

Summary Report & Next Steps

BC First Nations Water Governance Roundtable

Smithers, British Columbia (Wet'suwet'en Territories)
June 28th & 29th, 2017



Hosted by:



FIRST NATIONS
FISHERIES COUNCIL



POLIS Project on Ecological Governance
[watersustainabilityproject](http://watersustainabilityproject.org)

This gathering was made possible through the generous support of our partners and supporters, particularly from the BC Freshwater Legacy Initiative, a project on Tides Canada's Shared Platform, and LUSH Cosmetics.



The project team would like to extend a special thank you to Tony Naziel for the wonderful meals and nourishment, and to David de Wit of the Office of the Wet'suwet'en and his staff for sharing some of the beauty of Wet'suwet'en territories, including the magnificent Moricetown Canyon.

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Report prepared by: Natasha Overduin (CIER/POLIS research@polisproject.org), Susi Porter-Bopp (FNFC, Susi@fnfisheriescouncil.ca); and Genevieve Layton-Cartier (FNFC, genevieve@fnfisheriescouncil.ca) in October 2017.

1. Purpose of this Summary Report

The purpose of this summary report is to provide a record of the discussions that occurred as part of the BC First Nations Water Governance Roundtable, held in Smithers, British Columbia in Wet'suwet'en territories on June 28th & 29th, 2017.

This report is intended to:

- ◆ Be a resource that Roundtable participants and other First Nations can use to share discussion highlights with their communities, including staff, and Chief & Councils.
- ◆ Support the momentum of this group by maintaining an accurate record, proposing next steps, and identifying potential areas of focus for future Roundtable discussions.
- ◆ Enable the First Nations Fisheries Council, Centre for Indigenous Environmental Resources, and the POLIS Water Sustainability Project to accurately communicate the needs and opportunities that exist to build the strength of Indigenous-led freshwater governance in British Columbia with other water leaders and funders.

2. Background: Roundtable Purpose and Objectives

The purpose of the 1 ½ -day Roundtable was to convene a targeted group of approximately 15 staff and leadership from “higher water governance capacity” First Nations, in order to provide a space for peer learning and strategic collaboration, with the goal of advancing the collective vision of Indigenous-led freshwater governance in British Columbia.

The Roundtable had 3 specific objectives:

1. Exchange information on First Nations’ issues and challenges related to freshwater planning, management and governance to foster greater transparency and improved understanding.
2. Identify shared priorities to advance First Nations’ collective interests related to fresh water management and governance, based on shared challenges and successes.
3. Identify shared strategies to advance First Nations’ interests related to fresh water, either collectively or by individual First Nations, at the operational/technical or policy/legislative level, or through political or legal means, and at various geographical scales.

Merrell-Ann Phare and Michael Miltenberger (see bios in Appendix 1) co-facilitated the conversation, and also shared lessons learned from their involvement in co-governance processes with Indigenous Nations in the Mackenzie Basin.

The agenda for the Roundtable is included as Appendix 3.

3. Summary: Roundtable Discussion

3.1 Indigenous-Led Water Governance: What's Possible?

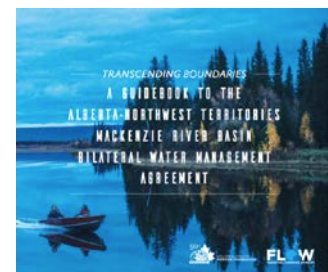
3.1.1 Introduction to Concepts and Definitions

After a brief round of participant introductions, Champagne & Aishihik member and independent consultant Nadia Joe provided an overview of key terms and concepts related to Indigenous water governance and co-governance (See slides in Appendix 4). Highlights from Nadia's session included:

- A number of definitions of co-governance, including “*when two or more self-governing jurisdictions agree to share authority to make and enforce decisions*” (Peigi, 2010). Nadia also highlighted that co-governance is not an exercise in compromise, nor is it a veto. Importantly, co-governance between indigenous and non-indigenous governments is not necessarily a desirable outcome for all First Nations communities, who may instead opt to lead, rather than co-lead, management and/or governance processes in their traditional territories.
- Core co-governance building blocks:
 - Shared authority to create laws, policies for decision-making
 - Shared responsibility to respect laws, governments, lands, people, and knowledge
 - Shared commitment to reconcile overlapping jurisdictions and resolve competing interests through achieving each other's consent.
- Three potential pathways for First Nations to actively engage in water co-governance:
 - **Participate in existing legislative frameworks:** Identify ways to advantageously use existing tools (such as those made available in the BC *Water Sustainability Act*, Environmental Impact Assessments, etc.). This pathway has risks and limitations because most existing colonial frameworks do not recognize Indigenous Rights and knowledge and do not allow for shared decision-making;
 - **Identify/Create Indigenous legislative frameworks,** for example Indigenous water laws. The risks associated with this pathway include that these frameworks are not always recognized by other orders of government and that Nations have limited capacity for compliance and enforcement.
 - **Hybrid: Pursue Pathways 1 & 2 in tandem:** strategies and tactics can occur with a multi-pronged approach, leveraging pressure points in the existing system. High capacity is needed to set up internal processes.

3.1.2 Moving from Co-Management to Co-Governance: Collaborative Experiences from the Mackenzie River Basin

Facilitators Merrell-Ann Phare and Michael Miltenberger explored the need, success factors, and operative details of collaborative consent with Indigenous Peoples, and the broader need for multi-level watershed governance. Using the Mackenzie River Basin (MRB) Agreement and its subsequent bilateral agreements between provinces and territories as an example, Merrell-Ann and Michael made the case for a “nested governance” model for working together for water, and as a “proof of possibility” for meaningful Nation-to-Nation (N2N) decision-making.



Highlights from Merrell-Ann and Michael's session included:

- The Mackenzie's River's northward flow means that the water "picks up all the bad decisions from the south", negotiations were about re-balancing power between upstream and downstream jurisdictions, and Indigenous and non-Indigenous governments.
- Indigenous and non-Indigenous governments worked to achieve each other's consent through "collaborative consent", a long-term process that builds support throughout an interest-based process, and wherein parties earn each other's consent at every stage, from the very beginning.
- Collaboration between Nations was key for co-drafting the MacKenzie River Basin Transboundary Waters Master Agreement. Indigenous governments self-organized to send the right people to this table. The NWT is a complex landscape with overlapping claims, but Indigenous Nations could all agree on water, despite their other differences.
- The current Trudeau government has made historic Nation-to-Nation (N2N) commitments that no Crown government in Canadian history has made previously. As implementation of the Mackenzie Basin Agreement continues, it is up to Nations to determine what N2N looks like to them, and to continue to self-organize.
- Indigenous Nations have a powerful and evolving toolset to drive water governance: UNDRIP, federal government commitments, Tsilhqot'i'n decision, *Water Sustainability Act*, and MacKenzie River Basin Agreements are all part of the arsenal.

3.2 Learning from Each Other's Successes & Strategies

Participants were offered an opportunity to get to know one another through a group discussion of the successes and challenges of freshwater planning and governance initiatives they are currently undertaking in their territories. Participants discussed a broad range of diverse strategies that are being applied in a variety of contexts. Key points from these conversations were recorded and included in Appendix 2.

Roundtable participants are currently undertaking planning and governance activities that can be categorized according to 5 distinct themes:

Activity Area #1: Revitalizing Indigenous Laws & Engaging Community in Water

"One element of revitalizing laws is informing community about our laws – laws are being lost – having knowledge keepers share helps people get pride and understanding back of what their laws say and mean."

"For outsiders, articulation of our laws helps build their understanding, and build relationships. The more people know, the better."

"Building community connection to water – especially our youth – is so important."

- **Fort Nelson First Nation (FNFN)** is just completing a Revitalizing Indigenous Law for Land, Air and Water (RELAW) process with West Coast Environmental Law to develop a legal order based in Dene laws that will inform the FNFN Water Policy. FNFN is also building internal staff and community capacity by strengthening connections to rivers and relatives in the watershed.

- **Lower Similkameen Indian Band (LSIB)** is working within the community to build a stronger bridge between community members and staff/leadership. LSIB is also working with the Indigenous Law Research Unit at the University of Victoria (ILRU) to revitalize natural laws, which will support the community to develop a Memorandum of Understanding based in Indigenous laws, knowledge, and stories for critical habitat in this biodiversity hotspot.
- **Ktunaxa Nation** is beginning a partnership with West Coast Environmental Law on a RELAW project. The A'qam community has a strategic plan and recently worked with members to better reflect the importance of water in that plan. It was also shared that groundwater protection is a top priority for A'qam.
- **Yekooche First Nation** is educating band members and youth on the importance of water, and how to keep streams clear and clean.
- **Secwepemc Fisheries Commission** is developing a governance plan, based on their laws and principles which they have articulated with the support of the Indigenous Laws Research Unit at the University of Victoria.

Activity Area #2: Developing Water Declarations, Policies, Plans and/or Strategies

“Common standards are powerful for helping focus on and articulate the common things we’re trying to achieve.”

“What has held back our [draft water strategy] from being concluded is that we need to spend more time with our community articulating cultural beliefs about water.”

“Traditional knowledge is not housed in one place. It can be hard to access and manage, but it has to inform the work.”

- **Okanagan Nation Alliance (ONA)** is creating 4 sub-watershed management plans, stemming from the Syilx Water Declaration. ONA explored community needs and issues, and worked internally with ONA fisheries staff to collaboratively incorporate technical and scientific information. A new methodology was created that sets out a Syilx process for planning for watersheds and water bodies that captures Indigenous concepts and values.
- **Gitanyow Hereditary Chiefs** is implementing a land-use plan which was solidified through a government-to-government agreement in 2012 (and was recently renewed for another 5 years). The plan includes water and ecosystem protections, including for alpine areas that drain into the riparian. Gitanyow has adopted the plan into Indigenous law, and has used it to engage in major development projects in their territories, including transmission lines and pipelines.
- **Champagne & Aishihik First Nation (CAFN)** is developing a water strategy that will define the Nation’s priorities and provide direction as well as a platform for engaging with other governments.
- **Nadleh Whut’en First Nation** recently developed the Yinka Dene ‘Uza’hné Surface Water Management Policy to guide water management in part of the traditional territories of the Carrier Sekani First Nations. The Yinka Dene ‘Uza’hné will apply to land-use planning, environmental assessment, environmental regulatory frameworks, and natural resource damage assessments. The policy details water management objectives, a water classification system, and water quality standards that together establish the conditions necessary to protect water and its uses.

- **The Office of the Wet'suwet'en** recently developed a water management area for the Upper Moricetown, an area of the watershed that provides critical habitat for five species of salmon. The Wet'suwet'en are also building financial infrastructure to support this work: when provincial funds were pulled for monitoring initiatives, the Nation worked with Bulkley Valley Research Centre to create the Moricetown Monitoring Trust, a charitable trust with an endowment.

Activity Area #3: Collaborations, Partnership Approaches and Agreements

"Our fisheries staff can't do policies and legislation around water alone: we need our political leaders involved."

"We have very positive relationships with regional provincial staff: but these staff may not be able to make or keep promises as they have to seek a mandate from their higher-ups."

"Just do it – let's lead – don't wait for the Province."

- **Carrier Sekani Tribal Council (CSTC)** has a Collaboration Agreement with the Province which was driven by LNG concerns to establish a framework to facilitate reconciliation of Aboriginal and Crown title and rights in the territories through new agreements and structures. The Collaboration Agreement includes provisions to immediately assemble a Collaboration Working Group, which regularly discusses water management and decision-making issues in the territories.
- **Cowichan Watershed Board (CWB)** is a regional co-governance body that is co-chaired by the Chair of the Regional District and the Chief of Cowichan Tribes. The CWB is working on a number of issues in the watershed, including environmental flow needs and engaging the Province in developing stronger protections for fish and Aboriginal Rights.
- **Champagne & Aishihik First Nation (CAFN)** is working through relicensing of a hydroelectric facility that was built without real consultation. CAFN has developed a co-management agreement for the re-licensing, and is working to define and articulate CAFN water rights.
- **Okanagan National Alliance** is creating a Syilx-based communications document that highlights values and concepts for water and its importance. This document is intended to aid non-Syilx community members in recognizing the cultural importance of water, and building partnerships based on shared understanding.
- **Approximately 30 First Nations in the Skeena and Upper Fraser** (including Wet'suwet'en and Saik'uz) are involved in the LNG Environmental Stewardship Initiative (ESI). One of the purposes of the ESI is to collaboratively establish baseline information to better assess cumulative effects and fill data gaps, as well as to develop environmental rehabilitation and restoration projects based on First Nations' priorities.

Activity Area #4: Management & Monitoring

“Success with the provincial government requires being able to describe our own wants and needs. Having our own data helps us make decisions and hold other decision-makers accountable.”

“Technical and operational level engagement isn’t enough. We need higher-level political strategies and agreements.”

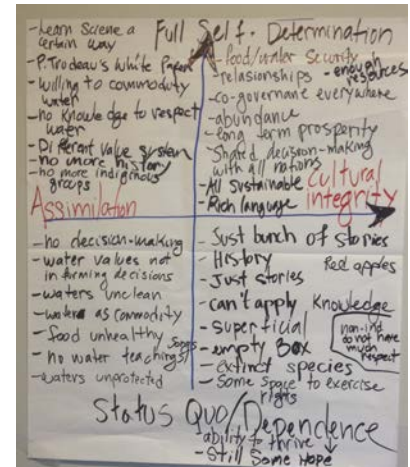
“Monitoring initiatives can help raise capacity of community.”

- **The Office of the Wet’suwet’en** is monitoring water quality and quantity and is leading fish and fish habitat protection/restoration initiatives. They are also exploring the idea of building a water quality objective for the Upper Moricetown water management area.
- **Secwepemc Fisheries Commission (SFC)** is developing an environmental flows protection strategy. SFC is also working with forestry companies to try to ensure that forest stewardship plans align with protections for water and for specific fish species (e.g. steelhead).
- **Yekooche First Nation** is improving understanding of watersheds through a monitoring collaboration with the Upper Fraser Fisheries Conservation Alliance.
- **Lower Similkameen Indian Band** is leading restoration of waterways and agriculture ditches in their territories to restore connectivity for species and build resilience of flood plains.
- **Upper Fraser Fisheries Conservation Alliance** is undertaking restoration in the Nechako system, which involves monitoring of small streams, restoration of fish passages, working to get agreement with the Province to restore a weir in order to improve flows availability for fish, and exploring the feasibility of environmental flow needs management. The goal of this initiative is to fill data gaps, monitor health, and control water to manage environmental flows for fish.
- **Fort Nelson First Nation** is working to fill data gaps and collaborating regionally on data and information through the Mackenzie DataStream project. FNFN is specifically working on a Liard Basin Monitoring Report, and is looking to collaborate with other Nations regardless of territorial boundaries.
- **Ktunaxa Nation** has a Guardian program with two positions currently funded by industry partners, to monitor natural resources in Ktunaxa territory.
- **Gitanyow Hereditary Chiefs** – with climate change and other factors decreasing flows in the Skeena, environmental flows are a serious concern for salmon, other fish, and wildlife. Gitanyow is conducting research on water quality and quantity, gathering baseline data, undertaking restoration to increase availability of habitat for salmon, and exploring the application of tools within the *Water Sustainability Act* to protect flows.

3.3 What Does Indigenous Water Governance Look Like in the Future and How Do We Get There?

Using a “transformative scenario planning” approach, facilitators Merrell-Ann and Michael stewarded a future-looking discussion on Indigenous water governance. This multi-phase approach offers a way for different and opposing groups to work cooperatively and creatively to get “unstuck” and move forward.¹ In South Africa where it was first applied, the scenario process helped polarized groups create common ground and work through the complexity of abolishing apartheid.

The following six themes on the future of Indigenous water governance emerged from the discussion over the course of the scenario planning exercise:



The need for new water governance approaches

- Shared decision-making agreements with the Crown tend to be “watered down”. What is needed is a new model that incorporates what Indigenous Peoples want and is not just tokenism.
- There is work to be done within First Nations to self-select and organize themselves to work with the Crown, on First Nations terms.
- First Nation and Crown governments can agree that not all decisions have to be shared, (“we want to drive the bus – but which parts of the bus do we want to keep?”)

Uncertainties and challenges with co-governance

- Co-governance between indigenous and non-indigenous governments is not necessarily a desirable outcome for all First Nations communities, and several Roundtable participants indicated that they intend to or already are leading, rather than co-leading, management and governance processes in their traditional territories.
- Co-governance requires lots capacity to facilitate, and get First Nations representatives at tables, and both First Nations and the Province have very little capacity.
- There are multiple levels to achieving co-governance: leaders, staff, community, youth.
- There is the question of achieving consensus among First Nations on what co-governance could look like, if this is a desirable outcome: what processes could BC’s 203 First Nations use to self-organize to define this and influence Crown governments?

Learning from the NWT: First Nations self-organizing for success

- In the NWT, each of the 7 communities in the NWT Transboundary Waters Master Agreement process represented a region: Indigenous Nations self-organized through their own processes so that not all 33 communities participated, but only a representative sub-section.
- Building a process is a process in of itself that takes a long time. Participants voiced the need to be able to be flexible and change, and create what is needed along the way. Once you are “in governance”, you are in it for good – governance does not have an end point.
- Co-governance is a purposefully and helpfully ambiguous and flexible term: can be used to suit First Nations’ purposes

¹ For more information about the origins of transformative scenario planning and where it has been used to drive change internationally, see work by Adam Kahane. Available online in podcasts (search “Adam Kahane” on CBC), and see the book excerpt here: https://ssir.org/articles/entry/transformative_scenario_planning_working_together_to_change_the_future

Breaking down barriers and tensions that may exist between Nations that prevent collaboration

- When looking at maps and boundaries, water can help us have clearer conversations between and across Nations.
- Language matters and it is important how we talk to our neighbours about working together. E.g., shared versus overlapping territory. “We don’t have to ask permission to get together – we can just do it.”
- Many participants talked about how they have come to expect the Province to stoke tensions between Nations, and to disrupt collaborations that may challenge the status quo.
- Some participants involved in the Treaty process shared that there is nothing fixed that says it needs to take 20 to 30 years to settle lands. Communities can push for expedited processes so they can “get back to their lives.”

Motivating other parties to “co-govern”

- Province does not want to give power and is often uninformed and ill-informed when it comes to working with First Nations, and has not generally been a good partner in BC’s history. Participants also spoke to the “pendulum swing” of government wanting or not wanting to work with First Nations.
- How do you motivate other parties? By guilt and threat? Or demonstrating by example and showing innovative ways of moving forward, paving the way?
- Local governments can be useful partners (e.g., Cowichan Watershed Board) and community-to-community forums can be a good place for dialogue.

The importance of building strength internally

- A fundamental step before being able to work with others is for the Nation itself to define what is needed for the community to have access to clean waters, wood foods, etc. What are communities’ core values, and do they have the support of members and leadership on where to go with management of water?
- Putting all eggs in one basket for a strategic approach is probably not the best.
- Low capacity Nations might not want to launch into holistic management: but different communities can focus on their own priorities (groundwater, monitoring, etc.) and become experts, and models for others.
- There are costs for individuals working in communities, and things get heaped on people. “Sometimes we become the lightning rod in our own community.”
- More internal capacity is needed to develop facilitation and communications skills for staff to have discussions on water in the community, as external facilitators might not be trusted.
- A co-facilitator approach (i.e., hired facilitator with a community member/leader) can increase the capacity of community and bring in trust.

4. Key Roundtable Highlights

#1: Moving from Management to Governance

Several participants noted that First Nations communities can often remain “stuck” in status quo management systems that are flawed, lack decision-making power, crisis-driven, and unresponsive to their needs, values, and rights. Treaty and other processes with the Crown, such as Environmental Impact Assessments and formal shared decision-making agreements, can often take many years and still fall short, while water and watersheds continue to degrade. Strength and influence lies in

proactively using a variety of strategies and approaches in parallel, and that include provisions for decision-making, in order to align with community values and the Nation's laws.

Some participants noted that the concept of co-governance is “helpfully vague”, as it enables First Nations to determine what co-governance means to them in their regional context, as well as at broader watershed and provincial levels. And while many participants agreed on the necessity of collaborative approaches with other governments, they also emphasized that co-governance needs to be co-designed to meet Nations' specific needs.

As stated several times by participants throughout the Roundtable and throughout this report, co-governance between indigenous and non-indigenous governments is not necessarily a desirable outcome for all First Nations communities, who may instead opt to lead, rather than co-lead, management and/or governance processes in their traditional territories. Some participants noted that co-governance can be considered an interim step to achieving the ultimate goal, which is title and jurisdiction.

#2: Essential Ingredients to “Getting to Governance”

Participants identified four common essentials that are needed to advance indigenous water governance in British Columbia:

1. An essential building block of actualizing co-governance is the urgent need to support the internal capacity of First Nations to engage in freshwater-related planning and governance activities in their territories. Participants returned to this theme throughout the Roundtable discussion, and noted that it is critical to secure support from local leadership and community, in addition to external resources.
2. Watershed governance is grounded in the community (re)connecting with water, land, language, law, including education and land-based activities.
3. The importance of applying a variety of water governance tools strategically to work towards a BIG vision: regardless of what an end goal might be (for example, restoration of a fishery, establishment of water rights or title, or co-governance), there are multiple tools available that can be used simultaneously.
4. Indigenous-led enforcement and monitoring is critical: initiatives including Guardians and watershed monitoring are an important component of governance and can also build community capacity, and provide meaningful land-based employment.

#3: The Need to Work Better Together

Many roundtable participants acknowledged that while many processes and institutions exist for federal, provincial, and territorial governments to collaborate with each other, there remains an entrenched attitude in the Crown that Indigenous Peoples “aren't ready” for governance, and First Nations are often excluded from these high-level decision-making and policy-setting discussions (for example, the ongoing implementation of BC's *Water Sustainability Act*). At the same time, many participants recognized the value of and the need for First Nations in BC to continue to self-organize, collaborate, and determine together paths forward in order to work with the Crown – or not - on their own terms. One participant pointed to the example of the First Nations Health Council which has Nations come together from different starting places but with similar challenges, values, and principles as something worth exploring further.

Participants were enthusiastic about the prospect of continuing to work together in a sustained and focused way through the Roundtable, and emphasized how in addition to providing a forum to share

strategies, it is also a place where Indigenous water leaders can support and reinvigorate each other, and avoid burnout and/or working in isolation, which can be discouraging. In particular, there was strong interest in continuing to explore how the groups can collectively define what freshwater governance – including co-governance - means from a First Nations perspective, identifying and advancing shared priorities, and strategies to ensure Nations are not excluded from operational decision-making and high-level policy-setting discussions with Crown governments.

5. Next Steps

1. Continue building an Indigenous water governance network in BC

The participants in this Roundtable are helping their communities put into practice a range of innovative approaches to stewarding fresh water in their traditional territories. Roundtable participants also share a strong collective interest in pursuing a range of governance and alternative decision-making structures, and expressed a distinct appetite for concrete and sustained opportunities to work together. The First Nations Fisheries Council will work with funding partners to seek support for an ongoing BC First Nations Water Governance Roundtable. This Roundtable would seek to meet the following needs of BC First Nations:

- Provide a **long-term, structured and consistent strategic space** for First Nations to share, collaborate and advance solutions related to freshwater planning and governance initiatives in their territories;
- **Enable coordination** amongst First Nations in order to move away from fragmented voices toward a more cohesive message and vision for Indigenous engagement in freshwater planning and governance;
- Ensure that where there is interest, that First Nations are supported to **participate in and contribute to policies and programs initiated by Crown governments** (for example, BC's *Water Sustainability Act*)
- **If desired by participants, potentially support the development of a functional process and working relationship with the Province** in order to work through freshwater governance issues strategically, and eventually, of a broader range of Tier 2 (e.g. Crown government) partners.

What an ongoing BC First Nations Water Governance Roundtable will **NOT** do:

- **Undermine the jurisdictional integrity of Aboriginal Rights and titleholders.** Instead, the Roundtable will work to enhance the full realization of rights by – at increasingly collective levels – supporting their articulation through technical, administrative, policy and political input and expression;
- **Occupy the space of a governance institution.** Instead, the Roundtable structure will leverage the collective freshwater governance and management capacities that exist within Roundtable participant communities, and consolidate these capacities through collaborative and integrative measures.

Participants identified the following potential topics for future Roundtables:

- Focused scenario planning exercises to approach a collective vision of indigenous water governance for the future. What strategies can help advance the “hundred year” vision of Indigenous-led water governance?
- Lessons learned from other First Nations networks and councils (for example, the First Nations Health Council) that can tie Nations together and provide a platform to work together
- Different governance approaches, decision-making tables, legal orders, processes or regulations, and technical projects to advance goals, rights, and interests in First Nations’ traditional territories
- Foundations for agreement within individual Nations, and between Nations, to get to co-governance
- How can BC’s 203 First Nations self-organize to have a more cohesive and impactful influence on shared water priorities – and what is the process to create that voice and structure
- Effective strategies to motivate other orders of government to collaborate with First Nations

2. Focused support for water governance initiatives

The CIER-POLIS joint program has committed to supporting some Nations in BC who have indicated an interest in additional strategies in leading new approaches for water decision-making. CIER-POLIS will work with partner Nations to organize a workshop that focuses on internal freshwater priority planning, and provide some ongoing follow-up support to help implement actions coming out of the workshop. Together with the participating communities, CIER/POLIS has committed to share lessons learned that emerge from these workshops and initiatives.

3. Facilitation training and support for staff and leadership

Several participants expressed a strong interest in receiving facilitation training in order to host and advance complex conversations about freshwater within their own communities. Often communities can be divided over issues that impact freshwater, such as resource extraction, and it’s critical for staff and leadership to be able to engage their members in discussions concerning decision-making over fresh water. Participants suggested that it would be much more beneficial to build this capacity internally over time through focused training(s), versus hiring a facilitator externally to host these conversations.

4. Sharing case stories and lessons learned

Many participants spoke of the value of being able to learn from others’ successes and challenges. FNFC has committed to developing and sharing six deep case stories from First Nations across BC on a range of experiences applying fresh water planning and governance.

Appendix 1

About the Roundtable Facilitators

The Roundtable benefited from the unique co-facilitation of Merrell-Ann Phare and Michael Miltenberger, who also shared their experiences in operationalizing co-governance in the Northwest Territories.

Merrell-Ann Phare is founding executive director of the Centre for Indigenous Environmental Resources (CIER), as well as a lawyer, author, and the former Chief Negotiator on behalf of the Government of the Northwest Territories in their negotiation of trans-boundary water agreements in the Mackenzie River Basin; and in negotiating Thaidene Nene national and territorial parks.

Michael Miltenberger is the principal of North Raven. His interests are water protection and governance, working collaboratively on environmental protection, renewable energy development, building efficient government, expediting land claims, and strategic planning. He works with Aboriginal and Crown governments, ENGOs, industry and the private sector providing strategic political advice. Prior to his current work, he spent 20 years as MLA in the NWT Legislature, 14 of those years as Minister of the Environment and Natural Resources, Minister of Finance, Minister of Health and Social Services and the Minister Responsible for the Northwest Territories Power Corporation.

Appendix 2

AGENDA: BC First Nations Water Governance Roundtable

Wednesday, June 28th & Thursday, June 29th, 2017

Dze L K'ant Friendship Centre (3955 3rd Ave, Smithers, B.C.)

Hosted by the First Nations Fisheries Council of BC and the Centre for Indigenous Environmental Resources with the POLIS Water Sustainability Project

DAY 1: Wednesday, June 28th

TIME	ACTIVITY
8:00 AM	BREAKFAST (provided) <i>Dze L K'ant Friendship Centre 3955 3rd Avenue</i>
8:30	Opening Welcome to Gitdumden Territory <i>Chief Timberwolf, Gitdumden Clan, Wet'suwet'en Hereditary Chief</i> Welcome and Introduction to Roundtable <i>First Nations Fisheries Council, on behalf of Roundtable organizers</i>
9:00	Participant Introductions
9:30 -10:15	Indigenous-led Water Governance: What's Possible? <i>Merrell-Ann Phare and Michael Miltenberger</i>
BREAK	
10:30 AM -Noon	Sharing Roundtable – Part 1: Learning from Each Other's Successes and Strategies <ul style="list-style-type: none"> • What are the freshwater initiatives that you feel most hopeful about in your community? • What is really working well? What are key success factors?
LUNCH (provided)	
12:30 PM – 1:45	Sharing Roundtable – Part 2: Learning from Each Other's Successes and Strategies <ul style="list-style-type: none"> • Walk & talk - biggest challenges and strategies learned
1:45 –2:30	Strategic Scenario Exercise: What does Water Governance Look Like in the Future and How Do We Get There?
2:30-5:30	Field Trip in Wet'suwet'en territories <i>David de Wit with Office of the Wet'suwet'en staff</i>
6:00 PM	GROUP DINNER & SOCIAL (provided) <i>Alpenhorn Bistro & Bar 1261 Main Street, Smithers</i>

DAY 2: Thursday, June 29th

TIME	ACTIVITY
8:00 AM	BREAKFAST (provided) <i>Dze L K'ant Friendship Centre 3955 3rd Avenue</i>
8:30	Day 1 Recap <i>Deana Machin (FNFC) and Oliver Brandes (POLIS Water Sustainability Project) and Participants</i>
9:00	Roundtable Discussion: Assessment of Potential Strategies and Action Planning
11:00-11:30	Synthesis, Closing & Next Steps
LUNCH (provided) & ADJOURN	

Roundtable Background and Rationale

The purpose of this 1 ½-day Roundtable is to convene a targeted group of 15 staff and leadership from “higher water capacity” First Nations, in order to provide a space for peer learning and strategic collaboration, with the goal of advancing the collective vision of indigenous-led freshwater governance in British Columbia.

Across British Columbia, many First Nations are leading a range of different water planning and governance initiatives, including: developing government-to-government land-use agreements/plans; co-leading watershed boards; designing water plans, strategies, and declarations; and articulating indigenous water laws. First Nations are also shaping the course of water governance and

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management in their territories through the application of new legal tools available within the *Water Sustainability Act* (e.g., environmental flow protections and in the future, Water Sustainability Plans).

Although a window of opportunity to reshape water governance exists in BC, there is still considerable uncertainty around how to create the necessary lasting conditions, capacity, and relationships for First Nations and non-Indigenous governments to share authority of water and watersheds. This Roundtable aims to begin to fill this gap.

Roundtable Objectives

To convene a facilitated dialogue that provides all participants an opportunity to:

1. Exchange information on First Nations' issues and challenges related to freshwater planning, management and governance to foster greater transparency and improved understanding.
2. Identify shared priorities to advance First Nations' collective interests related to fresh water management and governance, based on shared challenges and successes.
3. Identify optimum shared strategies to advance First Nations' interests related to fresh water, either collectively or by individual First Nations, at the operational/technical or policy/legislative level, or through political or legal means, and at various geographical scales.

Participating First Nations

Champagne & Aishihik First Nation
 Cowichan Tribes
 Fort Nelson First Nation
 Gitanyow Hereditary Chiefs
 Ktunaxa Nation Council
 Lower Similkameen Indian Band
 Office of the Wet'suwet'en
 Okanagan Nation Alliance
 Saik'uz First Nation
 Secwepemc Fisheries Commission
 Upper Fraser Fisheries Conservation Alliance
 Yekooche First Nation

Regrets:

Nadleh Whut'en First Nation
 Nicola Tribal Association
 Xenigwet'in First Nation

Appendix 3: Indigenous Water Co-Governance (slides presented by Nadia Joe)

Indigenous Water Co-governance

A Primer
By Nadia Joe
June 28, 2017

Co-governance – some definitions

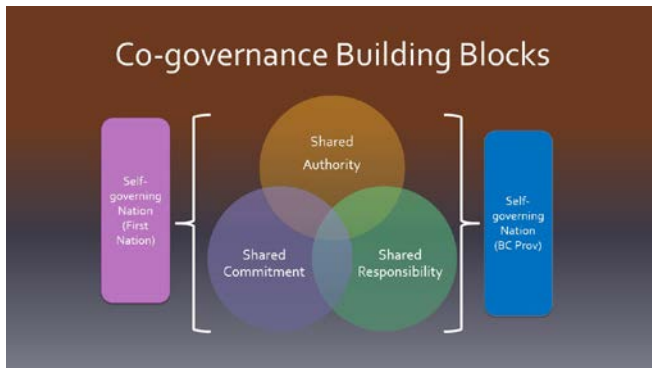
- Kotaska (2013) - co-create shared forms of jurisdiction over areas or resources that First Nations have agreed to share with non-Indigenous people.
- Peigi (2010) – when two or more self-governing jurisdictions agree to share authority to make and enforce decisions
- P2PF - process of participatory management in which decisions are made at the lowest levels possible (ie. subsidiarity and decentralization), thereby recognizing the decision of each member equitably

What Co-governance is not



"Let's compromise. You do everything I say and I'll say everything you do."

Nor is it

Co-governance – Key Attributes

AGREEMENT

- Shared Authority: the shared authority to create the laws, policies and frameworks for decision-making in self-governing Nations' respective jurisdictions;
- Shared Responsibility: the shared responsibility to respect the laws, governments, lands, peoples and knowledge of self-governing Nations
- Shared Commitment: the shared commitment to reconcile overlapping jurisdictions and resolve competing interests through *collaborative consent* (at multiple levels/scales)

Collaborative Consent

"Process where all governments - Indigenous and non-Indigenous - work to achieve each other's consent through collaborative approaches tailored to the matter at hand."

Benefits of Co-governance

- Avoids unilateral decision-making by any party (and can reduce potential for drawn out legal battles)
- Representative of cultural, geographic, linguistic diversity (enhances ownership and commitment to solutions)
- Responsive to local interests, issues, and needs
- More equitable distribution of risks and benefits associated with outcomes from decision-making

Challenges to Co-governing

- Much longer time scale required for building trust and consensus both between and among parties
 - Requires cross-cultural education and understanding of differing values, knowledge systems, needs, etc.
- Requires leadership and political will to commit to working through the process of breaking out of entrenched ideas of governance and building trust
- Collaborative process is complex and can be susceptible to losing focus
- Requires equitable access to resources (budgets and personnel with unique skillsets)
- Set-backs can disrupt confidence and commitment of parties and funding bodies



Risks and Limitations

- Until consensus is reached, water quality and hydrology conditions may continue to deteriorate
- Consensus decisions can be made more easily for 'low risk' issues and flounder over change-making issues
- High turnover in elected governments can shift priorities away from previous commitments
- The co-governance agreement between parties may have too narrow of mandate to effect change

Why Consider Co-governance of Water

- Disproportionate impacts to water experienced by Indigenous peoples
- Deteriorating water quality conditions under existing regulatory framework
- Respect basic human right to access clean safe water for consumption and cultural use
- UN DRIP:
 - Article 29 (1): Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories
 - Article 32 (1): Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources

Reversing these trends will be necessary to ensure Indigenous peoples enjoy a comparable quality of life as enjoyed by the majority of Canadians. More specifically, it will require full and equal participation of Indigenous peoples in deciding how the water in traditional Indigenous territories is to be managed such that Indigenous peoples' water needs can be met today and into the future.

Options

Generally 3 Pathways for Indigenous peoples to actively engage in water governance:

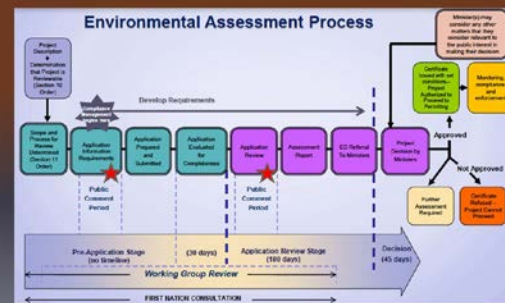
1. Participate in existing legislative frameworks
2. Create Indigenous legislative frameworks
3. Pursue Options 1 & 2 in tandem

Option 1: Work Within Existing Framework

Identify leverage in existing frameworks

Ex. In BC's new WSA:

- Inclusion of TEK in development of regulations (EFN or critical FN)
- Development of WSP
- Participation in new/existing governance boards



Option 1: Risks and Limitations

- Unclear how/if TEK influences DM outcomes
- Does not address/resolve Aboriginal rights and title to water
- Does not reflect Indigenous governance practices or privilege Indigenous knowledge equally
- Can overwhelm First Nations administrative capacity in responding to external parties' information needs

Option 2: Create an Indigenous Framework

Opportunities

- Develop water strategy, water policies, Indigenous water laws and regulations
 - Document citizen's interests, values, needs around water
 - Assess legal strengths and weaknesses of adopting Indigenous framework
 - Engage other actors in Indigenous laws and policies

Risks/Limitations

- Not recognized by other actors (not in co-governance process)
- Limited/no capacity for compliance and enforcement
- Creates disunity among FN citizens
- No predictable outcomes
- Vary Nation by Nation

Option 3: Hybrid

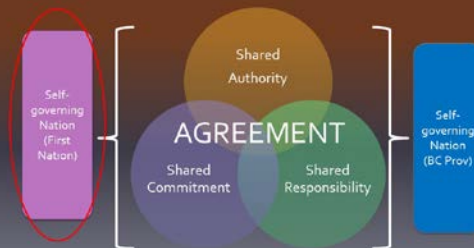
Opportunities

- Multi-pronged approach (strategies and tactics can occur in tandem)
- Leverage pressure points in existing regulatory framework
- Initiate dialogue with multiple jurisdictions to influence existing framework
- Document community values and TEK to inform both/leither processes
- Work towards incrementally changing framework to better reflect Indigenous values

Risks/Limitations

- High capacity needs to set up internal processes
- Water quality and hydrology conditions continue deteriorating
- No guarantee of better outcomes in short-term

Driving Co-governance



Defining Co-Governance Framework



Defining Co-Governance Framework



Option 4: Don't Participate

Reason

- Don't know best approach
- Everything is fine as is
- No agreement on approach
- No capacity to participate

Outcome

- Nothing changes

Which option is best?

Determined by First Nations:

- Time
- Capacity
- Resources
- Targets, values, needs (short, mid, long-term)

Appendix 4

Challenges in Advancing Water Governance: Walking Exercise

Participants walked in pairs and recorded their thoughts on two questions:

Question 1: *What are your biggest challenges in regards to water?*

- Time, resources, capacity to do the work in an ongoing way (and reliance on Crown funds)
- Need more continuity in water work.
- Isolation. Need to network and focus on watersheds.
- Changing the colonial mindset that has/is settling into our communities and leadership
- Mistrust, apathy
- Better communication with community needed
- Not understanding what water flows policies should be
- Leaders/General Manager doing all the work
- One person has all the control, i.e. water comptroller
- Lack of data (technical and cultural) for informed decision-making
- Still consumed by other priorities that are urgent but not as important
- Too much – focus where on water?

Question 2: *Did you hear anything useful this morning that you could take home?*

- Shared territory: issues in all nations not just ours. How do we work together towards common goals.
- We don't have to ask for permission, we need to do what works for us as people.
- Proactive planning
- Inspiration: connections - intergenerational and connect work with others. We are link between ancestors and youth. Youth have responsibility, should be at center of all natural resources work
- Multi-Nation approach.
- Leverage and attract funding
- Busting out of colonialism thinking
- Charitable trust model as alternative avenue of funding/capacity building
- Get a really good understanding of community input; get community involved in monitoring

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