community they are from. For a list of participants see Appendix 1.

Following the participant introductions, John turned the floor over to Karl Carisse, INAC, who delivered a presentation.

Karl Carisse, INAC, began his presentation by discussing some of the feedback given by participants at other sessions, particularly about the importance of water in First Nations communities. He thanked the Chiefs and everyone attending the sessions, recognizing that it is not always easy to attend such sessions, given the numerous demands on their time.

¹ The attached is the proposed agenda for the day. However, the agenda was for the most part not followed. The session lasted only a half day. The first half of the session featured presentations from First Nation representatives followed by a presentation from Karl Carisse interspersed with questions and comments from participants.

INAC is present at the sessions to listen, record and bring that information back to the Minister. The role of INAC representatives at these sessions is to help clarify questions around the proposed legislation so that everyone has a good understanding of what is being proposed. The days of going forward with policy drafted in back rooms are over. Drafting legislation and regulations with community consultation makes the process more difficult but the government wants to work in partnership. The respect is there on the part of representatives from INAC here today and the government as a whole.

Karl next described the overall process, purpose and objectives for the Engagement Sessions, including the need for a 'made in Alberta' solution that addresses its particular needs and issues. In terms of context, the provision of safe drinking water and the effective treatment of wastewater are critical to ensuring the health and safety of First Nations and the protection of source water on First Nation land. A legislative framework for water and wastewater in First Nation communities will help provide the same level of protection for water in First Nation communities as enjoyed by other Canadian communities. The sessions are being held to discuss the proposed legislative framework, the reports of which will be provided to the Minister. There is also the opportunity to provide submissions to the Minister directly by April 17, 2009.

Karl next described some previous non-legislative water initiatives and protocols, as well as some relevant studies. Non-legislative water initiatives have included the First Nations Water Management Strategy (2003), the Plan of Action for Drinking Water on Reserve (2008) and the First Nations Water and Wastewater Action Plan (2008). Current non-legislative protocols and guidelines include the *Protocol for Safe Drinking Water for First Nations Communities* and Health Canada's *Guidelines for Canadian Drinking Water Quality*.

In terms of studies, the Report of the Commissioner of the Environment and Sustainable Development (Office of the Auditor General, 2005) observed that First Nations drinking water regimes were operating under a 'regulatory gap' and that funding arrangements and administrative guidelines lacked important elements of a safe water management regime. The report recommended the development and implementation of a regulatory regime for drinking water on First Nation reserves comparable to those of provinces.

Next, the Expert Panel on Safe Drinking Water for First Nations (2006) was established to examine options for a regulatory framework. The process included a series of public hearings across Canada and the Panel received written submissions from First Nations and other stakeholders. The Panel determined that there were three viable options for the establishment of a regulatory framework: (1) Parliament could enact a new statute referencing existing provincial regulatory regimes; (2) Parliament could enact uniform federal standards and requirements; or, (3) First Nations could develop a basis of customary law that could then be enacted in a new federal statute.

Finally, the Senate Report on Safe Drinking Water for First Nations (2007) recommended (1) a national assessment of water systems on reserve; and, (2) that Indian and Northern

Affairs Canada undertake a comprehensive consultation process with First Nations regarding legislative options.

Karl next spoke to the need for a legislative framework. Currently there is no legislation governing drinking water in First Nations communities. While the *Protocol for Safe Drinking Water for First Nation Communities* sets out clear standards for the design, operation and maintenance of drinking water systems, there is no legislative base to ensure compliance. In terms of wastewater, Environment Canada has been consulting on a framework for new wastewater effluent regulations under the existing authority of the *Fisheries Act*. However, these regulations would not deal with important aspects of wastewater treatment such as the design and commissioning of plants or the certification of operators.

Karl then offered a brief overview of the process so far; in the spring and summer of 2008 INAC and Health Canada officials met with regional First Nation organizations, and provincial and territorial organizations to share information. Following the positive feedback and participation at these meetings, engagement sessions with all First Nations, regional First Nation Organizations and provincial/territorial officials were scheduled for winter of 2009.

The presentation highlighted the purpose of these sessions. First, the sessions are to provide First Nations with an opportunity to discuss and provide comments on the federal government's proposed option of reproducing provincial/territorial regulations and adapting them, as required, to meet the needs of First Nations communities. This does not mean that jurisdiction would rest with the province. Rather, the idea is to draw and base legislation and regulations for First Nations on laws and regulations that currently exist in provinces and territories, adapted to meet the First Nations context.

Second, the sessions will allow the Minister of Indian Affairs and Northern Development and the Federal Interlocutor for Métis and non-status Indians to receive input from First Nations, regional First Nation organizations and provincial/territorial officials on how best to address the regulatory gap. In addition, Regional Impact Analyses are being undertaken concurrently. These impact analyses will examine the implications of basing federal regulations on existing provincial/territorial regulations, suitably adapted for First Nation communities. Karl noted that the proposed legislation will be 'enabling' legislation; it will not have much detail, but will give authority to move forward with the development of regulations. Later, with regulations, there will be a lot more detail. Further engagement will be required at that time.

Participants in the Engagement Sessions will receive a report on their water engagement session, a wrap up report of all of the engagement sessions, the impact analysis developed for their region and a wrap up report of all of the impact analyses.

The presentation concluded with an outline of the proposed legislative and regulatory process. Karl reiterated the need to further engage with First Nation communities on the development of regulations, assuming that legislation is developed and passed by

Parliament. The Engagement sessions will deal with access to safe drinking water, which is different from the Aboriginal and/or Treaty Rights to water. INAC recognizes that claims to Aboriginal and/or treaty rights to water may need to be addressed at a later date in a different forum.

Throughout the presentation, participants posed questions and made comments followed by points of clarification from INAC officials.

Comments from participants:

General Comments

- As a point of clarification, one participant asked if the Government of Canada was taking the position that Aboriginal people have the right to manage their own water resources.
- The provincial, First Nations and federal governments have to sit down together and talk. That should be the starting point, before the Minister is even involved.
- One participant wondered why the legislation and regulations were being addressed at this time. Is it only now because of the status of the health of First Nations peoples? Or is it because of the influence of industry? What is the government doing to restrict the tar sands?
- Assessing quality of water and a proper wastewater process does not require a regulated regime. It may be more appropriate to develop a regulatory framework devoted to improving health and safety.

Transparency of Process and Process in General

- Another participant questioned the honesty of comments made by department representatives, specifically statements made about how the department is working for Aboriginal communities. This approach is too narrow, and focuses only on the water on reserve and the issues on reserve, without taking into account that water that is coming in and going out of these lands. This is why there is the fight against the ECRB, an Alberta regulatory agency.
- Building on the comments of the previous participant, another participant also questioned the truth of the department's statements. To say that the federal government does not have a plan in place is a lie. The Privy Council talked about this issue years ago; there are plans in place. The participant asked that, as a representative of the government, that Karl be clear about his position.
- A participant raised issue with the way discussions were being conducted. The participant felt that it was inappropriate and disrespectful that a technician (the federal representative) was coming to these sessions to speak to the political leadership in First Nation communities.
- The Chiefs have rejected the previous frameworks proposed by the province. The federal government is now proposing to take something that is not working (the provincial regulations) and adapt them to become a federal guideline. Further,

provincial boundaries do not apply to First Nation communities. First Nation communities are not Alberta bound: their traditional territories spread across Canada. Once these provincial regulations are adapted communities will be in the same predicament as is the case with resource development that is happening in Alberta.

Provincial Jurisdiction, Standards and Regulations

- Adapting provincial regulations to be used in First Nation communities might suggest that those communities agree with or accept provincial jurisdiction. Currently, the provincial position claims to own all of the water in Alberta; First Nations peoples do not agree.
- Upgrading or using standards that are available in the provinces may not be good enough. There have been frequent water issues in the provinces.
- One participant expressed concerns about the capacity and competency of the Ministries (Health Canada, Environment Canada, INAC) as well as the province to regulate water.
- The department is looking for First Nations to sign off their rights to the federal government so the federal government can incorporate provincial laws. First Nation communities can use provincial laws as a model, but to incorporate them on reserve would give them the same force and effect. First Nation people have their own traditional laws; they know how to take care of the water, culture and traditions. This ability was recognized in the treaties. Incorporating provincial regulations means incorporating a failing system.

Treaty Rights

- The Minister needs to know that the government must honour the treaties; the treaties require a working relationship between the federal government and First Nations and for the federal government to be a partner with First Nation communities. The traditional lands hold as much value for First Nations peoples as do the reserve lands set aside; that needs to be communicated back to the minister too.
- Terms like “cede and surrender” are not in the vocabulary of First Nation people. This government needs to understand that. The land is life for First Nations peoples; the water is the provider of that life. Engagement does not make sense when there are so many other things to worry about in communities. First Nations leadership invited the Minister to engagement sessions on education and he never came. If the department is giving this message about water to a man who does not want to sit with First Nations communities, what impacts will department officials have?
- The department has said that these sessions are not the forum to talk about the treaties and treaty rights. However, when the Crown signed those treaties it

- became a treaty member as well. The treaties represent the rights of First Nation people and First Nation people have a right to talk about what affects them.
- “Incorporation by reference” is a way to water down the treaty, as was done with education and health. The government is attempting to tell First Nation people what to do on reserve. First Nation reserve lands are slowly being turned into municipalities, slowly being assimilated. The government says that these sessions are not about treaty issues. Treaties are the life of First Nation people and these decisions will affect their lives.
 - There was a letter distributed at the session, which suggests that water licensing falls outside of federal legislation and will not be the subject of these sessions. Those licenses affect the source water. The department appears to be proposing regulations it does not have the authority to enforce.

Engagement and Consultation

- One participant argued that if the department respected the AFN, they would not use the term engagement but would rather use the phrase “duty to consult”. The session today is not engagement or consultation. The word engagement is another way to remove the court ordered duty to consult. This is an underhanded way of saying that the department does not have to follow its own rules. First Nation people are aware of the intent of these back door strategy sessions.
- Further, the participant argued that there is not the proper infrastructure in the communities to meet these regulations.
- Meaningful consultation has to be a two way dialogue. Federal representative said they were here to listen but First Nation people also want to know what the department has to say. The conversation has to be two ways.
- If consultation is to be explored as part of a new water regime, the governance structure to address water and waste water utilization must address crucial questions regarding financing, operation, control and ownership.
- In any institutional framework like this that will become a piece of legislation, participants have to consider all of the federal actors and their mandates: Environment Canada has CEPA, Health Canada is responsible for the federal/provincial/territorial committee on drinking water, Natural Resources Canada and the Department of Fisheries and Oceans work to protect water quality and Agriculture Canada is also involved. All of these players, at some point in time, have to engage with First Nations if legislation and regulation are going to happen.
- This is really an approach of cooperative federalism as well as the cooperation of all levels of government. No government or community will have the option to defer involvement or responsibility. At some point, everything that has been said

will have to be put on the table. If First Nation communities pursue this path to legislation and regulation, their treaty rights have to be the guiding path.

- This form of consultation is inadequate. Communities do not have the resources to start or finish projects.

Funding

- The department is trying to regulate before providing the necessary infrastructure. In the participant's community there is a new water plant but not the adequate O&M resources to run it.

Role of Water

- First Nations believe that water is a sacred resource. In modern society people have lost the reverence for water's sacred place in the circle of life as well as centrality of water in the sacred ways. People have come to believe that humanity and not nature is at the centre of the universe; that humanity can import what it runs out of. People have forgotten that they are a species that needs water for life. The treaties were negotiated in this spirit of intent, "as long as the river flows". If corporations are allowed to control water in First Nation communities, the federal government will be trading away First Nation health and safety as well as local employment. As far as First Nation people are concerned the treaty right to water and knowledge about water have to be given a prominent role in these discussions. There has to be community control over local water resources. There has to be a declaration that water resources are a public trust and should be accessible to all, to prevent water apartheid. No one owns water; it belongs to the earth and all of the species in it. It is a resource needed for life and eco-system health. Water is a sovereign good and cannot be taken from one country or community by force or economic dominance. Serious consideration needs to be given to water for historical, archaeological, cultural and religious sites. If the department wants to talk about engagement it has to be on First Nation's terms.
- Participants must understand how much water is needed to survive and what factors will engage that supply or increase the demand for fresh water here and in other parts of the world. The participant quoted the Stockholm International Water Institute (SIWI) which argues that on average each person needs a minimum of 1000 cubic meters of water per year, 2/5 of the volume of an Olympic pool, for drinking, hygiene and growing food for sustenance.
- One participant asked a question about how the legislation would propose to protect source water. Currently, First Nations land is being destroyed by industry; industry has access to water for the tar sands, a water intensive process. The water being used is not protected. Most First Nation communities are by a water source and it is important that any legislation or regulations that they look to protect source water.

Points of Clarification from Officials

General Comments

- The legislation will be enabling legislation that would give the government the authority to move forward with regulations that deal with source water, wastewater and drinking water in First Nation communities. It is the legislation that we are here to discuss today. The government is trying to move forward in each province to find solutions that are suitable in each community. If the consensus here at the session is that a national approach to legislation and regulation is the preferred option that is the message the department will take back.
- The question today is whether there is a need for regulations. When there are issues with the province in First Nation communities it would be nice to have a voice with which to address the province with federal support. Regulations can help protect drinking water and may help First Nations in their relationships with provincial bodies.
- In the past few years significant investments in water have been made; within the department it has been one of the top investments for years. Regulations are happening now because of situations like Walkerton. The push for regulations has come from the expert panel, the Office of the Auditor General (OAG) and the Senate. If the decision is to go forward with this proposal, the government cannot create regulations alone. The department will need to engage with First Nations to develop regulations that work for individuals and for communities.

Transparency of Process

- The expert panel, the OAG and the Senate have all stated that there is a regulatory gap. It was the Chiefs and technicians that first approached the Senate about that gap.
- The federal official noted that he has worked with communities in other roles before taking on his current one and he is being truthful about the process undertaken at these sessions.
- To help clarify some of the comments made, the federal official referred to his presentation, which offered a contextual overview of the history of this process, including some of the non-legislative initiatives that have been proposed.

Provincial Jurisdiction

- The suggested approach is not to impose or implement provincial regulations. The proposed option is to examine provincial regulations and adapt them to address the needs of First Nations communities. If that approach does not work, the department will report that back to the Minister. The provincial regulations already exist; they can be used as a base. In developing regulations for First

Nations communities, regulations in the provincial system that do not work for First Nation communities can be removed or new regulations can be added. This process will be undertaken in partnership.

- Allocation and licensing is a provincial issue. The department has invited the provinces to these sessions. The Chiefs present today have asked the department not to discuss these issues because of legal issues between First Nation communities in Alberta and the province of Alberta.

Engagement and Consultation

- The terminology used for the process was developed in partnership with the AFN. These sessions are engagement as part of a consultation process. The department has tried to keep the AFN involved, but has also heard from communities who feel that the AFN does not represent them.
- Should participants choose to go forward, this is only the first session. What has been discussed at the session needs to be documented. This is an opportunity for First Nations peoples to put all of their concerns on the table and to work with the Technical Services Advisory Group (TSAG) so that the concerns are reflected in the impact analysis. INAC has deliberately stepped back in this process because the information has to come from First Nations communities. A summary will be made of all of the impact analyses and that information will be given to the Minister.

Funding

- The issue of funding has come up. As an example, following an engineering assessment of water plants across the county several years ago, the department was able to get an additional \$600 million in funding. There is another engineering assessment underway currently. All of the departments are vying for dollars; an assessment is necessary to make the case to Cabinet that funding should be increased. The contract for the assessment is an Aboriginal set aside. The contractor will go to communities and talk to technicians and any leadership that is willing to participate in discussions. Whatever happens with the regulations, the department will go forward with the engineering assessment. The department is aware that money will be needed for infrastructure, for compliance and for regulations.
- There is a regulatory gap regarding drinking water and wastewater treatment on reserves. Before that gap can be addressed the government has to pass a law stating that Cabinet has the authority to adopt regulations. With that law in place, the department would come back to the community for further discussions on how to develop regulations. The department is aware that there would be legal costs at that point to ensure First Nation peoples can be at the table as partners. The law will allow for that conversation to go forward. When the draft law is developed departmental officials will recommend that the AFN be given the opportunity to

examine the draft and ensure that it reflects what has been discussed at these sessions. It will be up to Ministers, however, as to whether this will occur.

Source Water

- Currently, source water protection is incomplete in the provinces, undertaken in a piecemeal fashion. If legislation goes forward, there may be an opportunity for Chiefs and communities to sit on water boards and have a voice.

Session Closing

Chief Rose Laboucan spoke about the desire of First Nations people, specifically the Chiefs, to engage with the Minister. She reflected that the *Indian Act* states that First Nation people can regulate water on reserve and meetings should be held with the Minister to consult on this option.

Chief Laboucan, on behalf of herself and the other Chiefs present, closed the meeting stating that it was not consultation.

Karl Carisse thanked all of the participants for attending.

Appendix 1: List of Participants

Name	Community/Organization
Bryce Starlight	Tsuu T'ina
Andrew Bear Robe	Siksika Nation
Shane Beston	O'Chiese FN
Henry O. Tetteh-Wayoe	Yellowhead Tribal Council
Colin Springchief	Siksika Nation
Vivienne Beisel	ACFN
Peter Freeman	Drift Pile FN
Gordon Potts	Alexis Nakota Sioux Nation
Earl Laboucan	Whitefish Lake FN # 459
Gerald Whitford	BLCN
Tonya Crowchild	T7FNCA
Nicole Robertson	Muskwa Productions
Sonny Nest	Cold Lake FN
Mike Sharpe	ATC
Leonard StandingontheRoad	MFN
Wanda Baptiste	Maskwacis Cree
Cecil Janvier	Cold Lake FN
Lorne Bulldog	Beaver FN
Tracey Mclean	Sturgeon Lake
Francis Goodswimmer	Western Cree Tribal Council
Harvey Roasting	Louis Bull Tribe
Irving Leblanc	AFN
Gerald Davis	Swan River
Robert Strawberry	O'Chiese
Tony Steinhauer	Saddle Lake
Lara Oelw	Saddle Lake
Lorraine Makokis	Enoch Cree Nation
Lorraine Hoffman	Athabasca Chipewyan FN
Sheldon Sunshine	Sturgeon Lake Cree Nation
Joyce Arcand	Saddle Lake
Rusty Threefingers	Louis Bull Tribe
Norm Kootenay	Alexander FN
Joseph Jobin	Treaty 8 FN
Dennis Callihoo	Yellowhead TC
Bruce Arcand	TCVI
Roy Dell	Cold Lake FN
Bruce Potts	Alexis Band
Chief Alphonse Lameman	Beaver Lake
Chief Darren Whitford	O'Chiese
Wyatt Arcand	Alexander FN
Hank Snow	Stoney Morley

Beatrice Carpenter	O'Chiese FN
Henry Alexis	Alexis Nakota Sioux Nation
Lee Crowchild	Tsuu T'ina
Ann M. Wildcat	Ermineskin Cree Nation
Ben W Hoskeppoh	Saddle Creek
Laurie Buffalo	Maskwacis Cree
Lisa Beaubre	O'Chiese FN
Chris Morin	Enoch
Chief James Jackson Jr	Whitefish Lake
Vernon Watchmaker	Confederacy of Treaty 6
Holly Johnson	Samson
Chief Rose Laboucan	Driftpile First Nation
Elder Tony Alexis	Alexis Nakota Sioux Nation
Denise Verreault	TSAG
Clayton Leonard	MLT
Ralph Schroth	AB Environment
Karina Andrus	AB Environment
Patricia Mercredi	INAC – AB
Rick MacKay	INAC – AB
Keith R. Mercredi	INAC – AB
Karl Carisse	INAC – HQ
David Smith	INAC – HQ
Sue Burgess	INAC – HQ
Cristina Ruiu	EC
Simon Sihota	FNIHB – AB
Sunil Beeharry	FNIHB - AB
Chris Kelly	FNIHB – AB
Ivy Chan	FNHB – HQ
Jamie Lafontaine	FNIHB – HQ
John Graham	IOG
Laura Mitchell	IOG

Appendix 2: Agenda

AGENDA

ENGAGEMENT SESSIONS ON THE DEVELOPMENT OF A PROPOSED FEDERAL LEGISLATIVE FRAMEWORK FOR DRINKING WATER AND WASTEWATER IN FIRST NATION COMMUNITIES

Session Objectives

- To discuss with First Nations and regional First Nation organizations a proposed federal legislative framework for drinking water and wastewater in First Nation communities.
- To better understand the possible impacts of basing federal regulations on provincial/territorial regulations, suitably modified to meet the needs of First Nation communities.
- To discuss and compare compliance options.

8:00 – 9:00	Registration & Continental Breakfast
9:00 – 9:15	Opening Prayer & Introductions <ul style="list-style-type: none">▪ meeting objectives & agenda - facilitator
9:15 – 10:15	Opening Remarks & Context <ul style="list-style-type: none">▪ Regional First Nation representative▪ Karl Carisse, INAC
10:15 – 10:30	<i>Health Break</i>
10:30 – 12:00	Session #1: Proposed Federal Legislation <ul style="list-style-type: none">▪ small group discussions & plenary
12:00 – 1:00	<i>Lunch</i>
1:00 – 2:30	Session #2: Basing Federal Regulations on Provincial/Territorial Regulations <ul style="list-style-type: none">▪ small group discussions & plenary
2:30 – 2:45	<i>Health Break</i>
2:45 – 4:15	Session #3: Compliance Options <ul style="list-style-type: none">▪ presentation & plenary
4:15 – 4:30	Conclusions, Next Steps & Closing Prayer

PRINCIPAL QUESTIONS FOR EACH SESSION

Session #1:

Proposed Federal Legislation

Will a regulatory regime for drinking water and wastewater, developed through federal legislation, improve the health and safety of First Nation residents and better protect the environment? If not, what is your preferred solution?

Are the elements in the Discussion Paper, as proposed by the Expert Panel, the appropriate ones to include in federal legislation?

Session #2:

Basing Federal Regulations on Provincial/Territorial Regulations, with modifications to meet the needs of First Nation communities

Assuming a transition period of several years, what are the pros and cons of basing federal regulations on provincial regulations, suitably modified, to meet the needs of First Nation communities?

How should federal regulations be developed so that provincial regulations are suitably modified and the capacity needs of First Nations met?

Session #3:

Compliance Options

What are the principal compliance options under federal legislation and what is your preferred approach (the Discussion Paper outlines several possible options)?