



# **Renewing the Canada Water Act**

*Canadian Coalition for Healthy Waters' Policy Position on Renewing the Canada  
Water Act*

March 2022

*The Canadian Coalition for Healthy Waters is a non-Indigenous led coalition. Any statement or policy position coming from the Coalition, including this one, does not speak for Indigenous Peoples.*

## About the Canadian Coalition for Healthy Waters

The [Canadian Coalition for Healthy Waters](#) (CCHW) is a non-partisan coalition of organizations advocating for federal government leadership and policy to support the health of fresh water—including all inland waters—across Canada. Collectively, the members of the Canadian Coalition for Healthy Waters have hundreds of thousands of supporters from different walks of life, from coast to coast to coast.

This policy position was created thanks to the efforts of many organizations and individuals. It draws heavily on the policy analysis work conducted—both currently and in the past—by the [Forum for Leadership on Water](#) (FLOW).

The Canadian Coalition for Healthy Waters is guided by a Steering Committee of the larger CCHW membership and is chaired by [Our Living Waters](#). We would be pleased to speak to this policy position in more detail. Inquiries can be directed to Andrew Stegemann, the Director of Our Living Waters, acting as the Chair of the Canadian Coalition for Healthy Waters ([andrew@ourlivingwaters.ca](mailto:andrew@ourlivingwaters.ca)).

### CCHW Steering Committee:



## Key Priorities for Renewing the Canada Water Act

Canada is facing new and intensifying water challenges that must be meaningfully addressed to ensure that all waters in Canada are healthy, sustainable, and resilient to climate change for future generations. The federal government has a key leadership role to play in addressing these challenges, and comprehensive renewal of the Canada Water Act is one of the most important steps the government can take, a step that is included in the Minister of Environment and Climate Change's Mandate Letter and should be prioritized. The Act is Canada's primary federal freshwater legislation, yet it has not been modernized since it was passed in 1970 and has not been funded to effectively implement its provisions since the early 1990s.

*To ensure that the renewed Canada Water Act is consent-based and rooted in nation-to-nation relationships, we propose a co-drafting process with Indigenous Nations to modernize the Act, with this policy position to be used as input into that process.*

Water security is a global challenge. Canada has an opportunity to be a leader in this space by safeguarding our own waters, working with our American neighbour to ensure effective transboundary management, ensuring that our primary federal freshwater legislation supports reconciliation, managing land use at the watershed scale, and by sharing our water expertise and innovations to other parts of the world. We cannot fulfill this role without a robust and modern legislative framework.

This brief identifies 13 key priorities for renewing the Canada Water Act that are categorized into three focus areas: governance, scope, and water management. Addressing these priorities will help bring the Act into the 21<sup>st</sup> century and ensure that it reflects our freshwater reality now and into the future. These priorities are a starting point for a renewal process that should be led by the federal government in collaboration with provincial territorial governments, and co-drafted with Indigenous Nations.

### 1. GOVERNANCE

#### *Indigenous Water Rights and Jurisdiction*

- Develop the Act through a **legislative co-drafting process with Indigenous Nations** that is consent-based and rooted in nation-to-nation relationships. In a co-drafting process, Indigenous peoples and the government are co-authors of the proposed legislation, but the subsequent parliamentary legislative process remains unchanged (i.e., once the government introduces the Bill into the House).
- Mandate compliance with the **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)**.

- Mainstream **Indigenous governments’ participation** in water and watershed governance mechanisms throughout the Act, including equal participation in intergovernmental committees and intergovernmental agreements.
- Establish the ability of the federal government to develop water and watershed **co-governance agreements with Indigenous governing bodies**. This provision will allow Canada to negotiate and address water and watershed co-governance with Indigenous governing bodies without litigation over water rights.

### *Cooperative Federalism*

- Work with other orders of government to create and implement a **dispute resolution mechanism** for water-related conflict, such as interjurisdictional water disputes and failing to implement agreements and plans.
- Create an **intergovernmental collaborative committee** comprised of federal, provincial, territorial, and Indigenous government representatives to support a flexible approach that recognizes the difference in regional governance cultures and political realities.

### *River Basin Approach*

- **Add river basins as a fourth category of waters** throughout the Act (i.e., beyond the current scope of the Act, which is limited to “federal”, “transboundary” or “international” waters). This includes:
  - Enabling the development of river basin agreements with willing partners that set out mandatory standards for cumulative effects in a river basin that has designated waters. These agreements should be *required* when in the national interest.
  - Establishing river basin plans and boards with a priority on major river basins and consistent with a nested watershed governance approach.
  - Setting and enforcing standards for cumulative effects on river basin health.
- Immediately **designate the following river basin waters** and designate the requirement for river basin agreements to be in place according to specific timelines (these agreements would be legislated and form a Schedule to the Act):
  - Mackenzie River Basin (master agreement already in place, needs legislation).
  - Lake Winnipeg River Basin Agreement.
  - Columbia River Basin Agreement.

## 2. SCOPE

### *New Capacity*

- Legislate the new **Canada Water Agency** and define its mandate, responsibilities, and accountabilities. This includes assigning the Agency all federal freshwater responsibilities not specifically assigned to a Minister, as well as defining the Agency's role regarding inter-ministerial coordination.
- Legislate **Canada's Chief Water Sustainability Officer** and define their mandate, responsibilities, and accountabilities.

### *Broader Application*

- Broaden the scope of the Act beyond water quality to focus on **water sustainability** and on proactive measures that ensure resilience and long-term prevention, protection, and restoration. This includes moving beyond pollution to a more general “causing negative impacts” and including broader definitions of water quality and quantity (especially drought and floods), flow (particularly environmental flow needs), ecosystem health, and human health and wellbeing.
- **Broaden the applicability of the Act** by replacing “urgent national concern” with “national concern” and removing the limitation that restricts the applicability of some sections only to waters where there is a “significant national interest”.

### *Public Trust Doctrine*

- Clearly state the requirement to uphold a **duty of care (“public trust”)** to act in the best interests of present and future generations in making water decisions that affect federal, transboundary, or international waters (the existing federal scope) and that might impact the ecological integrity of river basins (the new scope). This public trust commitment should be rooted in consideration of long-term impacts and a duty to work with people and communities.

### *Justice, Equity, Diversity and Inclusion*

- Existing power structures consciously and unconsciously influence water management and result in water-related inequities and vulnerabilities that impact people differently in terms of water availability, water quality, access to clean drinking water, water-related disasters, and many other water related issues. To ensure no further marginalization of people within equity-deserving groups and to support justice, equity, diversity and inclusion efforts, mandate **gender-based analysis plus (GBA+)** in all policy and programming design and in evidence-based recommendations, as well

as social and health vulnerability assessments based on intersecting identities and vulnerabilities.

### 3. WATER MANAGEMENT

#### *Climate Change Resilience and Adaptation*

- Enable the creation of **harmonized policies to address climate change resilience and public safety needs**, including:
  - Integrated drought and flood risk management through a Canadian Centre for Water Forecasting and Prediction that is responsible for forecasting flood, drought, and water quality, maintaining updated flood risk maps, as well as water-earth systems predictions related to climate change.
  - Policies that integrate climate resilience and risk mitigation into all federal water programs, including infrastructure investments, disaster planning, insurance programs, agriculture and industrial commitments, and military and national security assessments.
  - Enabling provisions to allow the Canada Water Agency to work with provinces, territories, municipalities, Indigenous governments, and watershed organizations to develop climate change risk reduction and resilience measures and enhance protection from disasters.
  - Integrated surface water and groundwater management.
  - Integrated river basin planning, acknowledging that land use needs to be managed at watershed scales to achieve water sustainability.
- Ensure **consistency with federal climate commitments** and the Pan-Canadian Framework on Clean Growth and Climate Change.

#### *Research and Monitoring*

- Expand the list of cooperative research and monitoring relationships with the Minister to include **Indigenous jurisdictions**.
- Mandate the **incorporation of Indigenous knowledge and science**.
- Add **water research subventions and joint government-university research centres** as tools for advancing water research and data collection.
- Expand research beyond traditional physical/chemical areas to include **future socio-economic and socio-cultural needs, as well as health considerations**. For example, economic instruments, resource pricing, water rights marketing, etc.

- Establish a **formal link between water research (via the Canada Water Agency) and Infrastructure Canada** with respect to technology transfer and linking freshwater and economic development objectives.
- Establish **formal links and data sharing agreements with Statistics Canada and the Public Health Agency of Canada** to undertake joint research programs.
- Expand **scope of monitoring** to specifically mention water quantity, water quality, aquatic biodiversity needs, surface water, groundwater, snow and ice, water withdrawals and consumptive use, effluent, etc.
- Mandate the Canada Water Agency with **establishing and operating national repositories** of water data and information.
- Enable the Minister to support **community-based water monitoring** through assisting with the standardization of protocols, guidelines, training, equipment, etc.

#### *Transboundary Water Management*

- **Integrate the International River Improvements Act** into the Canada Water Act, particularly regarding the licensing of works on transboundary waters which may impact the U.S. and provisions pertaining to potential water export.
- **Clarify federal authority and responsibility** in governing unauthorized fill or other obstructions in boundary waters.

#### *Flood Management*

- **Acknowledge and address the new context**, in which Public Safety Canada, Natural Resources Canada, Environment and Climate Change Canada, and others have been working closely with provinces, territories, Indigenous governments, and the Insurance Bureau of Canada on comprehensive initiatives which would see private insurance playing a more important role over time.
- **Formalize a public-private insurance arrangement** in law and establish the basis for regulating insurance industry activity.
- Enable the Minister to **establish and operate a national flood forecasting and warning program** on a river basin level that would be supportive of local programs through improved science and models, encouraging best practices, data transfer, informing decisions on flood-prone developments, etc.

#### *International Water Security*

- Mandate the Canada Water Agency with **coordinating Canadian contributions** to meeting water-related international sustainable development goals and targets.
- Expand efforts to **identify and analyze water-related threats to Canadian interests**, and actively pursue solutions including legal agreements, conflict resolution institutions, and innovative water management.

### *Soil and Water Conservation*

- Enable the Canada Water Agency to enter into agreements with other orders of government to **assist the agricultural sector** with adapting to climate-impacted water supply.
- Rebuild and modernize some of the capacity that was lost when the former **Prairie Farm Rehabilitation Administration** was disbanded.