

## Discussion Paper: Opportunities for Collaborative Water Management

The Yinka Dene 'uza'hné from Nadleh Whut'en and Stelat'en recently enacted a water management regime for the regulation of the surface waters in our Territories. This regime currently consists of the *Yinka Dene 'Uza'hné Surface Water Management Policy* and *Yinka Dene 'Uza'hné Guide to Surface Water Quality Standards* (collectively, the "Policy").

### A. Background

We have been governing our Territories in accordance with the Yinka Dene legal tradition for thousands of years. There are several distinct elements of our governance system and legal tradition. In particular, our peoples are affiliated with various clans that include hereditary leaders known as 'uza'hné. We also have land and resource management territories known as keyah associated with extended family units. The primary institution for governing keyah and clans is through our potlatch system of governance known as bahlats.

Prior to contact with settlers, this interconnected system determined legal obligations and authority for stewardship of and access to lands, waters and natural resources to ensure that they benefit present and future generations. After contact, our governance system and legal tradition has persisted and evolved, responding to developments such as the imposition of Indian reserves and bands, a provincial trapline registration system that did not necessarily correspond to keyah and Canada's former ban on conducting bahlats. We continue to apply our laws, including through the bahlats, and continue to recognize our 'uza'hné, keyah and clan membership.

The Policy itself is an expression of our living governance and laws. The health of surface waters throughout our Territories, and the life they sustain, are of fundamental importance to our continued enjoyment of our Aboriginal title and rights. The Policy was developed to fulfill our legal obligations as stewards and to respond to the ongoing impacts to surface waters in our Territories. The Policy was formally enacted by the Yinka Dene 'uza'hné of Nadleh Whut'en and Stelat'en.

### B. The Policy at a Glance

The Policy sets out a framework consisting of three distinct technical elements for managing the quality and flow of surface waters within our Territories:

#### 1. Narrative Water Management Objective

The Policy establishes as a foundational objective that surface waters within our Territories should remain substantially unaltered in terms of water quality and flow.

#### 2. Water Classification System

The Policy enables us to classify waters into three categories relative to their importance and sensitivity to disturbance: High Cultural or Ecological Significance (Class I Waters), Sensitive Waters (Class II Waters), and Typical Waters (Class III Waters). Water management goals for Class I Waters are focused on protecting and maintaining background conditions in terms of quality and flow (i.e. non-degradation). For Class II Waters, water management activities are focused on minimizing changes to background

conditions, such that developmental activities are planned and implemented in a manner that minimizes alteration of the quality and quantity of surface waters (e.g. no more than 50% of the assimilative capacity of surface waters is utilized by development). For Class III Waters, water management activities are focused on protecting existing and future water uses. For all water bodies, rates of flow should not be altered relative to background conditions and flows should be restored in water bodies that have been affected by historical water management activities.

### 3. Numerical Water Quality Standards

The Policy sets out preliminary water quality standards for several high priority waters and the process for deriving further water quality standards for surface waters in our Territories. In particular, the Policy describes the process for establishing numerical water quality standards for each class of water, describes procedures for deriving site-specific water quality standards as needed, provides technical guidelines for implementation (e.g. guidance on characterizing baseline water quality conditions, objectives for waste discharges, Initial Dilution Zone delineation, deriving Effluent Quality Criteria, and aquatic effects monitoring), and articulates our expectations for documenting the derivation of water quality standards and for monitoring and evaluating their attainment.

Existing projects, new projects and all decisions related to such projects that have the potential to impact our Aboriginal title and rights will be required to comply with the Policy. In addition to the three technical elements described above, we will also require accommodation for all potential impacts. In particular, the cost of restoring the health of any damaged surface waters and the life they sustain will be assessed and levied. Further, existing projects and new projects that receive approval will require economic accommodation of impacts through instruments such as revenue sharing agreements, impact management and benefits agreements and/or project equity arrangements. Such economic accommodation will support continued implementation and oversight of the Policy.

While the Policy is primarily focused on managing the quality and flow of surface waters, its implementation will build the foundation for us to broaden the scope of our resource management to other specific aspects and for policy development in other general areas of environmental management. The development of specific guiding policy documents for water flow standards and damage assessment are forthcoming.

#### **C. Opportunities for Collaborative Implementation of the Policy**

Since formally enacted by our 'uza'hné, we are beginning the process in earnest of implementing the Policy. We also recognize that collaboration can provide a clear path forward towards the constitutional imperative of reconciliation.

The pathway of collaboration has most recently been embraced at a provincial level and tribal level. At a provincial level, the 2015 joint commitment document between the Province and First Nations Leadership Council acknowledges that “[c]oncrete action, and new and creative approaches, at all levels is required – in direct government-to-government relationships, negotiations, policies and laws, fiscal relations and decision-making.” At the tribal level, the province and Carrier Sekani First

Nations have recently entered into a series of agreements committing to create a new government-to-government relationship. The *Natural Resources Protocol* (March 31, 2014) commits the parties to discuss new processes for shared decision-making and environmental and cultural stewardship. The *Collaboration Agreement* (April 2, 2015) builds upon this by committing the parties to developing a framework to, among other things, “engage in collaborative management, and where possible restoration and protection of natural resources and ecosystems.”

The Collaboration Agreement contemplates future government-to-government agreements to address discrete topics such as mining and water. In particular, it is contemplated that such agreements will implement recognition of Aboriginal title and rights, collaborative decision-making, joint management of impacts, revenue sharing and economic benefits. While the Collaboration Agreement establishes general collaborative decision-making structures and processes that follow a joint recommendation model, it contemplates the need for customized models where it may be necessary to better harmonize the parties’ respective decision-making authorities and jurisdictions. Given the fundamental importance of water to our continued enjoyment of our Aboriginal title and rights, coupled with the extensive existing impacts to surface waters in our Territories, collaborative water management requires a unique approach.

Within our Territories there are several decisions and projects currently being contemplated by the Province that present concrete opportunities for the collaborative management of water in a manner that supports regulatory certainty, protection of natural resources and mutually beneficial economic outcomes. We extend an invitation to the Province to discuss models for collaborative implementation of the Policy as a pilot initiative led by Nadleh Whut’en.