



**"CAPTIK<sup>w</sup>Ł" : ORAL HISTORY**  
Okanagan legends tell us that in the beginning, *Sei'k'lip* (Coyote) brought the Sockeye salmon up the Columbia River. To the Syilx who lived on the Similkameen River, *Sei'k'lip* offered salmon in exchange for a wife. They refused. Therefore he did not allow salmon to swim into their river. However, the Syilx who lived along the Okanagan River, did give *Sei'k'lip* a wife, and the Sockeye salmon have been swimming up the Okanagan River ever since.



**WE, THE SYILX PEOPLE**

feel a deep connection with our land, our water, and with our relatives, the animals and the trees, the rocks and all living things that share the environment. Our *nsyilxcən* language and our Syilx culture respectfully honour the natural laws of the *tmix* – that which gives us life.

*sn̓x̓aʔiwlam* Columbia River, 2011



SYILX SONG

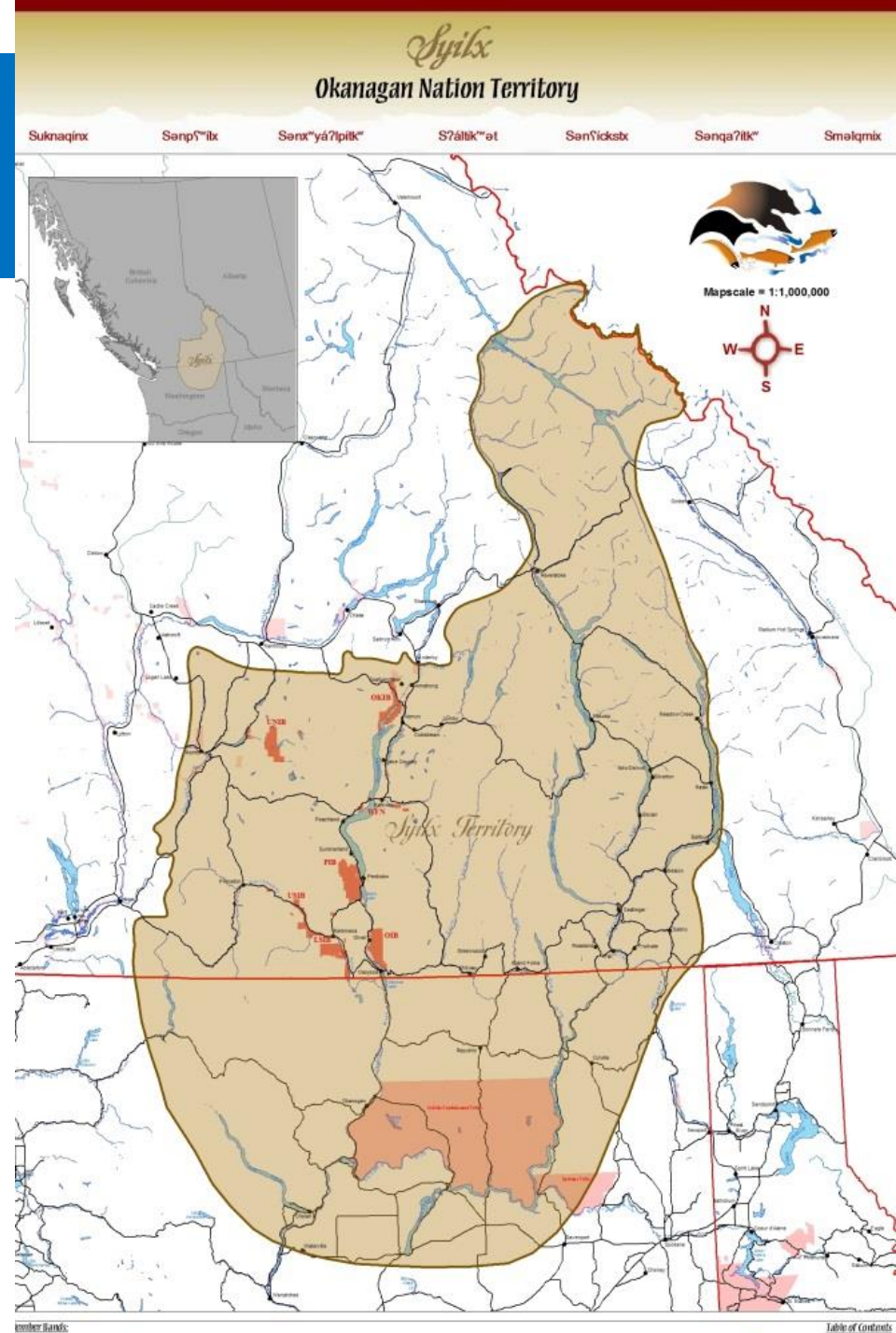
# Taking Responsibility for *siwłk<sup>w</sup>* (water)

**Presented by: Tessa Terbasket, Okanagan Nation Alliance**

# Syilx Okanagan Nation

Comprised of 8 member communities:

- Okanagan Indian Band,
- Westbank First Nation,
- Penticton Indian Band,
- Osoyoos Indian Band,
- Lower and Upper Similkameen Indian Bands,
- Upper Nicola Indian Band, and the
- Confederated Tribes of the Colville Reservations (WA, USA).



# Okanagan Nation Alliance (“ONA”)

- The ONA is a tribal council for the *Syilx* nation made up of political representatives from each 8 communities in the form of a chief who sits at the Chiefs Executive Council (CEC).
- The ONA mandate is to:
  - Advance, assert, support, and preserve Title and Rights of the *Syilx* Okanagan Nation
  - Protect, enhance and preserve the peoples, land, and resources of the member communities
  - Protect, enhance, and preserve the environment, fish, and wildlife resources within *Syilx* Okanagan territory
  - Promote, enhance, and preserve *Syilx* history, language, and culture
  - Collectively undertake and resolve governmental policy issues
  - Promote and create public awareness of the ONA concerns, position, accomplishments

# stłtałt: *Syilx* Inherent Rights



- An unchanging truth that comes from the Creator since the beginning of time on what it means to be *Syilx*. It is the responsibility of reciprocity that cannot be given away, overturned or diminished.
- Intergenerational knowledge of our natural laws that teach us how to live in balance with and how to act as caretakers of *nx<sup>w</sup>əlx<sup>w</sup>əltantət* (that which gives us life)
- Our sovereign, unceded right to self-governance and self-determination are affirmed within our *Syilx* Laws and Customs as dictated by our *captikwl*. Any proposed use of *siwtk<sup>w</sup>* (water) within our homeland must be premised on our unextinguished Title and Rights, which includes the right to decide how the *siwtk<sup>w</sup>* and lands of our territory will be used

# Syilx Water Declaration

- Background:

- Ongoing mismanagement of the lands and waters in *Syilx* territory resulted in ecosystem degradation, water quality deterioration, stress on local ecologies, species loss, etc.
- ONA Chief's Executive Council (CEC), communities and Elders gave direction to hold up our *sttaht* (rights and responsibilities) to care for water.
- July 31, 2014 the "Okanagan Water Declaration" was endorsed by CEC as a living document.



# The *Syilx* Water Declaration

To read the full water declaration visit:

[https://www.syilx.org/wp/wp-content/uploads/2016/11/Okanagan-Nation-Water-Declaration\\_Final\\_CEC\\_Adopted\\_July\\_31\\_2014.pdf](https://www.syilx.org/wp/wp-content/uploads/2016/11/Okanagan-Nation-Water-Declaration_Final_CEC_Adopted_July_31_2014.pdf)



“Water will always find a way around obstructions,  
under, over and through.”

– *Okanagan Water Declaration, 2014.*

# UN Declaration on Rights of Indigenous Peoples

## UN Declaration on Rights of Indigenous Peoples (2007)

- The Declaration is the most comprehensive international instrument on the rights of indigenous peoples. It establishes a universal framework of minimum standards for the survival, dignity and well-being of the indigenous peoples of the world and it elaborates on existing human rights standards and fundamental freedoms as they apply to the specific situation of indigenous peoples.
- It does not create any new rights – it is an affirmation of the *sttalt* (pre-existing inherent rights) of over 370 million Indigenous peoples around the world.
- Federal government endorsement of Bill C-262 on *UNDRIP* implementation (Second reading in House of Commons - Feb/2018)
- Provincial government commitment to full implementation of *UNDRIP* through its ministerial mandate letters

# UN Declaration on Rights of Indigenous Peoples cont'd

## **ARTICLE 18**

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

## **ARTICLE 25**

Indigenous Peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard

## **ARTICLE 26**

Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

## **ARTICLE 32**

Indigenous Peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

## **ARTICLE 36**

States, in consultation and cooperation with Indigenous Peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

## **ARTICLE 39**

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.



# Canadian Water Laws

## ***Constitution Act***

- Federal government has jurisdiction related to fisheries, federal lands, managing water on *Indian Act* reserves and responsibilities of management of boundary waters shared with the United States.
- Recognizes and affirms Section 35 Aboriginal title and rights. These rights lie in the practices, customs, and traditions integral to the distinctive cultures of Aboriginal peoples.
  - Allocating water infringes rights to fish and fishing.
  - Indian reserve lands were put in place with water sufficient to fulfill the purpose of the reservation.

## ***Canada Water Act (CWA)***

- Only Federal law dealing exclusively with water. It is an enabling framework to improve shared planning and decision making between governments.
  - Developed at a time when Indigenous governments weren't considered partners in water governance.

# BC Water Laws

## ***Water Sustainability Act (WSA)***

- Principle BC Law for managing: the diversion and use of water resources – water rights and licenses requirements for non-domestic groundwater users, Protection for aquatic ecosystems, Fees and rentals for water use, Protection of groundwater, including well construction and maintenance, and Dam safety and awareness.
  - The Province did not meaningfully engage with First Nations through its development and implementation of the legislation
  - Does not recognize *Syilx* water Title, Rights and Laws
  - Water rights are still prioritized using a “first-in-time, first-in-right” system
  - EFN’s are established by regulation, therefore salutatory decision makers will have the ability to override Indigenous laws and guidance.
  - New groundwater licenses will apply to Reserve lands. This has potential to limit indigenous rights to water in situations where wells have not been already drilled.

# Case Law

- 2014 Tsilhqot'in decision, affirmed that
  - Aboriginal Title is real and meaningful, and can exist over large tracts of land
  - Aboriginal Title includes the vesting of the full beneficial and economic interest in the land to the Aboriginal group
  - Where Aboriginal Title exists, consent of the Aboriginal group is required for the Crown or industry to use that land; and failing consent, the Crown has to meet the test of justifiable infringement; and
  - If the Crown authorizes activities on land which are demonstrated to be Aboriginal Title land, projects and permits may be cancelled, and damages owed to the Aboriginal group.

# ONA's Water Governance Initiatives

- Bringing back *ntytyix* (Chief Salmon) to the Okanagan
- Enduring Relationship with BC Hydro and WUP's
- Okanagan River Restoration Initiative
- Determined Environmental Flow Needs (EFN) – target and minimum flows
- Fish Water Management Tools that support more fish-friendly water release decisions
- *Syilx* Water Law project led by Lower Similkameen Indian Band and Okanagan Indian Band.
- *Syilx* Water Strategy
- The *Syilx* Water Declaration
- *Syilx* Water Responsibility and Planning Methodology
- Annual Water Ceremonies and Water Forum's



# Challenges

- Lack of recognition of Rights and Title
- Lack of ongoing funding for water initiatives, project and proposal driven.
- Mismanagement of water (e.g. over-allocation)
- Urbanization
- Resource Extraction
- Educational Gaps and Attitude
- “Collaboration”

# Ways to be an Ally

- Recognize *Syilx* have Title and Rights related to water
- Adequate funding for *Syilx* and other First Nations water governance, planning and protection
- The Provincial government need to have meaningful involvement with First Nations. This means decision making involvement and not just a user group
- Government to Government process needs to be developed with Province and Federal Government
- Co-creation, *Syilx* involved from beginning of process

# How Do We Move Forward Together?



**“siwłk<sup>w</sup> movements, pathways,  
resiliency and power teach us who  
we are and who we can be as people”**  
*Syilx Water Declaration*

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