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Chair

Mr. Chris Warkentin

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● (0845)

[*English*]

The Chair (Mr. Chris Warkentin (Peace River, CPC)): Colleagues, we'll call this meeting to order.

This is the 73rd meeting of the Standing Committee on Aboriginal Affairs and Northern Development. Today we are beginning our study with regard to Bill S-8, An Act respecting the safety of drinking water on First Nation lands.

Today we have the minister with us. It's always a privilege to have the minister before us.

We appreciate your willingness, Minister, to join us. We will turn it over to you for your opening statement. Then, as is the custom in this committee, we will begin with rounds of questions.

Mr. Minister, please.

[*Translation*]

Hon. Bernard Valcourt (Minister of Aboriginal Affairs and Northern Development): Thank you, Mr. Chair.

[*English*]

I appreciate this opportunity to participate in the committee's review of Bill S-8, the Safe Drinking Water for First Nations Act.

I'm pleased to appear before this committee today to present this important piece of legislation developed to ensure that first nations communities throughout Canada have the same health and safety protections for drinking water as all other Canadians have. I truly hope that the committee will support the passage of this legislation before we adjourn in June.

Bill S-8 should not be seen in isolation. Bill S-8 is an essential part of our government's larger comprehensive strategy to improve the quality of drinking water for residents of first nations communities, through three pillars: capacity development, which is important; continued investment in infrastructure; and the development of a clear regulatory framework.

[*Translation*]

Our government recognizes the necessity for capacity and infrastructure improvements in the provision of safe drinking water on reserves. I know that many interested parties are concerned about the issue of on-site capacities and infrastructure. That is why our government doubled the funding for the Circuit Rider Training Program, which has helped support and train hundreds of first nations water and wastewater system operators. And this program has produced significant results. For example, since July 2011, the percentage of first nations systems that have primary operators certified to manage the drinking water systems has increased from 51% to 60%, and the percentage of certified wastewater system operators has increased from 42% to almost 54%.

In addition, our government continues to make investments in water and wastewater infrastructure. Between 2006 and 2014, our government will have invested approximately $3 billion to support the delivery of drinking water and wastewater services to first nation communities. You will recall that, as part of Economic Action Plan 2012, $330.8 million is being invested over two years. As a result of those significant investments, the percentage of high-risk water systems has decreased by 8.1%, and the percentage of high-risk wastewater systems by 2.1%.

Mr. Chair, I can assure the committee that our government will continue to invest in water and wastewater infrastructure.

However, despite these significant investments and progress, one key factor remains unaddressed—the absence of an enforceable regulatory regime on reserves. Until regulations are in place, we know that achieving long-term sustainable progress will be challenging. Modern equipment and good intentions are great, but they need regulations to support them. That is why all municipalities and communities across Canada have adopted regulations. Regulations are essential because they map out clear lines of responsibility for each of the many steps required to safeguard water quality, such as source water protection, regular quality testing, and adherence to legislated—and therefore enforceable—standards for water treatment and distribution.

Our government believes that first nation communities across this country should have access to the same quality of safe, clean and reliable drinking water as all other Canadians living off reserve. This can only be achieved by having a strong regulatory framework in place.

● (0850)

The proposed legislation now before the committee will fill this regulatory gap. Should Bill S-8 receive royal assent, our government will continue to work with first nations and other stakeholders to develop regulations on a region-by-region basis. Developing regulations by region will enable the government and first nations to partner with municipalities and regional technical experts.

In addition, this collaborative, region-by-region approach will also leverage the value of existing regulations. Rather than creating entirely new regulations, the most efficient approach is to build upon existing provincial and territorial regulatory frameworks and adapt them as needed in order to reflect specific local conditions for each first nation community.

[*English*]

Let me be clear, Mr. Chair. This approach would not take jurisdiction away from first nations, nor would it give a province, territory, or municipality jurisdiction over first nation lands. By developing regulations that are comparable to those that exist off reserve, first nations will be better positioned to partner with neighbouring municipalities in the delivery of water treatment services and to cooperate on other matters, such as operator training, business ventures, and the adoption of new technologies.

Now, it will take some time to develop and implement these regulations across Canada. For this reason, the regulations will be phased in to ensure first that there is adequate time for the government and first nations to bring the drinking water and waste water infrastructure and the operating capacity to the levels required to conform with the new regulations. There's no point in implementing regulations unless that capacity and that level of infrastructure are in place; otherwise, as you know, it doesn't make sense. As we've stated many times, we're not going to roll out regulations until first nations have the capacity to abide by them, because health and safety remain our ultimate goal.

I fully recognize also that some first nations do not have the resources needed to help develop these regulations. Back in April 2012, the former minister, Mr. John Duncan, sent a letter to all chiefs and band councils confirming that our government will provide the funds needed for eligible activities.

We have already, for example, provided funding to the Atlantic Policy Congress to support their work in researching and analyzing the development of regulations for first nations in the Atlantic region. It is important to recognize that the collaborative and region-by-region approach builds on the extensive ongoing engagement and consultation that have been a defining characteristic of the joint action plan on first nations drinking water.

This joint action plan was launched by the Government of Canada and the Assembly of First Nations in March 2006 to address the drinking water concerns in first nation communities. Over the last seven years, our government has been engaging with first nations, regional first nation chiefs, first nation organizations, provincial and territorial government officials, municipalities, and other stakeholders on legislation for safe drinking water and waste water every step of the way.

Our government will continue to consult with first nations and other stakeholders on the development of regulations. As a result of that collaborative process, there have been 10 amendments made to this legislation.

● (0855)

Some of the key differences between the previous version of this bill and the current Bill S-8 include: the addition of language to the preamble to demonstrate our commitment to work with first nations on the development of regulations; clarification that regulations would not include the power to allocate water supplies or license users of water for any purpose other than for the provision of drinking water; the removal of language that could be interpreted as powers to compel first nations into an agreement with third parties; and the inclusion of the non-derogation clause addressing the relationship between the legislation and aboriginal and treaty rights.

The non-derogation clause now found in Bill S-8, in clause 3, was proposed by first nations during the without prejudice discussions we held with them. The clause essentially prioritizes the safety of drinking water over issues of aboriginal and treaty rights. That is an important point. In my view, this is entirely appropriate, because safe drinking water is essential to human health.

As I stated previously, the goal of this proposed legislation is the health and safety of first nations. The inclusion of a non-derogation clause in the bill is one of the many accommodation measures that resulted directly from consultations with first nations.

We continue to listen. More recently, as many of you know, concerns have been raised by various stakeholders regarding the opt-in provision, the famous clause 14 in Bill S-8, which would provide self-governing first nations and those with land claim agreements the ability to opt in to a federal regulatory regime if they so choose. Specifically, it was suggested this provision could create jurisdictional challenges and impact ongoing and future land claim agreements, among other issues.

As I stated in the House two weeks ago, after careful consideration and extensive discussions between my officials and these stakeholders, I am recommending to this committee the removal of this provision from Bill S-8. I want to assure the members of the committee that removing the opt-in provision would have no negative impact on any first nation.

Further, I believe removing this clause serves as yet another good example of positive results produced by ongoing collaborative discussions with first nations and other stakeholders. I hope that members of this committee will see the value of this change and will support this amendment.

● (0900)

[*Translation*]

To conclude, let me reiterate, Mr. Chair, that the proposed legislation now before this committee is the product of a lengthy and comprehensive process of study, engagement, and meaningful consultations with first nations and other stakeholders. This bill is an essential part of a larger collaborative strategy—which I mentioned at the beginning—to improve the quality of drinking water available to residents of first nation communities.

This strategy has produced remarkable results, and yet, until regulations are in place, the progress made remains at risk. Safe drinking water requires a regime that defines responsibilities and establishes clear lines of accountability. In response to those who feel we should wait until all investments in infrastructure have been completed, I say that first nations should not have to wait any longer to have access to safe, clean drinking water. I want to respectfully point out that this depends on the comprehensive strategy I talked about earlier.

It has taken seven years for us to get to this point—seven years of discussions, consultations, engagements and investments have produced this legislation before you today. We believe that now is the time to move forward. The health and safety of first nations is an urgent priority. Through continued investments, this bill will bring the quality of the drinking water and the treatment of wastewater on reserves to the same standards enjoyed by all other Canadians.

Safe drinking water should be available to all Canadians, and Bill S-8 will help achieve that goal.

Mr. Chair, the solution is now in your committee's capable hands. Thank you. I will now answer any questions the members may have.

[*English*]

The Chair: Minister, thank you very much.

We'll begin with our rounds of questioning. We'll turn to Ms. Crowder for the first seven minutes.

Ms. Jean Crowder (Nanaimo—Cowichan, NDP): Thank you, Mr. Chair.

Welcome, Mr. Minister.

With respect, simply putting in a regulatory regime will not guarantee adequate safe drinking water. In fact, the report of the expert panel on safe drinking water from November 2006 said:

> First, and most critically, it is not credible to go forward with any regulatory regime without adequate capacity to satisfy the regulatory requirements. While it is tempting to assume that putting a regulatory regime in place would reduce the dangers associated with water systems, exactly the opposite might happen. This is because creating and enforcing a regulatory regime would take time, attention and money that might be better invested in systems, operators, management and governance.

Mr. Minister, I have three questions for you. The first question—and you've actually gone a long way to clarifying it—has to do with the self-governing first nations. I think you're well aware that subclause 14(1) of the bill is creating some concern, because that subclause did not restrict itself to groups for which there is a regulatory gap or groups that have developed their own laws.

Am I to understand that an amendment will be put forward to remove subclause 14(1) from the legislation?

Hon. Bernard Valcourt: Yes, that is my recommendation to the committee, for the reasons you have expressed. There was concern on the part of those who have land claim agreements and those negotiating land claim agreements, or even self-government arrangements, that this clause, the opt-in provision, could pose those jurisdictional challenges, but also that it could be used as a way of ensuring that in order to get infrastructure assistance they would have to adopt the regulations.

Our officials have had long discussions with stakeholders, and upon consideration of the matter and to ensure that no gap results from the removal, I am recommending to the committee that clause 14 be removed from the bill.

● (0905)

Ms. Jean Crowder: Thanks, Mr. Minister.

My second question has to do with liability. I understand some changes were made to the bill before us with regard to liability for third party systems assumed by first nations. We've received a briefing note from Metro Vancouver. It has a position paper on Bill S-8. In your speech today you indicated that municipalities had been consulted, but according to Metro Vancouver, one of the larger cities in Canada—and there are first nations in close proximity to Vancouver—the proposed legislation raises a number of concerns.

One of them is the lack of consultation and local government input, because municipalities may well be the providers of water, but the second issue is around liability. First nations have raised questions regarding liability if they are the owner-operators of the system and regarding their own capacity to enforce those regulations.

When you have a third party provider, such as a municipality, how will their liability be impacted?

Hon. Bernard Valcourt: When you said that Metro Vancouver deplored the lack of consultation, I was going to ask where they were during the last seven years. Their concerns were brought to my attention; as a matter of fact, they wrote to me. I wrote back explaining that municipalities were welcome and it was important that they participate in this process and where appropriate, continue to work with our officials. Regarding the concern on the level of services to first nations communities and how this will be enforced, I reminded them that we had committed to working with first nations, provincial and territorial governments, and other stakeholders to develop appropriate compliance and enforcement mechanisms.

In regard to liability, as you know, currently there are no legally enforceable drinking water and waste water treatment standards, and potential liabilities today are not clear. The responsibilities and corresponding potential liabilities of these parties will be similar to the responsibilities and corresponding potential liabilities of provinces and territories. Whoever has a water system has a range of liabilities that exist. That is why Bill S-8 is enabling legislation. Paragraph 5(1)(o) clearly says that the regulation can “set limits on the liability of any person or body exercising a power or performing a duty under the regulations”.

These will be developed in cooperation with first nations and stakeholders. The corresponding liabilities that already exist for provincial governments or municipalities would seem to any reasonable person to be the kinds of liabilities that would apply to an operator. The regulation enables the conclusion of agreements between first nations and third parties. It is clear that the regulation will allow the setting of limits on liabilities for first nations or a third party operator by an amendment that would enable the regulation to deem who is the owner of the system that is being operated.

The first question that you raised as to—

● (0910)

Ms. Jean Crowder: Could I interrupt, as I only have a couple of seconds left.

Hon. Bernard Valcourt: Sure.

Ms. Jean Crowder: On the issue of liability, as you well know, a regulation does not have the oversight of Parliament or of this committee. Regulations could well be imposed that would leave first nations bearing the liability, and they would not be able to afford to make some of the other investments, because they would now be looking at this whole compliance regime. This was pointed out by the panel on safe drinking water.

Hon. Bernard Valcourt: As I have said, the responsibilities and corresponding potential liabilities of these parties will be similar to the responsibilities and corresponding potential liabilities of provinces and territories. Whether it be a first nation or a municipality, if you undertake to provide clean drinking water to a segment of the population, there are responsibilities that flow from that undertaking, but that will be left to first nations and those providing the water. We say that the bill authorizes regulations that set limits on liability, but these regulations will also protect the first nation members in the communities. I think the right balance can be reached by working through these regulations as they are being developed.

The Chair: Thank you, Minister.

We'll turn now to Ms. Ambler for the next seven minutes.

Mrs. Stella Ambler (Mississauga South, CPC): Thank you, Mr. Chair, and thank you, Minister, for being here today at the beginning of Aboriginal Awareness Week.

For seven consecutive years, Minister, we've been working closely with first nations to address the issue of safe drinking water and the current legislative gap. Can you tell us what discussions have taken place between the government and first nations on this subject?

Hon. Bernard Valcourt: I don't know if I have time to answer that question. You make an important point. There has been extensive ongoing engagement for seven years, beginning in 2006, the engagement that I referred to in my opening comments, for example, with the expert panel on safe drinking water for first nations. From June to August 2006, hearings were held in nine locations across Canada with first nations and other stakeholders.

Federal officials and the AFN's technical water experts group held a joint workshop in 2007. In 2008 there were meetings with first nations organizations and provincial and territorial officials to share information on the proposed legislative framework. From February to March 2009 the government launched a series of 13 engagement sessions across the country, at which some 544 first nations individuals were present. From early 2009 to early 2010, the government met with regional first nations chiefs and first nations organizations to discuss specific regional issues. Between October 2010 and October 2011, the government engaged in without-prejudice discussions with first nations and first nations organizations.

From October 2011 to today, the government has continued to meet with first nations and other stakeholders to discuss the proposed legislation. The preamble of the bill clearly states that the government will work with first nations to develop regulations. Moving forward with this bill will not place any additional strain on first nations, but rather will open the door wider to further collaboration on the development of these regulations, which are an important part of the comprehensive strategy I referred to in my opening remarks.

Mrs. Stella Ambler: Thank you for detailing the ways in which we have been engaging with first nations partners since 2006 and every step of the way with regard to this proposed legislation.

In fact, after the last iteration of the legislation, Bill S-11, died on the order paper, we took action to address some of the concerns that had been raised by some first nations and other stakeholders by making a number of amendments.

On the current bill, Bill S-8, we've also continued to consult and have taken action to address some of those concerns that were first raised with regard to the opt-in provision for self-governing first nations.

You stated in the House during second reading that the government has chosen to remove clause 14 from Bill S-8, as was also mentioned earlier. Can you explain how this amendment will address concerns related to the opt-in provision?

● (0915)

Hon. Bernard Valcourt: As was raised by Ms. Crowder, clause 14 in the bill has raised some concern. I was before the Senate committee the week before last, and the same concern was raised again. As I indicated earlier, the concern heard and expressed by representatives of self-governing first nations is that future programs and funding associated with water treatment and protection may depend on their agreement to be brought under the purview of the legislation. Of course that was not the purpose.

As they already have jurisdiction over water issues, and I recommended that we simply withdraw clause 14, I made sure there would be no gaps. What is important to us is our first nation community members: families, kids, people. The withdrawal of clause 14 creates no gap in the sense that the self-governing first nations and those who have concluded comprehensive land claim agreements already have that power.

What is important is that there be no gap. I'm going to be quite candid: there is one. In the case of the Sechelt, the power is not included in the comprehensive agreement. We will work with them to work out an amendment to their legislation in order to given them that power.

Mrs. Stella Ambler: Thank you.

To continue with regard to consultation, one of the results of the extensive consultation process was the non-derogation clause developed in collaboration with the Alberta Assembly of Treaty Chiefs, AOTC, which specifically addresses the relationship between legislation and aboriginal and treaty rights under section 35 of the Constitution Act, 1982. A preamble has also been added to describe the government's intention to develop regulations to work with first nations.

Why does Bill S-8 include a clause that deals with aboriginal and treaty rights?

Hon. Bernard Valcourt: During the consultation process and parliamentary deliberations on the former bill, Bill S-11, first nation representatives, including the Assembly of First Nations, and Liberal senators raised the concern that the legislation and future regulations could infringe on existing aboriginal and treaty rights protected by section 35 of the Constitution Act unless a non-derogation clause was added to the bill.

As you know, Bill S-11 included a clause addressing aboriginal and treaty rights under section 35. The clause would have allowed non-derogation clauses to be added to federal regulations made under the legislation in order to ensure safe, clean, reliable drinking water on first nation lands. However, the unintended omission of a non-derogation clause in the legislation was interpreted by several senators and first nation representatives, including the Alberta chiefs you referred to, as a sign that the government intended to derogate from or infringe on aboriginal and treaty rights.

After that bill died on the order paper, we considered this and talked to first nations. Thus, in respect of these without prejudice discussions that I referred to earlier, we have included clause 3, which is the non-derogation clause that addresses the relationship between the legislation and aboriginal and treaty rights under section 35.

● (0920)

The Chair: Thank you, Minister.

We'll turn now to Ms. Bennett for the next seven minutes.

Hon. Carolyn Bennett (St. Paul's, Lib.): Thanks very much.

Minister, I think we've explained before that the Liberal Party position is that any legislation without capacity is not on, so once again I need to ask this question.

In your department's own report, it said that "regulation alone will not be effective in ensuring safe drinking water". It also said, "Regulation without the investment needed to build capacity may even put drinking water [safety] at risk by diverting badly needed resources into regulatory frameworks and compliance costs". It was also said that "adequate resources—for plants and piping, training and monitoring, and operations and maintenance—are more critical to ensuring safe drinking water than is regulation alone".

I want to know why you have decided to disregard these warnings and move forward with this legislation without addressing the critical capacity gaps.

Hon. Bernard Valcourt: Ms. Bennett, you raise an important concern that we have and which we share also. If you remember, in 2011 you wrote to my predecessor indicating the concerns of your party on this issue, and you even quoted the "Report of the Expert Panel on Safe Drinking Water for First Nations" of November 2006 saying "it is not credible to go forward with any regulatory regime without adequate capacity to satisfy the regulatory requirements".

Now, when you look at Bill S-8.... I asked you at the beginning to please look at this as part of the comprehensive strategy, which is built on those three pillars—

Hon. Carolyn Bennett: Okay, so that is what we were getting at the other night. The 2011 report, which, as you remember, was ready before the election but was held back until after the election because it was so damning, identified that $1.2 billion was the immediate shortfall, with $4.7 billion over 10 years. Yet last year's budget had only $330.8 million spread over two years, in 2012, which was actually just an extension of the existing temporary funding, and there was absolutely no new money in this budget.

I want to know, just as you've said, does the department have a comprehensive plan to respond to this assessment? Can you table with the committee the what, by when, and how? When will 100% of first nations homes in 100% of the communities have safe drinking water?

Hon. Bernard Valcourt: Between 2006 and 2014, as a government, we will have invested approximately $3 billion in water and waste water infrastructure and related public health activities to support first nations.

Hon. Carolyn Bennett: Do you have any idea what results you'll get for that? How many will feel—

Hon. Bernard Valcourt: When we look at the current status, following the release of the national assessment results—, which think was in July 2011—

Hon. Carolyn Bennett: Minister, you keep giving us these big numbers and you fail to acknowledge that while over the past six years this program received an average of $1.2 billion annually in new funding, that's actually a cut of approximately $345 million per year from the 2012 levels, and $500 million over the six-year average. I want to know how, instead of addressing the gap that already exists, you are able to claim that the resources will be there to deal with these new responsibilities, instead of tying up first nations with their compliance, and instead of actually building the infrastructure that they require.

Hon. Bernard Valcourt: You may recall that one of the key findings of the national assessment of first nations water and waste water systems was that the majority of the risk identified in high-risk systems relates to the issue of capacity, with only 30% relating to design risk and infrastructure issues. What we have done...and I hate to go back to this strategy, but it is a comprehensive strategy that is addressing the issue of capacity development, is making continued investments in infrastructure, and is making the development of a clear regulatory framework essential. This is the strategy. Investments are taking place. The 2012 budget contained a commitment to invest $338 million, I think, over two years into infrastructure for waste water and drinking water systems—

● (0925)

Hon. Carolyn Bennett: It involves taking out a few tanks.

Hon. Bernard Valcourt: —which I believe is a substantial investment—

Hon. Carolyn Bennett: No.

Hon. Bernard Valcourt: —given the fiscal situation that all Canadians face. It's not as though I can just go and pick money off a tree. These are taxpayers' funds invested strategically to protect the health and safety of first nations members living on reserve in Canada.

Hon. Carolyn Bennett: Minister, the numbers speak for themselves. There's actually a cut of $345 million per year from the 2012 funding levels and $500 million over the six-year average. My concern is that the capacity—and I hope, Minister, you'll listen to some of the chiefs, who we hope will come to the hearings on this. Taking a provincial approach to some of the standards is very worrying to a number of the first nations chiefs, because the training and the testing sometimes eliminate people who've been running these plants for 20 years. A lot of people we have talked to would prefer a system run and delivered by first nations, so I hope you'll listen to that.

The real question for us here in the House of Commons is whether this is being brought in through the Senate so that there can't be any funding appropriation. Given the recommendations of the expert panel about the need to deal with capacity, we're asking why you decided to introduce this bill in the Senate, where it is subject to increased restrictions on incorporating the much needed resources in order to actually provide safe drinking water to first nations.

Hon. Bernard Valcourt: On the first point you made, of course we will listen to the chiefs who will come to testify before the committee. Our commitment is clear in the preamble of the bill, that these regulations will be developed in cooperation with first nations.

You talked about tenders, municipalities and the impact. I would point to paragraph 5(1)(b). Subclause 5(1) says, “Regulations made under section 4 may”:

> (b) confer on any person or body any legislative, administrative, judicial or other power that the Governor in Council considers necessary to effectively regulate drinking water systems and waste water systems;

This bill is enabling legislation allowing the implementation and the development of regulations to ensure the health and safety of first nation members. This will not be done overnight. The capacity that you refer to has to be in place. Of course the infrastructure has to be in place in order to meet whatever regulated standards will be adopted. This will take place, but it cannot be done overnight. The legislation needs to be in place for these regulatory developments to take place.

It's not as if there were no investments in infrastructure or in the training of the people. For example, you referred to people who have been there for 20 years. I was in Kashechewan about a month and a half ago. It's a brand-new system, but unfortunately, because of the lack of training of the operators, they had a loss there. We have to invest a lot of dollars to correct this. That's why the training program which is taking place right now is having good results. We have a lot more operators who are qualified and certified, which helps protect those important investments that first nations themselves make in their own systems.

● (0930)

The Chair: Thank you very much, Minister.

We'll turn now to Mr. Boughen for the next seven minutes.

Mr. Ray Boughen (Palliser, CPC): Thank you, Mr. Chair, and my thanks to you, Minister, and to your officials for taking time out of your busy schedules to meet with us. We certainly appreciate it.

Minister, Bill S-8, the Safe Drinking Water for First Nations Act, is crucial to ensuring that first nations have the same health and safety protections concerning drinking water and waste water treatment that are currently in place for other Canadians. Can you expand on this? I know you touched on it in your remarks, but will first nations be involved in the development and implementation of the regulations?

Hon. Bernard Valcourt: Absolutely the answer is yes. As the preamble of the bill clearly establishes, we will work with first nations and other stakeholders to develop these regulations and standards on a region-by-region basis. Canada is far and wide, and we know that the regional situation is particular to different parts of the country. We recognize that first nations communities face unique challenges wherever they are in the country, and their ability to meet federal regulatory requirements may vary from province to province, territory to territory, and also region to region within provinces.

When we think about those isolated communities, we realize that they are a different bird from being on the outskirts of Vancouver or Edmonton. We will work with first nations to develop these regulations. As I said earlier, it will take time, but they will be implemented over a number of years in full cooperation with first nations and stakeholders, keeping in mind always that the prime concern is the health and safety of first nations community members.

Mr. Ray Boughen: Since 2006 the government has invested approximately $3 billion in waste water infrastructure to support first nation communities. On January 13, 2013, the former minister announced $330.8 million over two years to sustain progress made to build and renovate water and waste water infrastructure, and to support the development of a long-term strategy to improve water quality in first nation communities. The government will continue to provide funding for the improvement of infrastructure and capacity related to drinking water and waste water services on first nations land.

Minister, what other steps has this government taken in order to be ready for a regulatory regime for first nations infrastructure?

Hon. Bernard Valcourt: You raise an important question. I referred to the national assessment which was undertaken between July 2009 and spring 2011. The results were released in July 2011. Independent engineers inspected throughout the country 1,300 drinking water and waste water systems, more than 800 wells, and 1,900 septic fields. It was the most rigorous, comprehensive, and independent assessment of its kind, surveying 97% of drinking water and waste water systems on first nations lands.

Following the release of the assessment results, we committed, of course, to take concrete action to support first nations communities in improving access to safe, clean, and reliable drinking water. On-reserve water and waste water issues have been identified as a priority. The comprehensive strategy I referred to earlier was developed on the three pillars I mentioned.

It is important to realize that with the money that was invested and appropriated for these purposes, work commenced in 2011 to address 47 water systems identified as both high design and high overall risk. This involved the design, building, and renovating or expansion of these systems, thereby benefiting some 24,000 individuals living on reserve; strengthening the annual inspection process to improve the consistency across the country, and ensuring that first nations and the department have accurate information to support decision-making regarding water and waste water systems; and also committing $330 million over two years through economic action plan 2012 to help sustain progress made to build and renovate water infrastructure on reserves.

As I said earlier, by 2014 we will have invested approximately $3 billion to support delivery of water and waste water services in first nations communities, which I think is a good indication of our commitment to ensure that they are provided with the capacity to deliver to their community members.

● (0935)

Mr. Ray Boughen: I have a quick one-minute question, Minister.

Bill S-8 would establish enforceable standards and protocols for water and waste water management. While provinces and territories each have their own safe water standards, there are currently no legally enforceable standards for first nations communities. How long will it take for regulations to be in place?

Hon. Bernard Valcourt: This will be developed over a period of time. It will take time to develop and implement regulations across Canada. That's why the regulations will be phased in to ensure there is adequate time for the government and first nations to bring their drinking water and waste water infrastructure and operating capacity to the levels required to conform with these new regulations.

Mr. Ray Boughen: Thank you, Minister.

The Chair: Thank you very much.

We'll now turn to Monsieur Genest-Jourdain for the next five minutes.

[*Translation*]

Mr. Jonathan Genest-Jourdain (Manicouagan, NDP): Good morning, Minister.

The involvement of first nations people is essential to the implementation of the bill before us, but the consultation campaign launched with the same theme in 2009—an expensive Canada-wide campaign—attracted only 544 participants. With that in mind, I would like to know how you will ensure that first nations people will really participate in the implementation of this bill.

Hon. Bernard Valcourt: Of course, as my opening remarks indicate, we will continue to work with first nations leaders across the country on developing regulations to provide guidance in the area of water distribution in first nation communities. I don't think the system requires the participation of all community members. The important thing is for the leaders of various first nation communities across the country to be involved in the process. They and other system stakeholders will be involved.

Mr. Jonathan Genest-Jourdain: Minister, I would now like to talk about clause 3 of the bill. That provision derogates from the treaty rights of aboriginal peoples of Canada, while complying with the Constitution and to the extent necessary to ensure the safety of drinking water on first nations lands.

Could you tell us in what specific cases aboriginal treaty rights could be derogated from?

Hon. Bernard Valcourt: I think that we are the only country in the world where aboriginal rights and treaty rights are protected by the Constitution. We must never lose sight of that.

Clause 3 aims to ensure that no regulations can violate those treaty rights or aboriginal rights, and that those rights will always have precedence, unless, of course, the health of first nations people is compromised.

I will leave the discussions on hypothetical situations to others. What the committee should know is that this non-derogation provision under clause 3 of the bill is almost identical to what we covered in our impartial discussions with first nations.

● (0940)

Mr. Jonathan Genest-Jourdain: How much time do I have left, Mr. Chair?

[*English*]

The Chair: One and a half minutes.

[*Translation*]

Mr. Jonathan Genest-Jourdain: Okay.

Minister, I was looking at the legislative summary of Bill S-8, which provides for the possibility of implementing regulations that would require permits to be obtained as a condition of engaging in any activity on first nations lands that could affect the quality of drinking water.

I would like to know what you think about that. Can the same reasoning be applied to first nations traditional territories, considering that the industrial activities carried out on those territories often involve reaching groundwater and lead to a noticeable drop in the quality of drinking water on Indian reserves?

Hon. Bernard Valcourt: The bill before the committee basically aims to target first nations reserve lands. The bill is limited to its objective—which consists in ensuring that those regulations apply to water source protection, clean water delivery and wastewater treatment on reserves, and not off reserve.

Mr. Jonathan Genest-Jourdain: Thank you.

[*English*]

The Chair: Thank you very much. Thank you, Minister. We appreciate your testimony today and we certainly appreciate your willingness to come, as you have always demonstrated.

Colleagues, we'll suspend, and then we'll move on to the next witnesses.

Thanks again, Minister.

Hon. Bernard Valcourt: Thank you.

The Chair: The meeting is suspended.

● (0940)

(Pause)

● (0945)

The Chair: We'll call the meeting back to order and invite our witnesses to come forward.

Mr. Paul, we'll begin with you.

I appreciate your coming. We certainly appreciate your willingness to join us.

Mr. Vaughn Paul (Chief Executive Officer, First Nations of Alberta Technical Services Advisory Group): I'm going to let the councillor go first.

Ms. Regena Crowchild (Councillor, Tsuu T'ina First Nation): I'm representing Chief Whitney.

The Chair: That's wonderful.

If you would state your name for us, that would be helpful.

Ms. Regena Crowchild: I'm Regena Crowchild, member of council for the Tsuu T'ina First Nation.

The Chair: Thank you so much for being here.

We appreciate your willingness to come; we expected the chief.

We'll turn it over to you for your opening statement and then we'll have some questions after Mr. Paul gives his opening statement.

Ms. Regena Crowchild: Good morning.

First, I have a letter from my chief, which reads:

> Thank you for allowing representatives from my nation, Tsuu T'ina, to make a presentation to you on Bill S-8.
>
> On behalf of the Tsuu T'ina people, I hereby serve notice to you that the Tsuu T'ina First Nation has jurisdiction over water on our lands. Our jurisdiction is protected by Treaty 7 and the Constitution Act of 1982.
>
> Canada, the successor state of Great Britain, has responsibility to adhere to the Constitution Act of 1982.

That was from Chief Roy Whitney of the Tsuu T'ina Nation.

First of all, we would like to introduce ourselves to you. We are the Tsuu T'ina Nation. We are signatories to Treaty 7.

Our reserve is rectangular in shape, measuring 18 miles in length running from east to west, and 6 miles in width running from north to south. It consists of 69,000 acres, more or less. Our population numbers total 1,863 as of the latest figures. Our reserve borders on the southwest city limits of the city of Calgary.

Two natural water systems run through our reserve, the Elbow River and Fish Creek. Both are heavily depended upon by the city of Calgary. A major river, the Bow River,which runs through the city of Calgary, is a part of our traditional territory and has been used by our nation since time immemorial.

All of these sources of water have been largely polluted by industrial, agricultural, and residential development. Hence, that is why we are very concerned about water pollution and safe drinking water.

Water, pursuant to the Van der Peet case, is integral to our culture. In addition to physical needs, water is an integral part of our ceremonies, our songs, and our stories, which in turn define who we are as a nation.

As a signatory to Treaty 7, our nation would like to remind the crown about Treaty 7. Treaty 7 is a peace treaty between two nations where our Chief Bull Head agreed to set aside part of our traditional territory as a reserve for our exclusive use so that we could continue our way of life and to share the rest of the traditional territory with the Euro newcomers in exchange for a number of guarantees, including: fiduciary protection from Euro newcomers' encroachment; lifelong education and health services; continued rights to hunt, fish, and trap; and money for economic development.

This proposed safe drinking water bill is another example of a continuing attempt by the crown to get out from its responsibilities under Treaty 7, but we would like to remind the crown that it owes fiduciary and fiscal responsibilities to our peoples. These responsibilities arise out of a number of sources included in the Royal Proclamation of 1763, Treaty 7 of 1877, the United Nations Declaration on the Rights of Indigenous Peoples, and the Supreme Court of Canada's cases, such as the Guerin case.

The Supreme Court of Canada has also reminded the Government of Canada that it must act with honour when dealing with first nations.

Our nation's view on Bill S-8 is that the crown is not acting very honourably and simply wants to relieve itself of its fiduciary duties.

The summary of Bill S-8 states:

> This enactment addresses health and safety issues on reserve lands and certain other lands by providing for regulations to govern drinking water and waste water treatment in First Nations communities. Regulations could be made on a province-by-province basis to mirror existing provincial regulatory regimes, with adaptations to address the circumstances of First Nations living on those lands.

This summary reflects what is in the proposed act. The proposed act is strictly about a regulatory regime and does not deal with health standards. It follows the general practice of the federal government adopting provincial legislative and regulatory regimes and applying them to first nations lands.

● (0950)

All indications are that the proposed act will simply adopt provincial laws and regulations regarding safe drinking water and waste water systems, but the reality is that a large amount of the water pollution on reserve lands is caused by weak provincial water standards and/or by lack of enforcement of the law and regulations of the province. Consequently, the federal government should take a lead role in assisting first nations to develop standards for safe drinking water on reserve as opposed to deferring to provincial legislation and regulatory regimes.

Bill S-8 makes references to sources of drinking water. In Canada there is no first nation that has control of sources of drinking water, other than wells actually located on reserves.

Further, there is reference to requiring permits for a body entity that may affect drinking water sources by its activity. A body entity could include an oil company. For instance, fracking is an activity that does affect underground water systems, but the proposed act does not mention anything about regulating that type of activity, other than requiring a permit.

The proposed act is very cognizant of provincial jurisdiction over water and other natural resources. It becomes very clear the federal government does not want to take a leadership role with regard to safe drinking water, but simply wants to off-load its health responsibilities for first nations peoples to the provinces, which have no constitutional responsibility to Indians.

The proposed act makes it very clear that water allocations will not be affected by the proposed act. Water allocations are regulated through water licences issued by the provinces. The issue here is what if there is a conflict between the drinking water needs of a first nation and water allocation for irrigation and industrial purposes. The proposed act makes it very clear that water allocations by the provinces will be paramount over drinking water needs of first nations.

Under the proposed act, the Governor in Council will have authority over a broad spectrum of regulatory powers. There is no mention of chief and council in Bill S-8. There is mention of conferring powers of a person or a body to carry out the regulations. Since there is no mention of chief and council, the body will most likely be a non-Indian, a corporation, or a provincial administrative agency. In other words, an outsider will most likely be in charge of safe drinking water for our reserve community. If a non-Indian or a corporation is in charge of safe drinking water on the reserve, it is more than likely the result will be about profit and not health.

A large part of the proposed act revolves around protecting government officials, both federal and provincial, from lawsuits. The government can make all the laws and regulations, but does not want to take any responsibility for mistakes, omissions, or negligence. Chiefs and councils will be held responsible for these matters under the act.

Water is not specifically mentioned in the Canadian constitution. The federal and provincial governments claim authority over water through implications such as sea coast and inland fisheries, navigation and shipping, municipal institutions, and property and civil rights. But first nations have a much superior right to water than provincial and federal governments have, whether you look at it from an aboriginal and treaty right—section 35 of the Constitution Act—or from a prior appropriation perspective.

Based on this right to water, Bill S-8 should really be about treaty implementation. It should be first nations enacting laws and regulations regarding safe drinking water, not the federal and provincial governments.

● (0955)

In conclusion, we are here to inform you that Tsuu T'ina Nation rejects Bill S-8 in its entirety, as it is not according to the spirit and intent of Treaty 7. Treaty 7 and our inherent aboriginal rights are protected by your Constitution Act of 1982.

Please be informed that Tsuu T'ina Nation is currently developing an act that addresses the water needs of our citizens on Tsuu T'ina lands.

Thank you.

● (1000)

The Chair: Thank you, Councillor Crowchild. We appreciate that opening statement.

We'll now turn to Mr. Paul. Mr. Paul is here representing the First Nations of Alberta Technical Services Advisory Group.

We appreciate both of you coming.

We'll turn now to you, Mr. Paul, for your opening statement.

Mr. Vaughn Paul: Thank you very much, Mr. Chairman.

Good morning to the honourable members. Thank you for inviting our organization to make a presentation on this piece of legislation.

I'll give you a bit of background. I want to thank Regena for opening the comments from an Alberta perspective. I'm with the First Nations Alberta Technical Services Advisory Group, TSAG for short. It's a non-profit service entity governed by all first nations in Alberta through a chief steering committee appointed by the Assembly of Treaty Chiefs. TSAG provides technical services and training to first nations for housing, public works, community facilities, and environmental management, for more than 12 specialized programs.

Our organization has a particular focus and expertise in relation to water management at the local level in first nations communities. TSAG operates a circuit rider program which trains first nation water and waste water operators to deliver safe drinking water. In partnership with Aboriginal Affairs and Northern Development Canada—the regional office and the folks here in Ottawa—TSAG has also worked to develop a community-driven source water protection plan with one Alberta first nation. It is the first of its kind. This guide will serve as a national template for source water protection planning on reserve to further build community capacity for water resources management. TSAG provides technical training and network opportunities for first nations staff working in lands and environmental departments.

Over the last year and a half, we have engaged in a pilot project with representatives of AANDC. We've installed remote water monitoring devices in every first nation water treatment plant in Alberta. They're quite unique in their design and implementation. They don't use reagents or chemicals to do the testing and the monitoring. They give us real-time information on the quality of drinking water as it leaves the water treatment plant, using a sophisticated model and algorithm—don't ask me to explain it, please—so that no reagents and no chemicals have to be used. It's virtually maintenance-free.

That being said, I want to lay the groundwork for a bit of the expertise that we feel we have. It might not be a significant amount, but over the years we've been involved in the development of the impact analysis that was rolled out when we participated in the Neegan Burnside report. We felt the impact analysis was inadequate in that it didn't allow for enough time to have a thorough consultation and discussion about the impacts and ramifications of the different methods and methodologies for coming up with this piece of legislation.

AANDC's terms of reference for the impact analysis asked first nations to consider the impact on first nations of incorporation by reference of existing provincial regulations and to examine the elements of provincial law that may be addressed in the legislation. AANDC identified these elements in its discussion paper prepared in early 2009. They also required us to enlist the assistance of local experts in the analysis and to examine the impact of the regulatory regimes currently in place in the province.

AANDC stated that the purpose of the impact analysis was to seek input from first nations and first nations regional organizations on a proposed federal legislative framework for drinking water and waste water, based on the option of incorporating by reference existing provincial regulations. First nations only had two months to complete the work, which included a review and consideration of the five provincial statutes and 19 regulations, codes, and guidelines —about 149 pages of regulatory requirements—that collectively make up the provincial regulatory regime for drinking water and waste water.

We had to solicit input from 47 first nation communities in Alberta and their water system operators on the potential implications of subjecting first nations to the provincial regulatory regime. We also had to consider the potential impacts of incorporation by reference of the provincial regulatory regime and synthesize all of the above information into an impact analysis report. AANDC provided the AOTC with $22,000 in funding, or $468 per Alberta first nation, for the impact analysis.

● (1005)

In light of TSAG's extensive work on water matters with first nation communities in Alberta, the AOTC approached TSAG in early 2009 to assist with the creation of an impact analysis. Despite the grossly inadequate budget and the nearly impossible timeframe provided by AANDC, we reluctantly agreed to complete the impact analysis for the AOTC.

On April 6, 2009, TSAG submitted an analysis of the potential impacts of proposed new federal drinking water legislation to INAC on behalf of the AOTC. You have a copy, and it's on our website as well. AANDC stated in its terms of reference that once the impact analysis was complete, each of the 12 regional impact analysis reports would be submitted to the coordinating consultant who would roll up the results into a final summary report. This summary report would be provided to INAC once it has been reviewed by all the regional first nation organizations participating in the impact analysis.

We were provided with the draft summary report prepared by the Institute on Governance late in the afternoon of April 13, 2009. We were expected, along with other regional first nation organizations, to review the draft summary report prior to a meeting in Ottawa on April 15, 2009, at which time the report would be finalized. Of course, April 14 was spent travelling to Ottawa from Alberta and in practical terms, TSAG had little time to review the draft summary report.

From what we understand, these circumstances were not unique to Alberta first nations. Each of the first nation regional organizations received a draft summary report late in the day on April 13, 2009. Consequently, TSAG and first nations regional organizations from Saskatchewan, Manitoba, Ontario and Nova Scotia, the Atlantic region, Northwest Territories and Yukon made a request to AANDC to have 30 days for first nation regional organizations to review the draft IOG summary report. However, the request was denied. As a result, the same first nation regional organizations collectively insisted that the following disclaimer be added to the executive summary of the IOG summary report, and I quote, "The contents of this paper are the responsibility of the authors of the IOG report and do not necessarily reflect the positions or perspectives of the regional first nation impact analysis representatives or any particular first nation or regional organization."

To date AANDC has not responded to any of the concerns and issues identified by TSAG and the AOTC in the impact analysis. The complete lack of response from AANDC to the impact analysis has left Alberta first nations deeply concerned and frustrated. Why did AANDC ask for and fund the impact analysis if it never intended to review it, respond to the concerns it raises, or to meet with Alberta first nations to discuss it?

It's clearly recommended that AANDC undertake a comprehensive consultation process with first nations with a view to collaboratively developing such legislation. Although there's legal obligation to consult, Alberta's first nations are most concerned about the practical implications of AANDC's failure to review, consider or respond to the AOTC's impact analysis. In simple terms, it means that Bill S-8 has been developed without any meaningful impact from first nations leaders, communities, organizations, or water system operators in Alberta.

I will now go to a brief summary of general concerns identified by the impact analysis, which represents the collective efforts of first nations leaders, communities, water system operators, staff, and concerned first nation members from across Alberta who attended workshops with TSAG, answered questions, phoned in their concerns and provided written input. It is a lengthy document, which is not surprising in light of what it was intended to accomplish. Unfortunately, TSAG does not have a budget to provide a French translation of the 220-page impact analysis for this committee, and AANDC has confirmed that it has not translated the document. In order to make it available to the members of this committee, TSAG has posted the document to our website, www.tsag.net.

Although we encourage honourable members to review the impact analysis, we have provided the following summary of concerns and issues identified in the impact analysis by first nations leadership and water system operators regarding the potential implications of applying the provincial regulatory regime to first nation communities.

It is important to stress that this summary does not include the portion of the impact analysis which addressed the potential impacts of the proposed legislation on first nations treaty rights and jurisdiction over water on reserve lands. Those issues were addressed in the AOTC submission, and will be by first nations from other regions, I'm sure.

Number one, our recommendation was resources, then regulation.

● (1010)

In the course of developing the impact analysis with TSAG, first nations leaders and water technicians stressed a serious overriding and persistent issue. Canada has consistently failed to provide first nations with adequate funding for the design, construction, operation and maintenance of first nations water plants and other drinking water infrastructure. AANDC has invested over $2 billion in recent years to tackle trouble spots in first nations communities, but more funding is required to bring all first nations water systems up to acceptable standards.

The cost of improving first nations water systems is being studied by the national engineering assessment, and has yet to be completed. If the core issue of adequate resources is not successfully addressed prior to the implementation of new drinking water legislation, many first nations will be unable to meet new regulatory standards. Moreover, the regulations could worsen the situation by increasing costs associated with monitoring, reporting, compliance, and the potential financial penalties related to enforcement.

AANDC has stated that the regulations will be phased in and applied to first nations communities when they are ready, yet no such commitment or requirement is contained within Bill S-8. Nobody wants new drinking water legislation to make the situation worse than it already is.

The expert panel stressed the problem of chronic inadequate funding is the most significant issue preventing the delivery of safe drinking water to first nations. As an example, a number of our communities have expended their annual budgets for their water treatment and water and waste water facilities in their first quarter. In Alberta with the high cost of labour, chemicals and utilities, come September or October often there's no money for chemicals, and they have to look at other ways and means.

Regulation alone will not be effective in ensuring safe drinking water unless the other requirements—a multi-barrier approach, cautious decision-making, and effective management systems—are met. These other requirements depend on adequate investment in both human resources and physical assets. Regulation without the investment needed to build capacity may even put drinking water safety at risk by diverting badly needed resources into regulatory frameworks and compliance costs.

Aboriginal Affairs' current policy is to fund 80% of the estimated rather than the actual operation and maintenance costs of first nations drinking water systems. In 2005 the Commissioner of the Environment found that the cost estimates underlying this percentage had not been revisited nor had they been updated for several years.

To our knowledge, AANDC's funding formula has not changed since 2005. Further, when negotiating funding agreements with first nations, Aboriginal Affairs ignores whether first nations have other resources to meet this requirement to fund the remaining 20%.

Many first nations water technicians told TSAG that the practical result for their communities is that they often have to operate and maintain their community drinking water systems on budgets that fall short of their actual costs. Some first nations communities have little choice but to reallocate money from other underfunded areas, such as health, education, or housing, to operate their water systems.

Nothing in the bill, INAC's discussion paper, or its plans for implementing the bill address this critical and fundamental issue. Regulation without the required resources is simply a recipe for perpetuating Canada's long record of failure with respect to first nations drinking water.

The chair of the expert panel, Dr. Harry Swain, said most clearly that if we want “to get good water on Indian reserves, then we should worry about the basic resources and then about a regulatory regime.”

Alberta first nations uniformly communicated the same message to TSAG during our work on the impact analysis. They want a clear commitment from Canada to address the problem of inadequate funding before developing new legislation or regulations.

Number two is first nations water and the Government of Alberta. The Government of Alberta's operating position is that first nations have no water rights or jurisdiction on reserve lands. It asserts that the province owns and controls all water resources within first nations lands.

AANDC has not considered the implications of Alberta's position and the often difficult resulting relationships that exist between many first nations and Alberta regarding water, even though the expert panel on safe drinking water for first nations identified this concern as a barrier to the effective use of provincial regulations. This barrier could become even more significant if provincial officials were provided with a role in regulation of first nations water systems.

● (1015)

Water technicians and their chiefs and council are deeply concerned that the Alberta officials may use any authority they derive as a regulator from the federal government to also advance Alberta's assertion of control and ownership of first nation on-reserve water resources. There's particular concern about the potentially staggering cost implications of being made subject to Alberta's new water markets under this bill, where even small allocations of water are being sold for millions of dollars.

Currently AANDC has made no commitment to purchasing water allocations for first nations in Alberta's new water markets.

The Chair: I wonder if you could summarize the last point. We're moving into question time, so if that would be possible, it would be great.

Mr. Vaughn Paul: I'll just read out three, and then I can submit the document as information for those who are interested.

One is about having regulations without a regulator.

There is not enough information about incorporation by reference. What does that exactly mean? Does referential incorporation of Alberta's regulatory regime make sense?

Another would be source water protection.

TSAG's review of the source water protection aspects of Alberta's regulatory regime also called into question whether the system would effectively protect first nations on-reserve source water resources. Incorporation by reference is likely to include the watershed management planning provisions of Alberta's regulatory regime. This has a troubling starting point. The Government of Alberta's position is that it has no obligation to include first nations in watershed management planning. Further, under Alberta's regime, watershed management plans, which are supposed to be the main instrument for source water protection, are not binding and are administered as an unenforceable policy objective. Alberta has no enforceable source water protection legislation, like Ontario's Clean Water Act. The limited requirements of the provincial regime have demonstrated a failure to protect first nations from local and immediate potential impacts to on-reserve source water resources.

For all the reasons set out here and above, first nations express significant concern as to whether AANDC has carefully considered the adoption of the provincial regulatory regime, and whether the same is a meaningful solution in the context of first nations drinking water.

There are quite a few pages. There is a conclusion and recommendations.

We want to thank you for giving us this opportunity to make a submission on the legislation. Our organization agrees with the long-held position of the Assembly of Treaty Chiefs that the regulatory gap regarding first nation drinking water and waste water needs to be filled and that first nations must have a central role in a truly collaborative effort with Canada to develop legislation to fill that gap. However, based on significant concerns and issues raised by Alberta first nation leaders and water technicians in the impact analysis, TSAG respectfully submits that the bill as presently drafted is likely to create as many or more problems than it fixes. Accordingly, we recommend that the bill be returned to the Government of Canada for further work, particularly for more direct input from first nations.

Thank you.

The Chair: Thank you very much.

Colleagues, we're going to begin with five-minute rounds to ensure that we can get some additional questioners in.

Thank you so much to our witnesses for your extensive and important briefs.

We'll turn to Mr. Bevington, to begin.

Mr. Dennis Bevington (Western Arctic, NDP): Thank you very much, witnesses. Both of you provided us with valuable testimony today, a very comprehensive discussion of the water system in Alberta.

I'm sure that you're familiar with the national assessment that was done. It indicates that a number of water supply systems are through municipal-type agreements, some 25 out of the 82 water systems in Alberta. How is that relationship?

● (1020)

Mr. Vaughn Paul: I'm from one of those first nations that has an MTA, or an agreement with a local municipality in the city of Edmonton. The relationship has been fairly good.

The problem we have is that when we built our pipeline and the water to our pumping station, it was 20 years ago. The cost of creating and producing drinking water at that time was about $80,000 annually. The cost has almost tripled. The budgets haven't reflected that cost, so our first nation is forced to look for other ways and means of paying those bills.

Mr. Dennis Bevington: Simply for the water supply in first nations you're looking at $250,000 a year.

Mr. Vaughn Paul: Yes.

Mr. Dennis Bevington: This national study suggested that $162 million was required to upgrade the 82 systems in Alberta to some kind of decent level, and then there was probably a requirement for the future of some $800 million in capital investments.

Are you familiar with those figures? Do they seem accurate to you?

Mr. Vaughn Paul: Yes, sir.

Ms. Regena Crowchild: Sir, could I say something on that?

Mr. Dennis Bevington: Absolutely.

Ms. Regena Crowchild: The Prime Minister announced that he would provide those dollars to deal with the issue. However, it has been just lip service. To date we have not seen any dollars in our community or in our province, Alberta. We have not received any dollars, and we were hoping that the Prime Minister will make his commitment a reality.

Mr. Dennis Bevington: Thank you.

I spent some time on the northern river basins study in northern Alberta, and I realize the problems that first nations water supplies have in that area. The knowledge of those problems has existed since the 1990s, so you really haven't seen much improvement over the years.

Ms. Regena Crowchild: We haven't at all.

Mr. Dennis Bevington: About 30% of the homes in all reserves are on truck delivery. In the Northwest Territories the cost of truck delivery is very high. Maybe you could explain to the committee what that means to those communities, what those costs are like.

Ms. Regena Crowchild: I don't have the actual costs, but most of our reserve homes have cisterns. We do have some wells, and we do purchase water from the City of Calgary for our administration building, for the casino, and so forth, the buildings on the east end of our reserve.

I'm sorry, I don't have the costs for this, but it costs us a lot of money to do that.

Mr. Dennis Bevington: I'm very familiar with the cost of water delivery in the Northwest Territories for people in remote communities. According to this study, 31% of the people on reserves still get water delivered, and those costs are extremely high and are getting higher every day. That is a difficult situation.

Mr. Vaughn Paul: The distribution system is one of the things that add to the resource gap we talked about. We can split hairs over what constitutes a distribution system. In our view, trucking is exorbitant because of the high cost of diesel. We have communities that are going virtually 24-7 because of the burgeoning populations. The ability to make safe drinking water out of some of our source water areas from groundwater and lakes and streams and wherever they are pulling it from.... There are significant costs associated with getting that water delivered to the first nation residences.

Trucking has its own set of problems. They start punching out the roads and we have to start making investments in roads. There is timely delivery. There is freezing up. Everything and anything that can go wrong seems to happen. I couldn't give an exact figure, but 30% seems a little low to me with respect to truck delivery. In my community alone, it is well over 60%. In other areas in the east-central part of Alberta where there are higher concentrations of oil and gas, the water is not potable.

● (1025)

The Chair: Thank you.

We'll turn to Mr. Rathgeber for the next five minutes.

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Thank you, Mr. Chair.

Thank you to both witnesses for your attendance. It's always great to see fellow Albertans here in the nation's capital.

Councillor Crowchild, I remember in 2006 the Province of Alberta brought in a water market management system for the South Saskatchewan River Basin. If my recollection is correct, the Tsuu T'ina First Nation has always been opposed to that. Is that correct?

Ms. Regena Crowchild: That is correct.

Mr. Brent Rathgeber: It was also and more seriously opposed when the province expanded the water market from the South Saskatchewan River Basin to the entire province of Alberta. Would that be fair to say?

Ms. Regena Crowchild: That would be fair to say.

We tried to have proper consultation on that issue, but even though we made presentations to the province and to the representatives we were dealing with, our concerns were never met and were never dealt with properly.

Mr. Brent Rathgeber: I know there is litigation between you and some of the other Treaty 7 nations and the province over this very issue. I'm aware that in the first instance the province prevailed, but then I lost track of the litigation.

Was that appealed to the Alberta Court of Appeal?

Ms. Regena Crowchild: Yes. It's still in the court system so we're not privy to discuss it at this point.

Mr. Brent Rathgeber: The Alberta Court of Appeal hasn't ruled on this.

Ms. Regena Crowchild: No.

Mr. Brent Rathgeber: Can you tell me if the argument has been heard?

Ms. Regena Crowchild: It's been heard but not completely. I don't want to address it because it's in court and I don't want to jeopardize our native stand.

Mr. Brent Rathgeber: Sure.

Ms. Regena Crowchild: Thank you.

Mr. Brent Rathgeber: I appreciate that.

I understand at one point Treaty 7 nations, and Tsuu T'ina specifically, were supportive of the federal government's framework to regulate safe water and waste water management.

Is it safe for me to say that a big part of your concern with this legislation is not so much with the regulatory framework but the federal government's position that water allocation is, in fact, in the federal government's position a matter of provincial jurisdiction?

Ms. Regena Crowchild: We rejected Bill S-8. We're coming from a Tsuu T'ina perspective. As for Treaty 7 in total, at the time when it was first introduced, everybody said that they didn't have any problems with safe drinking water. We want safe drinking water. It was the manner that it was introduced into legislation that overruled and overrode our jurisdiction. It overrode the fiduciary obligations and fiscal responsibilities.

We take the position that we have complete jurisdiction over the water that's on our territories. As nations, we have never surrendered that. We expect Canada to start implementing the treaty according to its spirit and intent. One of our concerns is the water issue. The Province of Alberta, which has the regulatory regime or the allocation, is in direct conflict with the spirit and intent of Treaty 7. We want to address that and get it all sorted out. It appears it has always fallen on deaf ears and we haven't been able to address it properly. We certainly want safe drinking water, but we want it to be done appropriately.

Mr. Brent Rathgeber: Right. We all want safe drinking water.

You indicated in your opening comments that in your view there were weak provincial water standards and a lack of provincial regulation. I'm assuming that, jurisdictional issues aside, you would welcome a federal water regime that developed not weak federal regulations governing the provision of drinking water.

Ms. Regena Crowchild: No, what—

Mr. Brent Rathgeber: —the jurisdictional issues aside.

Ms. Regena Crowchild: What we're seeing is that we're developing our own water law. We hope that the federal government would work with us to develop these laws appropriately and not go ahead and dictate what their regulations are. Yes, the provincial regulations are weak. There's no constitutional provision for the provinces to enter into our territory to have jurisdiction over matters that affect our lands and our people. There isn't. Why is the federal government always trying to shove their responsibilities over to the provinces? To us that's unconstitutional.

● (1030)

The Chair: Thank you very much.

We'll turn now to Ms. Bennett for the next five minutes.

Hon. Carolyn Bennett: Thanks very much.

I'd like to continue with that.

Maybe the two of you could describe how this should work. Everybody wants safe drinking water, as you've said. What would it look like if this was developed in proper consultation with first nations? How would you ensure safe drinking water in helping you develop your own laws and enabling the sharing of best practices with organizations like yours?

I think where we're coming from, this lack of trust on all of this, is shoving down legislation when, no matter what anybody says, the capacity is not there. Boasting about how much is being spent when it seems that the money is being cut and you're not getting what you need to do the training and build the infrastructure that you require, and also not even dealing honestly with the assessment that had so many water systems at moderate or high risk.... At the same time there are a whole bunch of people still getting it delivered who don't have boil water advisories because the water's still being delivered. This is a crisis, I think, that appalls all Canadians.

What we're trying to say, and what we tried to say to the minister, is that this legislation is not going to fix the crisis unless Canada accepts its fiduciary responsibility to fix this with a real plan. I mean money, funding it properly, and developing the regulations in proper consultation.

Ms. Regena Crowchild: We suggested that what we should be addressing is the implementation of treaty. Now when you do the implementation of treaty—the Prime Minister indicated last year and again in January that he would have serious discussions on treaty. That has yet to happen as well. We get all these empty promises. We want a nation-to-nation discussion with respect to water, our lands, our jurisdiction over all matters. We need to set up a proper relationship. When the Prime Minister does fulfill his commitment, then our chiefs will be ready to address all these issues and then they will set out a process to address the water, the fiduciary obligations, and the fiscal responsibilities.

The United Nations declaration, which was passed by the United Nations General Assembly, and which Canada and the Prime Minister later endorsed, talks about our rights as peoples, as well as Canada, the state, providing the mechanisms and financial resources to assist us to do this work. Right now, as you can see, most of our reserves don't have the necessary capacity because we don't have the money. Each year the Department of Indian Affairs is allocating less and less to each tribe, so where does that put us?

Now they are enacting this legislation and they're not responsible for anything, any negligence or anything else. If anybody gets sued, they're indemnified and guess who's responsible? We are.

Why is the federal government feeding us to the dogs? Why is it setting us up when we have very limited...and when Canada has not been fulfilling its responsibility towards our people? You must remember we were the first peoples here on this territory. If it weren't for Treaty Nos. 6, 7, and 8, there would be no such thing as the Province of Alberta. We've got to put that into perspective and honour the obligations under treaty and recognize our inherent and aboriginal rights. Thank you.

It's very frustrating. Canadians think they can legislate over us, dictate to us as to what we should do, not giving any care about the supreme laws of this land, interpreting them according to their own thinking. Let's sit down and discuss this and clarify treaty, set out our relationship according to treaty, and work things out so everybody can be safe and healthy, and enjoy the relationship we have with the non-indigenous peoples on our territories. We agreed to live side by side without interference, and yet Canada has interfered in our lives since prior to the treaties—the Indian Act first and now all these other pieces of legislation. It's frustrating.

Mr. Chairman, just for your information, there's one copy with signatures at the bottom. There are several more from our nations that will be following because when we do things to represent the nations, we consult with them and they support us. We just missed many sheets of this. They'll be coming.

● (1035)

The Chair: Thank you, Councillor.

We'll turn to Mr. Seeback for the next five minutes.

Mr. Kyle Seeback (Brampton West, CPC): Thank you, Mr. Chair.

I always find it interesting when I hear members talk about something needing to be done. When the previous government was elected in 1993 it took them until 2003 to actually look into an assessment of water and waste water, and then to somehow suggest that we're not moving too quickly...but I digress.

Vaughn, one of the things that you were talking about and seemed very focused on is incorporation by reference to provincial standards. You seem quite concerned about that, and I can understand those concerns. You gave a list of things, and if those were to be adopted, what the costs and the difficulties associated with that would be.

I'm sure you're aware that subclause 5(3) actually says, “Regulations made under section 4 may incorporate by reference laws of a province, as amended from time to time...”. The legislation actually doesn't say “shall” or “will”; it says “may”. That's a key distinction, because it's not actually saying that this is what's going to happen. The other thing that's important is that the preamble of the legislation states:

> And whereas the Minister of Indian Affairs and Northern Development and the Minister of Health have committed to working with First Nations to develop proposals for regulations to be made under this Act;

It appears to me that the concerns you're raising are very clearly set out in the legislation, both in the preamble, which says there will be a very good discussion on these regulations, and in the proposed subsection, which uses “may”.

Do you not agree that in terms of these concerns you have, there will be adequate time for all of them to be raised in the process going forward?

Mr. Vaughn Paul: Not necessarily. If the legislation is passed, from our perspective that will open up a whole new jurisdictional labyrinth that nobody knows—you don't know; we don't know. I don't have a lot of faith that it's going to come out in favour of first nations.

Mr. Kyle Seeback: One of the things the expert panel talked about, and I know they also talk about funding, was that a critical thing to do is the creation of a new federal statute establishing single water standards across first nations communities. As I look at it, it's an enabling statute. It says that we're going to pass legislation that says we can develop regulations—so there will be uniform regulations—but after consultation with first nations.

To me it's the first step. Maybe you and I are going to disagree, but you're suggesting that the first step is resources and then to figure out regulations. Quite frankly, I think that's backwards. When you look at it, if you don't know what the regulations are, how can you resource properly? So what you do, and this is what I think we are doing, is you look at developing regulations in consultation with first nations. Once we determine what those regulations are, we'll have an idea of what the costs are going to be, because organizations such as yours are going to say if you put in place regulation *a*, *b*, *c*, and *d*, this is what the cost is going to be, and there will need to be funding to implement that.

To me that seems to be the more sensible approach to developing this.

Mr. Vaughn Paul: I think you can do both. I think you can do them simultaneously. I think you can invest in bringing those community systems up to a standard that's acceptable to whatever jurisdiction you want to follow, developed in meaningful consultation with first nations in each respective region, or if it's a uniform regulation, that's fine too. But I don't think it's fair to be creating legislation without knowing what the end results are going to be.

● (1040)

Mr. Kyle Seeback: The legislation doesn't create anything. It just says we're now enabled to go forward and pass regulations.

Mr. Vaughn Paul: What's the big rush of passing the legislation then?

Mr. Kyle Seeback: Then we can move forward and get the consultation on the regulations, because we actually have to do something.

Mr. Vaughn Paul: You've had all these years to consult.

Mr. Kyle Seeback: We don't want to be like the previous government that did nothing. We actually want to move forward with this.

Consultation takes time. There was extensive consultation. There has been a lot of funding implemented already. You talk about funding, and there's been about $3 billion, when you take both A-base funding and the targeted funding, and plan-of-action funding on water and waste water. Since 2006-07 there's been almost $3 billion invested in that. There certainly has been money invested.

Mr. Vaughn Paul: Yes.

Mr. Kyle Seeback: I think we need to move to regulation in consultation with first nations and then figure out what other additional funding there needs to be.

Mr. Vaughn Paul: We won't agree on much.

Mr. Kyle Seeback: All right.

The Chair: Thank you, Mr. Seeback.

Councillor Crowchild and Mr. Paul, thank you so much for being here. We appreciate your testimony.

Mr. Paul, if you wanted to forward your documentation, we'd make sure it was circulated to committee members.

Mr. Vaughn Paul: Thank you.

The Chair: Colleagues, I have one quick piece of business that needs to be undertaken and that's a consideration of the budget for this study. I think you have a copy of it. If there are any questions with regard to that, I'll entertain them; otherwise we'll move to a vote on it.

Mr. Del Mastro.

Mr. Dean Del Mastro (Peterborough, CPC): Thank you, Mr. Chairman.

I note we have a fairly significant request specifically for witnesses. Was any thought given, especially in the case of western witnesses, to utilizing the services of a video conference to save money for the committee?

The Chair: Every effort; as this committee is known to do, we make that available to every witness. This budget is put together with the assumption that everyone chooses to come. However, there is always the option.... We have witnesses who have already indicated that they'll testify by video conference.

Mr. Dean Del Mastro: Of the 11 witnesses from Vancouver, are any of them similar to other organizations. Is there a means to find savings? No?

Okay, thank you.

The Chair: Thank you.

We'll now move to a vote on the budget.

(Motion agreed to)

The Chair: Colleagues, I will meet with several of you in the next number of hours or days with regard to future witnesses. I know several of you need to get to another committee meeting, so we'll adjourn.

The meeting is adjourned.