

# Indigenous Peoples

## Water

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Centre for Indigenous Environmental Resources

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# Water Rights Reconciliation

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Water is life.

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spirit

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interconnectedness

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stewardship

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reciprocity

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### Indigenous Peoples' Water Responsibilities

Indigenous water rights flow from connection to  
traditional territories and responsibilities given by  
Creator

Includes all inherent responsibilities (rights) to protect  
and use water

Water-related decision-making, based upon  
indigenous laws

Since time immemorial

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### Rights

Who has them,  
who doesn't.

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land & water

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Who can take from it.  
Who can live on it.  
Who decides.  
Who owns it.

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how did it come  
to this?

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land  
+  
colonisation  
=  
treaties

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assimilation policies  
abdication of treaty promises  
outlawing of culture  
residential schools  
loss of language  
descent into poverty  
natural resource exploitation  
rapid industrialisation  
environmental degradation  
denial of rights

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Section 35(1)

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affirms existing  
aboriginal and treaty  
rights

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(whatever that means)

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### Rights: The Shopping List



Aboriginal title to lands and waters  
Hunting, fishing, trapping, gathering  
Land Claim Agreements  
Self-Government Agreements  
Historic treaties  
Many incidental rights

(c) University of Lethbridge

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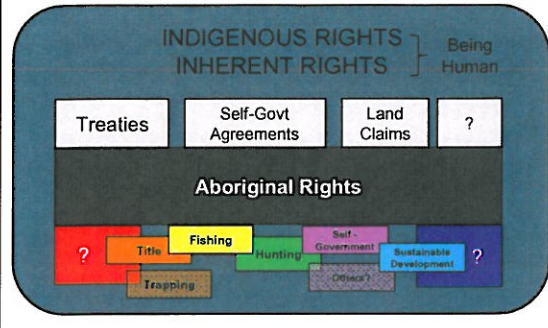
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## Two Worldviews




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## Do Aboriginal Water Rights Exist: a Nutshell

1. What water rights did Indigenous Peoples have before 'Canada'?
  - Ask Indigenous Peoples, Aboriginal rights doctrine
2. Did Indigenous Peoples agree to give up these rights?
  - Treaties or other agreements
3. Did the Crown successfully eliminate these rights?
  - Treaties or legislation

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**If not,  
Indigenous Peoples' water rights  
still exist.**

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## Kyoto World Water Forum Indigenous Peoples Declaration 2003

Our relationship with our lands, territories and water is the fundamental physical, cultural and spiritual basis for our existence. This relationship to our Mother Earth requires us to conserve our freshwaters and oceans for the survival of present and future generations. We assert our role as caretakers with rights and responsibilities to defend and ensure the protection, availability and purity of water. We stand united to follow and implement our knowledge and traditional laws and exercise our right of self-determination to preserve water, and to preserve life.

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**United Nations World Water Forum 2003**  
Indigenous Peoples Declaration 2003

**Chiefs of Ontario**      **UBCIC**

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## Did Indigenous Peoples Release Water Rights?

### Purpose of reserves and treaties?

- Build 'successful' communities: protecting rights, access to food, water, necessities
- Certainly was not to deny their ability to survive

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## Did Indigenous Peoples Release Water Rights?

- No land cession treaties specifically mention water rights or reservations, but:
  - Treaty 5 mentions reserving rights to navigation
  - Treaty 7 analysis by Vivienne Beisel
  - Treaty 8 mentions agriculture purposes (as do others)
- Presumption would be that First Nations reserved their rights to water, as they did with other treaty rights, especially given fundamental need for water

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## What was Canada's intention?

To deny that treaty 7 reserved some water for the Peigan is to admit that our ancestors swindled the Indians; to accept the inference is to admit that subsequent generations, including the present one, swindled the Indians by allocating all of the water to non-natives.

-Jack Glenn, *Once Upon an Oldman*

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Federal Water Policy 1987  
recognises 'native people's special  
interests in water'...

But provincially....

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No legislation states a specific intention to extinguish or limit Aboriginal or treaty rights to water (*Sparrow test*)

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## Current Litigation

- Stoney Nation: claims ownership lands, beds, water on reserve
- Beaver Lake First Nation: water quality as an incidental right to fishing
- Walpole Island First Nation: title to beds and water
- Sagkeeng First Nation: title including water
- Haida Nation: Queen Charlotte Islands and deep sea and ocean bed

No case litigated to SCC denying or affirming existence of Indigenous water rights.

## Some statements

- **Calder:** title includes a right to enjoy fruits of soils, forests, rivers, streams
- **Van der Peet:** rights include interests in land and its waters
- **Sappier and Gray:** rights include resource use for survival purposes
- **Klahoose:** defines scope of entitlement according to watershed area
- **Saanichton Marina:** protects habitat of fishery
- **Tsilhqot'in:** title exists and includes numerous rivers and lakes

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## Therefore, Aboriginal water rights can still exist

### Aboriginal rights and title:

- navigation and travel
- irrigation
- environmental protection
- domestic
- commercial
- industrial
- governance
- all activities and uses so long as not incompatible with original bond
- related activities to protect water

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**water  
and  
indigenous  
peoples**

The stats...

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1 in 4 reserves substandard water

No piped water: 90 times more likely

UN State of the World's Indigenous Peoples (2009)

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614 First Nations  
907 Reserves  
229 DWAs  
as of March 31 2010

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1 in 3 or 4

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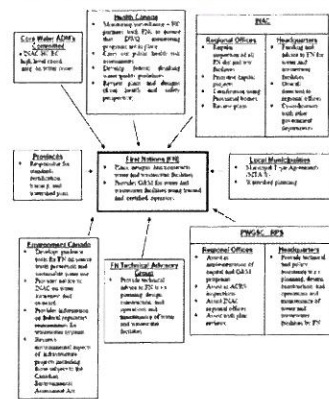
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no laws



No legislated standards  
No clear authorities or accountability

\$1.8 billion spent over 5 years on First Nations Water Management Strategy

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CESD 2005

'First Nations cannot expect same standards as other Canadians'

'The risk for health has not been reduced'

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Money and talk  
aren't fixing the problem.

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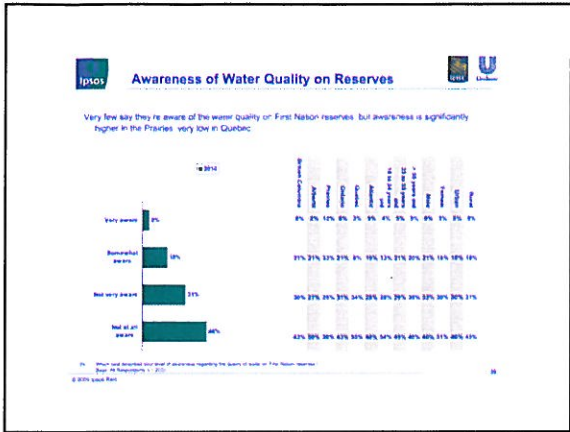
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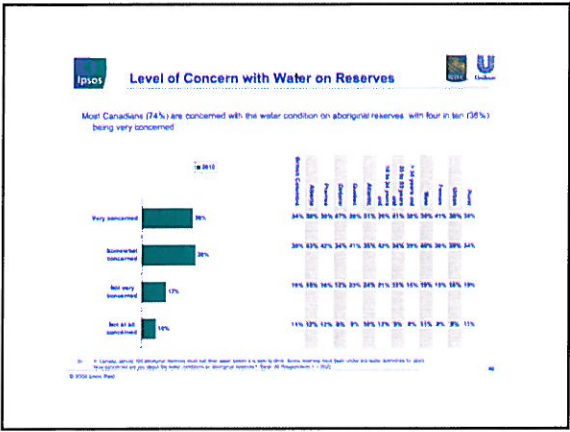
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6.5%

Percentage of the world's renewable freshwater found in Canada

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1766

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energy vs. water

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food vs. water

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45% of water used in Alberta is  
for agriculture or irrigation

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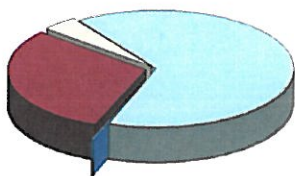
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- Embedded in Food - 65%
- Drinking Water - 0.2%
- Domestic Uses (cooking, cleaning etc.) - 4.2%
- Embedded in Industrial Goods (car, bicycle, TV, etc.) - 30.6%

4550 litres water to make 1 litre of milk  
241 litres water to make 1 latte  
81900 litres water to make a pair of jeans  
8.4 litres water to make 1 water bottle

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So we  
have water  
competition....

and scarcity...

...resulting in overuse and degradation

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What  
are  
they  
saying  
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**Reconciliation  
is the  
road to peace**

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Decisions  
Decisions  
Decisions

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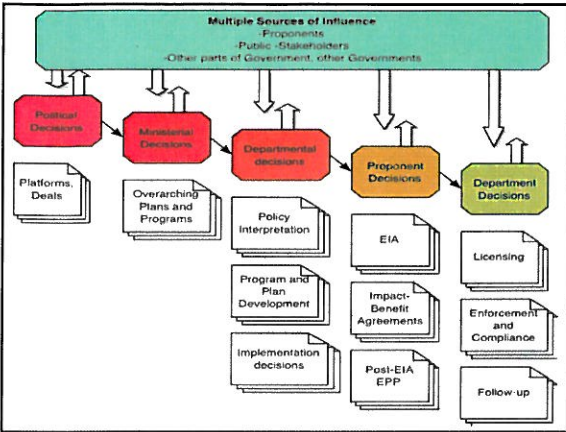
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What could reconciliation look like?

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**Brave Policy Vision**

Canada-wide water policy  
 energy, food, ecosystems  
 identification of common water values  
 articulate needs

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**Brave Rights Vision**

Indigenous water rights  
Environmental right to water  
Human right to water?

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**Graceful Management Process**

integrated watershed management & planning,  
and ecological governance

including recognition of First Nation rights  
as governments to  
manage  
protect  
provide  
  
... water

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**Bold Outcome**

limits

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property  
growth  
consumerism

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Consumerism will be the last wave  
of colonisation

Vine DeLoria, Jr.

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**Reconciliation:**

- ✓ past, present and future
- ✓ First Nations and non-First Nations
- ✓ people and ecosystems
- ✓ world views and values

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A brief example....

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Where does water come  
from?

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the creator

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[so what?]

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a responsibility that  
cannot be shed

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All  
our  
relations

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reconnect

rebuild

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Our journey may be  
longer than that...

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Thank you for listening.

[maphare@cier.ca](mailto:maphare@cier.ca)

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