



## **Indigenous Peoples Water Rights: Challenges and Opportunities in an Era of Increased North American Integration**

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### **Introduction**

Indigenous Peoples are in a unique position when talking with Canadians about fears of a merging North American identity. Many of the fears now expressed by Canadians about the potential outcome of a merged relationship with the United States – assimilation, loss

Indigenous Peoples as unique and distinct members of the world community requires recognition of our relationship with and reliance upon the waters of our territories.

Non-Indigenous Peoples believe that scientific knowledge empowers them to control water and allow for uses of water that are fundamentally foreign to its natural course and flow. Science in the absence of knowledge of the sacred nature of water has given rise to a belief that it is possible to determine how far water can be polluted, diverted or consumed without draining its ability to sustain life. Yet it is clear human activities have adversely affected the health and quality of water.

Indigenous Peoples who remain tied to the waters and lands and whose livelihoods depend upon water and watersheds, are increasingly impacted by water scarcity, failing water quality, and overuse and contamination of marine resources. The impacts of water degradation and scarcity have been felt first by Indigenous Peoples who live closest to, and rely heavily upon water. However, these impacts will spread and be felt more directly by the broader Canadian and American public over the next fifteen years.

Canada and the United States were built without regard for Indigenous Peoples reliance upon water for our livelihood and food security. Indigenous Peoples' own knowledge and laws for the protection and preservation of water have been entirely disregarded. Waters have been dammed, over fished, polluted, watersheds logged – all without Indigenous consent or involvement. Every Indigenous Nation is impacted by the destruction of watersheds and watercourses through decisions to build ski resorts, site fish farms and garbage dumps, and other large scale industrial and residential developments. Indigenous Peoples have been largely unable to prevent these developments, as non-Indigenous legal structures have acted to secure state ownership, sovereignty, and relatively unfettered authority to make decisions which impact upon the waters and Indigenous Peoples.

*Canadians will be faced with an opportunity to either acknowledge and learn from the impacts and costs of Canada's dispossession and denial of Indigenous Peoples water rights; Or, by their inaction, to sanction a continuation of water use and management policies which have damaged both Indigenous Peoples and the environment we now collectively share.*

## **Differing Recognitions**

Canada and the United States have followed markedly different paths in recognizing Indigenous Peoples water rights, reflecting political differences between the two states over their relationship with Indigenous Peoples. The United States has long recognized Indigenous Peoples as “domestic dependent nations” with limited sovereignty. Reservations recognized as under the jurisdiction of the tribes are substantially larger than those in Canada, and have been found to include reserved water rights sufficient to meet the needs of the people under the *Winters Doctrine*.<sup>1</sup> This recognition, while often

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<sup>1</sup> Taken from the case *Winters v. United States*, 207 U.S. 564 (1908).

problematic, has nonetheless protected Indigenous Peoples water rights

Canadian and American governments, individually and jointly, are establishing commercial rights to water. In Canada, for example, British Columbia has recently recognized a “right to farm” in our waters. The United States has legislation pending before Congress which would create off-shore economic rights in the deep sea which would allow for the siting of monolithic fish farms, each containing hundreds of thousands of fish, as well as other enterprises far enough from the shoreline to escape public radar or scrutiny.

Proposals reflecting the idea of water as a shared North American resource have included plans for large scale diversion or export of water from Canada to the United States, in order to offer life support to cities and industries built where there is not sufficient water to sustain an urban population.<sup>3</sup> While these plans have been unsuccessful, the idea of large scale water diversion will likely be reinvigorated with greater force as water shortages increase.

The denial of Indigenous Peoples right to water is a form of economic racism which discounts the costs to Indigenous Peoples of water commercialization, pollution and diversion, and instead positively attributes the loss of a traditional lifestyle as a benefit of civilization. Similarly, proposals to divert water count only limited human needs, and do not tally the costs to



government decision to privatize all waters.<sup>4</sup> This trend will continue to grow over the next fifteen years, and beyond.

*Canada will be forced to choose what sort of citizen it wants to be in the world community in the face of growing demand for recognition of Indigenous rights, including to water. Canada could choose to continue to actively suppress recognition of Indigenous Peoples as Peoples and Nations, or could choose to accept the reality of our existence and move forward.*

### 3. Growing Indigenous Populations

As water flows, Indigenous Peoples are flowing back onto the lands. After contact, Indigenous numbers plummeted due to the introduction of foreign diseases, as well as outright extermination policies. Lower populations have limited Indigenous Peoples ability to act to meaningfully protect or preserve water. The population of Indigenous Peoples in Canada and the United States is growing. In America, this growth is largely represented by Indigenous Peoples from Mexico, many of whom have historic tribal affiliations with the Indigenous Nations of the Southern United States. In Canada, population estimates suggest that over the next decades, Indigenous Peoples will form a significant majority of the population in several Canadian provinces, and perhaps upwards of 50% in the provinces of Saskatchewan and Manitoba.<sup>5</sup>

*As Indigenous populations grow, and begin to form a majority in certain states or provinces, Indigenous Peoples' ability to influence domestic and international decisions regarding water use and preservation will increase. Rising Indigenous population levels will provide a more powerful Indigenous political voice and greater ability to influence both domestic and international water use decisions. Indigenous Peoples will have to choose whether (and how) to exercise this increasing power to protect water.*

### **Water for a New Day – Suggested Action for Canadians**

Indigenous Peoples relationship with water demands far more than a simple recognition of a right to use or drink water, and must include respect for our responsibility to make decisions for the preservation of water and its ability to sustain life. The degree to which Canadianw0ude respe will h3.445 0 TD-0.00taaE6a1t, Indigenous Pe(Indi085(lis 0 Te6(jr )T0007le001 Tc-2

*deals with Indigenous Peoples. The issue is not merely one of fundamental human rights, but also one of ecological preservation for all life.*

The choice to continue to ignore or undermine Indigenous Peoples' rights to both access and preserve water offers only the certainty of destruction of water and the life which depends upon it. Alternatively, creation of a political and legal plurality which includes Indigenous Peoples' own knowledges and laws for the protection and preservation of our territories and ecosystems offers hope: Water for a new day.