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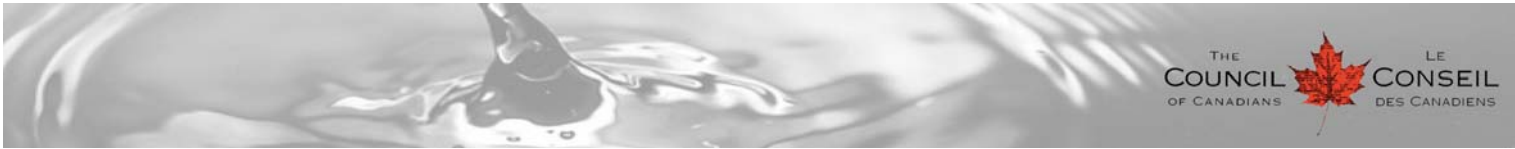
Expert Panel on Safe Drinking Water for First Nations

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The Council of Canadians is Canada's largest citizen advocacy organization and promotes progressive policies on fair trade, clean water, safe food, public health care, and other issues of social and economic concern to Canadians.

The Council of Canadians believes that water is a precondition for all life, a basic human right and an indigenous right. The global water crisis and inequitable access to water has meant that worldwide 1.1 billion people do not have access to clean drinking water.

In Canada, contamination and inadequate water and sanitation services in First Nations communities are a real and present threat to human health and the environment. There are currently 80 First Nations communities under a boil-water advisory and 21 communities are deemed at most risk.

Maintaining public ownership and control of water resources is an important priority for the Council of Canadians. A key component of our national water campaign is to advocate for a national water policy that ensures sovereign control over our water resources and preserves water as a public trust. Water provision and treatment are essential services and public ownership, operation and control of water and wastewater systems is critical for citizen health and safety.

The Council of Canadians is deeply concerned with the implications a new regulatory regime will have on communities facing crucial water issues. Investment in water services by the federal government has been inadequate and the funding model that is required to meet infrastructure needs in First Nations communities must be sustainable.

Specifically, we are very concerned with the infrastructure investment shortfall and the move toward public-private partnerships (P3s) in water delivery and strongly encourage the Assembly of First Nations, Indian and Northern Affairs Canada and Health Canada to abandon any funding models for water services that include outright privatization or an increased role for the private sector.

SAFE DRINKING WATER FOR FIRST NATIONS

The scope of work for the Safe Drinking Water for First Nations public consultation process included the exploration of a new regulatory regime for water and wastewater services in Canada. It is important to highlight that this process stands to alter the governance structure of water and wastewater utilities, and therefore inherently involves the crucial questions of financing, ownership, control and operation. The question of who should own, manage, operate, and govern water services in First Nation communities is one that should involve robust public consultation and education efforts.

Water infrastructure was included in the package of priorities announced by Minister Jim Prentice in March 2006. This year's budget included \$450 million to increase the supply of safe drinking water and housing on reserves, and improving educational outcomes and socio-economic conditions for Aboriginal women, children and families.

Despite a desperate need for infrastructure, this budget announcement did not come with any new allocated funding for water services, leaving many communities vulnerable to the growing threat of privatization or public-private partnerships (P3s).

Without adequate funding from the federal government, a larger role for the private sector would be created. When private companies take over a public project, the focus shifts away from the public interest and meeting community needs, to ensuring a profit for the companies' shareholders.

In May 2006, Terasen Utilities announced their new subsidiary, First Nations Utility Services. Indian and Northern Affairs Canada (INAC) announced new partnerships designed to provide opportunities for First Nations to build infrastructure and train and certify water workers with support from both INAC and Terasen. Both of these announcements are of concern because they send a strong signal that both the water industry and the federal government are prepared to increase the role the private sector will play in the delivery and treatment of water in First Nations communities.¹

Indian and Northern Affairs Canada has announced the three proposed models of funding for First Nations water and wastewater systems:

1. INAC funding
2. Self-financing
3. Public-private partnerships

Public-private partnerships are projects where the private sector plays a key role in financing, designing, building, operating or even owning facilities or infrastructure that are otherwise designed to be public services. While the forms of P3s vary, they can allow private corporations to plan, finance, build, and operate public facilities – usually at a much higher price than if a local government were to retain control.

THE CASE AGAINST PRIVATE SECTOR INVOLVEMENT

As has been widely documented, increased private sector involvement in municipal water and wastewater systems has failed municipalities. In particular, the increased private sector involvement through Design-Build-Operate, Operation, and other ‘public-private partnership’ models have been a disaster for the delivery and treatment of water primarily because the fundamental incentive line for any private interest is to maximize profit, which shifts the priorities away from the public interest in community health and safety.

1. Quality Decreases. Public utilities and democratically elected governments have a broader mandate to include environmental and social goals whereas the private sectors goals are primarily to maximize profit. The delivery of services by the private sector is, by its very nature, of a lower quality than that of a public utility because expenditure saving measures really mean lower resource investment by the company. This results in lower labour costs through a decreased workforce, compliance with lower environmental and health standards, and less rigorous testing.

2. Cost Increases. Public-private partnerships are also a concern in terms of the introduction of user fees or the pricing of water services. A private interest may apply the full cost recovery model, which would force consumers to bear the cost of the investment, including any profit shortfalls. Clean, safe drinking water is a requirement for all; the provision of water services must be universal, not reliant on the ability to pay. The pricing of water is an inappropriate method of conservation and, ultimately, unfairly impacts the poor.

3. Accountability Decreases. Lost transparency and lack of accountability are crucial issues when considering the private sector’s role in water treatment and delivery. The private sector does not need to comply with Freedom of Information Act mechanisms and are thus less accountable to public scrutiny on its management, accounting, and operations than a fully public utility.

4. Trade Concerns. In a global economy, privatization or partnerships between public and private interest will almost certainly involve the participation of transnational corporations, which enjoy rights and remedies under international trade agreements that have no equivalent in Canadian law. Moreover, because these agreements were established to serve an agenda of privatization and de-regulation, they undermine competing policy objectives including maintaining public ownership of water and public sector provision of water services, as well as the regulatory authority of governments to control water use and polluting activities.

In the North American Free Trade Agreement (NAFTA), the “Investor State” provision of Chapter 11 has the most potential implications for the provision of services in a public private partnership. Chapter 11 gives corporations the right to sue the government of a NAFTA country if legislation interferes with its ability to make profits. When Sun Belt Waters Inc. of California had its licence revoked to ship water in bulk from British Columbia, the corporation countered by suing the Government of Canada for \$10.5 billion.ⁱⁱ

Since NAFTA borrows its list of "goods" from the General Agreement on Tariffs and Trade (GATT), water is also under the rules of the World Trade Organization. Unlike any other global institution, including NAFTA, the WTO has the authority and capacity to challenge laws, policies, and programs of member countries and force them to be changed.

Finally, the General Agreement on Trade in Services (GATS), also under the WTO, covers water as a service and an investment. The GATS negotiations currently underway include environmental services, and will try to force the privatisation of water services and waste management, ostensibly taking water out of the control of communities and putting it in the hands of corporations.

The impacts of NAFTA and the GATS are an additional public sector risk to increased private sector involvement in the water and wastewater services sector. These increased risks were cited in the Greater Vancouver Regional District's decisions against a public-private arrangement for the operation of a new water filtration plant.ⁱⁱⁱ

The tried and true public funding model is more cost effective, more accountable and more transparent than the P3 model. After years of neglect, public infrastructure requires new investment to provide clean, safe water with universal access.

TRENDS IN OTHER CANADIAN COMMUNITIES

As First Nation communities and the Government of Canada explores various funding models, it may be valuable for Indian and Northern Affairs Canada to explore how and why other communities have chosen the public model of water services.

It is important to note that there has been an increased interest in private sector involvement by international bodies, the Canadian government, and several provincial governments. However, many communities across Canada have evaluated private sector involvement, only to choose public models for financing and governing water services. In particular, the following Canadian municipalities recently reviewed private sector involvement and decided against a public-private partnership model:

- Whistler, British Columbia (water treatment plant)
- Fort McMurray, Alberta (waste water plant)
- Edmonton, Alberta (drainage system)
- Winnipeg, Manitoba (water treatment plant)
- Halifax, Nova Scotia (harbour cleanup and sewage treatment)
- Moncton, New Brunswick (20-year water system upgrading program)
- Toronto, Ontario (water and wastewater system)
- Vancouver, British Columbia (water filtration plant)
- Saint John, New Brunswick (water system)
- Kamloops, British Columbia (water system)

CONCLUSION

The United Nations Committee on Economic, Social and Cultural Rights developed General Comment 15 that confirms that the right to water is implicitly contained in the International Covenant on Economic, Social and Cultural Rights. The Council of Canadians believes that recognizing access to water as an essential human right would assist efforts to address a number of other rights including the right to livelihood and addressing urgent social issues such as poverty and public health concerns.

Privatization of water services is a band-aid solution to a larger problem that necessitates long-term investment and upgrading of essential water infrastructure. The Council of Canadians believes that the Government of Canada should recognize water as a human right and as a public trust, and should seek to limit private sector involvement in this essential public service.

The Council of Canadians is committed to the preservation of public sector water and related services. We believe there are several very sound reasons to establish a strong regulatory framework that protects water as public trust and curbs privatization initiatives for water.

The Assembly of First Nations has always argued that self-government is the key to unlocking the potential of First Nations, economically, socially and politically. The AFN argues that greater control by and for First Nations is a necessary precondition for improvement of the appalling living conditions in First Nations communities.

Allowing corporate control of water services in First Nations communities through public-private partnerships would mean the loss of local control of health, accountability, environment, costs and jobs. The solution lies in a funding strategy that encourages local management as well as federal legislation to monitor drinking water quality and safety.

As the Assembly of First Nations, Indian and Northern Affairs Canada and Health Canada move forward with the process of evaluating a regulatory regime to govern decision-making on water services and infrastructure investment for First Nation communities, we strongly encourage the Government of Canada to support this regime with adequate and appropriate funding to maintain water and wastewater services as a public utility and to provide safe drinking water for all communities, regardless of the province, territory or region.

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ⁱ From comments made at the *Safe Water for First Nations: Financing and Developing Infrastructure for Effective Water Treatment*, held in Toronto April 20-21, 2006 and in Vancouver May 11 – 12, 2006

ⁱⁱ Stephen Shrybman, *Water Export Controls and International Trade Obligations, Legal Opinion Commissioned by The Council of Canadians*

ⁱⁱⁱ For more information on these risks, refer to Shrybman's *A Legal Opinion Concerning the Potential Impact of International Trade Disciplines on Proposals to Establish a Public-Private Partnership to Design Build and Operate a Water Filtration Plant in the Seymour Reservoir*.