



FIRST NATIONS RESERVE DRINKING WATER ISSUES IN CANADA: A GOVERNANCE PRIMER

- As of November 30th, 2014, there were 135 Drinking Water Advisories in effect in 91 First Nations communities across Canada, excluding British Columbia (Health Canada, 2014).
- As of December 31st, 2014, there were 35 Drinking Water Advisories (30 Boil Water Advisories, 5 Do Not Consume advisories) in effect in 31 First Nation communities in British Columbia. This includes water systems with 5 or more connections and smaller water systems that have public facilities (First Nations Health Authority, 2014).
- Between 2006 and 2014, the federal government invested approximately \$3 billion in water and wastewater infrastructure and related public health activities to support First Nation communities in managing their water and wastewater systems (Aboriginal Affairs and Northern Development Canada [AANDC], 2014).
- There are multiple different governance actors involved in drinking water provision on reserves. The actors and their responsibilities are as follows (AANDC, 2012):
 - **First Nations governments:**
 - Own, manage, monitor, and operate water and wastewater systems.
 - Responsible for 20% of drinking water and wastewater facility operation and maintenance costs (Simeone & Troniak, 2012).
 - Issue drinking water advisories (typically with the recommendation of Health Canada).
 - Design and construct facilities.
 - **Aboriginal Affairs and Northern Development Canada:**
 - Provides funding and advice regarding design, construction, operation, and maintenance of water and wastewater facilities.
 - Responsible for 80% of drinking water and wastewater facility operation and maintenance costs (Simeone & Troniak, 2012).
 - Provides funding for training First Nations staff.
 - Sets standards.
 - Reviews designs in collaboration with Health Canada and Environment Canada.
 - **Health Canada:**
 - Ensures monitoring programs for drinking water quality are in place in First Nations communities south of 60° (excluding BC, as the First Nations Health Authority now tracks drinking water advisories in BC).
 - Provides public health advice on-reserve and funds and trains Community-Based Water Quality Monitors.
 - Verifies monitoring of the overall quality of drinking water at tap.

- **First Nations Health Authority:**
 - In British Columbia, the First Nations Health Authority has assumed Health Canada's role in reserve drinking water safety and monitoring, as described in previous point.
- **Environment Canada**
 - Regulates treatment of wastewater discharged to receiving waters.
 - Provides advice and guidance on source water protection and sustainable water use.
- **Municipal Governments**
 - In some instances, reserve drinking water systems are connected to municipal drinking water systems through service agreements.
- This water governance arrangement generally remains in place in the modern treaty and self-government agreements that have been signed between some First Nations and the federal and provincial governments in BC. Federal and provincial laws over water still apply and in all cases, ownership of water remains vested with the province and federal governments (Simms, 2014).
- Key governance concerns regarding First Nations' drinking water include:
 - **Fragmentation:** There is jurisdictional overlap and ambiguity in the respective roles and responsibilities of AANDC, Health Canada and First Nations in drinking water provision on reserves. This has been identified as one of the key reasons why chronic drinking water problems persist on reserves across the country (Boyd, 2011; Office of the Auditor General, 2005; Phare, 2009; Swain, Louttit, & Hrudey, 2006)
 - **Source water protection:** While surface and groundwater sources on reserve are impacted by off-reserve land and water use activities such as agriculture and mining, the ability for First Nations to exercise their jurisdiction outside of reserve boundaries has been limited (Swain et al., 2006; Phare, 2009). Federal attempts at source water protection for drinking water on reserve as recently stipulated in Bill S-8, *the Safe Drinking Water for First Nations Act* (see below), apply only to water sources within reserve boundaries (Simeone & Troniak, 2012). Approaching source water protection at this limited within-reserve scale does not account for the fact that off-reserve activities influence reserve water quality (Simms, 2014).
 - **Capacity & funding:** Many First Nations, particularly small and remote communities, face financial, technical and human resources capacity deficits for service provision as a consequence of historical and ongoing colonialism (Baird & Plummer, 2013; Graham & Fortier, 2006; MacIntosh, 2008; Swain et al., 2006). As the Expert Panel on Safe Drinking Water related in 2006: "The federal government has never provided enough funding to First Nations to ensure that the quantity and quality of their water systems was comparable to that of off-reserve communities" (22).
 - **First Nations' jurisdiction and authority:** First Nations have not been adequately consulted and involved in decision-making around drinking water legislation and regulation. Decisions about source water protection and planning for off-reserve activities that impact reserve water quality are often made at the municipal or provincial level without meaningful First Nations involvement (MacIntosh, 2008; Phare, 2009).

- **A broader governance perspective is needed:** As McGregor (2012) notes, a focus on drinking water without considering water governance from a more inclusive perspective is narrow and technocratic: “When one considers water, therefore, one must consider all that to which water is connected and related. Elders [from across Ontario] felt current government initiatives around water to be limited and short-sighted. When one considers water, one must consider all that water supports and all that supports water. Therefore, a focus on just drinking water is misguided. It is not in keeping with traditional principles of holism and the interdependence of all living things” (11).
- **Situating within historical and ongoing colonialism:** There is an identified need to consider the socio-cultural implications of current drinking water issues within the larger framework of historical and ongoing colonialism in Canada: “The legacy of colonial relations, attempted forced assimilation, and ongoing paternalistic relations, codified through the Indian Act, have created a situation where simple investments in water infrastructure and/or better regulations will not solve the problem” (White, Murphy, & Spence, 2012, p. 19).
- In November 2013, the federal government passed a regulatory regime for drinking water on reserves: *Bill S-8, the Safe Drinking Water for First Nations Act*. Until this legislation came into effect, there were no enforceable binding standards in place for on-reserve drinking water quality (AANDC, 2014).
- Under Bill S-8, drinking water and wastewater regulations will be developed on a region-by-region basis and may incorporate provincial standards. This was the least favoured regulatory regime according to the Expert Panel on Safe Drinking Water for First Nations in 2006 (Simeone & Troniak, 2012; Swain et al., 2006).
- Three principal concerns with Bill S-8 have been identified:
 - The Bill offers weak protection of Aboriginal and treaty rights¹: non-abrogation of existing Aboriginal and treaty rights is subject to a clause which states that such rights can be overridden “to the extent necessary to ensure the safety of drinking water on First Nation lands” (Assembly of First Nations, 2012; Canadian Environmental Law Association, 2012).
 - Regulation without resourcing: Bill-8 does not have any funding attached to it; the legislation transfers substantial new costs and responsibilities to First Nations without a corresponding transfer of resources that builds communities’ capacity to assume operation and management responsibilities (Assembly of First Nations, 2012; Canadian Environmental Law Association, 2012).
 - The legislation lacks significant action on source water protection (Assembly of First Nations, 2012; Canadian Environmental Law Association, 2012).
- Legal action is now being taken to address reserve drinking water issues: in June 2014, the Tsuu T’ina, Ermineskin, Sucker Creek and Blood First Nations in Alberta filed a lawsuit against the federal government for its “systemic conduct that has created, contributed to and sustained unsafe drinking water on First Nations’ reserves.”

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¹ Aboriginal rights are collective rights which flow from Aboriginal peoples’ continued use and occupation of certain areas. They are inherent rights which Aboriginal peoples have practiced and enjoyed since before European contact (First Nations Studies Program 2009). Those First Nations that signed treaties have specific rights called treaty rights, “which, in addition to activities such as hunting and fishing, and depending on the terms of the treaty, can include things such as health care and education” (Kotaska, 2013, p. 30).

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