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Chiefs of Ontario Bulletin

DATE: November 5, 2009

TO: Leadership, Grand Chiefs, Tribal Councils

FROM: Angus Toulouse, Ontario Regional Chief

RE: **FEDERAL GOVERNMENT FORGING AHEAD WITH LEGISLATIVE FRAMEWORK ON DRINKING WATER AND WASTEWATER IN FIRST NATION COMMUNITIES DESPITE FIRST NATIONS CONCERNS**

The federal government has drafted enabling legislation on drinking water and wastewater in First Nation communities, which they plan to introduce in the very near future.

This information was provided by Indian and Northern Affairs Canada (INAC) officials during a meeting that took place on October 20, 2009. Chief Bill Montour attended the meeting on behalf of the Political Confederacy, as the portfolio holder for Environment issues. Chief Montour again relayed to the federal officials present that the concerns and priorities of the First Nations must first be addressed prior to the tabling of legislation. It was made clear to the federal officials that this meeting must not be construed as consultation but an information gathering exercise.

There are significant concerns with respect to this initiative. This legislation has been drafted without meaningful consultation with First Nations. INAC organized two sessions in Ontario in an attempt to get First Nations input and feedback on their preferred option of developing federal legislation that would reference existing provincial regimes. INAC officials indicated that the approach they are pursuing could be described as “incorporation by reference with adaptations”. But First Nations are not clear on what the “adaptations” might be.

The Chiefs in Assembly in Ontario have passed two resolutions with respect to this issue – resolution 08/11 in June 2008, and 09/19 at the All Ontario Chiefs Assembly in July 2009. The First Nations have been clear that the federal government first must address the infrastructure needs in First Nations communities prior to the development of legislation. The federal government-appointed Expert Panel on Safe Drinking Water for First Nations also called a review of infrastructure needs as a precondition to the development of legislation. Furthermore, First Nations leadership has called on Canada to fulfill its duty to consult and accommodate First Nations regarding the development of legislation and to provide resources for First Nations to complete a thorough analysis of the three options identified by the Expert Panel as viable. The First Nations in Ontario have been clear that First Nations are not opposed to the development of legislation and regulations. However, First Nations have serious concerns that have thus far been ignored by the federal government.

First Nations participants that attended the two engagement sessions in Ontario were clear that the Crown has failed to engage in meaningful consultation with First Nations on this issue, and that the Crown is in breach of its duty to consult and accommodate First Nations by making the unilateral decision to proceed with their engagement sessions and impact analysis solely on the basis of incorporation by provincial/territorial reference. These messages are clearly stated in the reports prepared for INAC by the Institute on Governance.

The federal government has clearly communicated that they are unwilling to engage in a discussion of inherent, Treaty and Aboriginal rights with respect to the development of this legislative framework, which is a fundamental flaw in their engagement process. Furthermore, the federal government has ignored key recommendations made by the Expert Panel on Drinking Water for First Nations, the Standing Senate Committee on Aboriginal Peoples, and has also ignored the stated priorities of the First Nations – the very population that will be most affected by their proposed actions.

Minister Strahl continues to indicate that “the government of Canada is committed to working in partnership with First Nations to ensure the provision of safe, clean drinking water and effective wastewater services within First Nation communities” but this stated commitment has not been reflected in the actions in the federal government on this very important issue.

Federal officials have indicated that financial resources will be available for First Nation participation in the development of regulations. But these resources will only be available once the enabling legislation is in place. First Nations need to be cautious with respect to this matter as First Nations have not given up their rights to water and the enabling legislation currently being sought by the federal government could potentially affect these rights.

Ontario Regional Chief Angus Toulouse, and the members of the Political Confederacy, will continue to pursue this matter with the federal government. The Chiefs in Ontario office will endeavour to provide up to date information to the First Nations in Ontario with respect to this matter.