

Consultation is not Consent:

Considerations for Nation-to-Nation Relationships in Scoping for Wastewater Projects

**© Dr. Heather Castleden,
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Five Objectives:

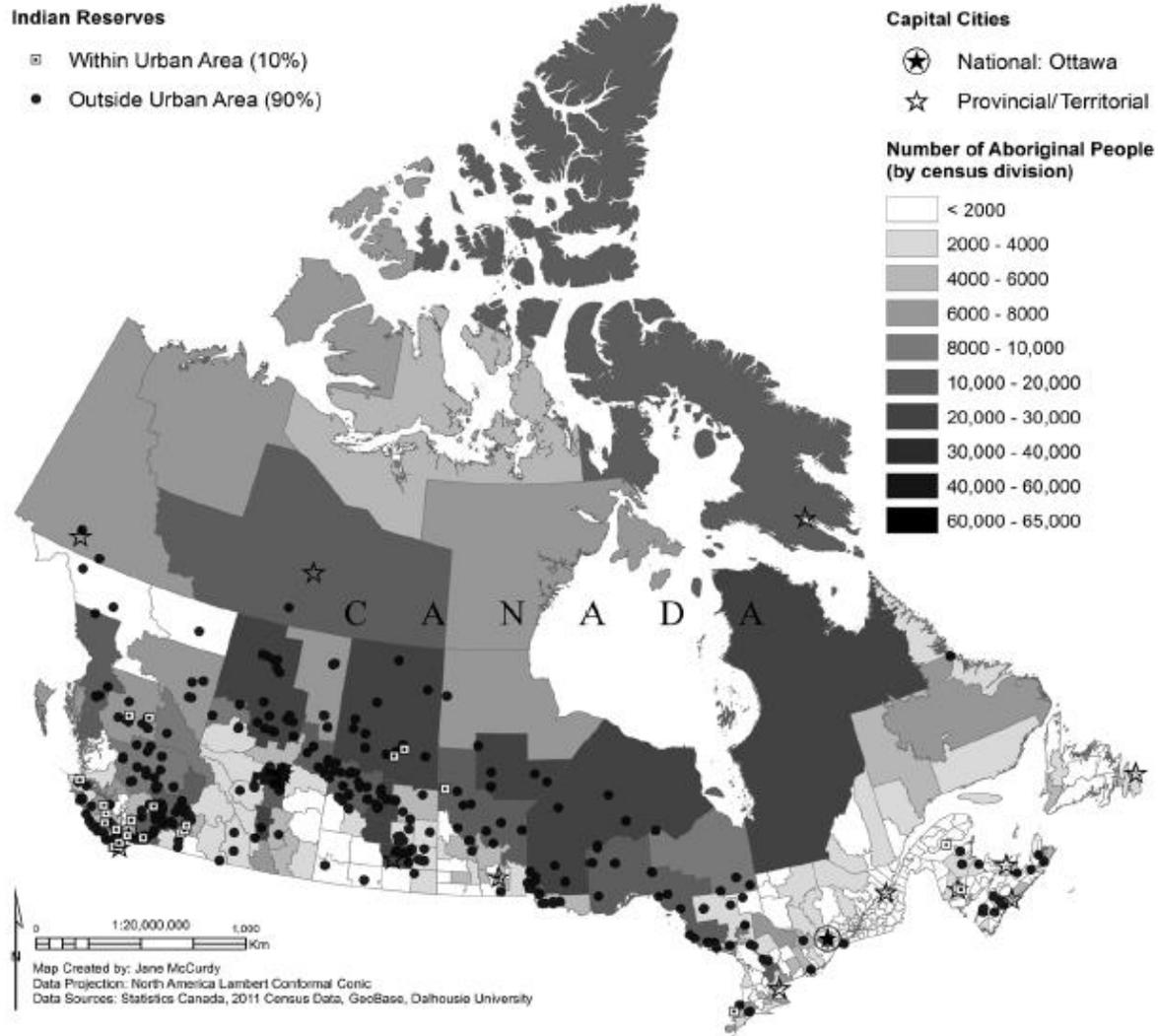
1. Participants will recognize that **we are all Treaty people** in Canada and that Treaties mean Nation-to-Nation relationships, even when it comes to wastewater facilities.
2. Participants will gain awareness of why consultation about building or upgrading wastewater facilities is not the same **as free, prior, and informed consent** when interacting with First Nations, Inuit, and Métis communities who may be affected by municipal decisions.
3. Participants will have an introduction to **why collaboration** with neighboring First Nations, Inuit, and Métis communities makes (common, financial, relational) sense.
4. Participants will acquire insights about **how to begin scoping projects** involving First Nations, Inuit and Métis governments in Canada.
5. Participants will understand that these key messages have **applicability** in ALL scoping, engagement, and communication.

Where I am coming from...



Which is your Treaty territory?

**First Nations, Inuit, and Métis populations in
relation to your municipality.**



Castleden, H., & Skinner, E. (2014). Whitewashing Indigenous water rights in Canada: How can we indigenize climate change adaptation in Canada if we ignore the fundamentals? In Stucker, D., & Lopez-Gunn, E. (Eds.) *Adaptation to Climate Change through Water Resource Management: Capacity, Equity, and Sustainability*. London, UK: EarthScan.

Objective 1:

We are all Treaty people

- Treaties are social and political compacts between Nations - and the people they represent.

We are *all* Treaty people

- In Canada, we have 'historic' Treaties....



Historic Treaties (pre-1975)



http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/htoc_1100100032308_eng.pdf

We are *all* Treaty people

- And we have 'modern' Treaties (also known as Comprehensive Land Claims).



The Maa-nulth Treaty, signed by 5 First Nations, the Province of British Columbia, and Canada, took effect in 2011.

<http://www.landclaimscoalition.ca/assets/maanulth-logo-300x300.gif>

MODERN TREATY TERRITORIES



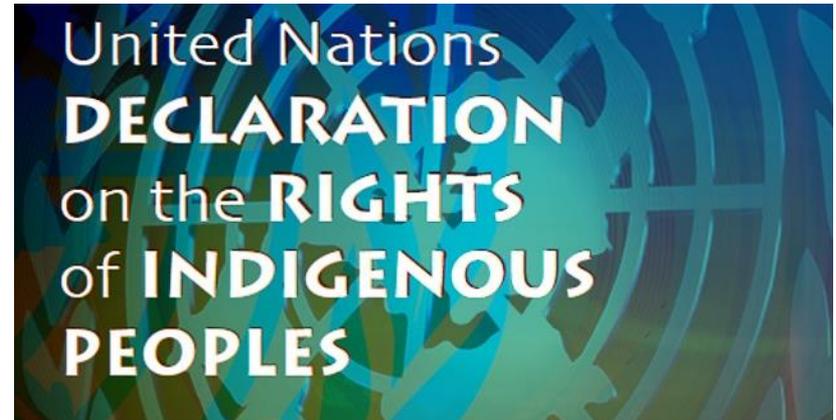
Source: The Land Claims Agreement Coalition

We are *all* Treaty people

- Treaties are social and political compacts between Nations (and the people they represent).
- In Canada, we have 'historic' Treaties.
- And we have 'modern' Treaties (also known as Comprehensive Land Claims)

- **Nation-to-Nation Treaties remain in place, regardless of when they were signed, until such time as new Treaties are signed.**

Objective 2: Consultation ≠ Consent



- 2007: UNDRIP was adopted by the UN
- 2010: Canada issued statement of support for UNDRIP
- 2015: Prime Minister mandated federal government to implement UNDRIP
- 2016: Canada announced its full support, without qualification, of UNDRIP.

UNDRIP Article 19

- States shall consult and cooperate in good faith with Indigenous peoples concerned through their own representative institutions in order to obtain their **free, prior and informed consent** before adopting and implementing legislative or administrative measures that may affect them.

UNDRIP Article 28.1

- Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their **free, prior and informed consent**.

UNDRIP Article 29.2

- States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their **free, prior and informed consent.**

UNDRIP Article 32.2

- States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their **free and informed consent prior** to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, **water** or other resources.

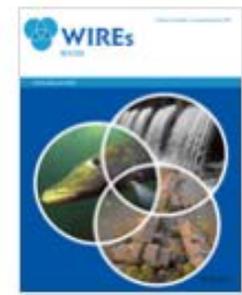
To learn more about Consultation ≠ Consent see:

Wiley Interdisciplinary Reviews: Water [Explore this journal >](#)

Advanced Review

Consultation is not consent: hydraulic fracturing and water governance on Indigenous lands in Canada

Michele-Lee Moore [✉](#), Suzanne von der Porten, Heather Castleden

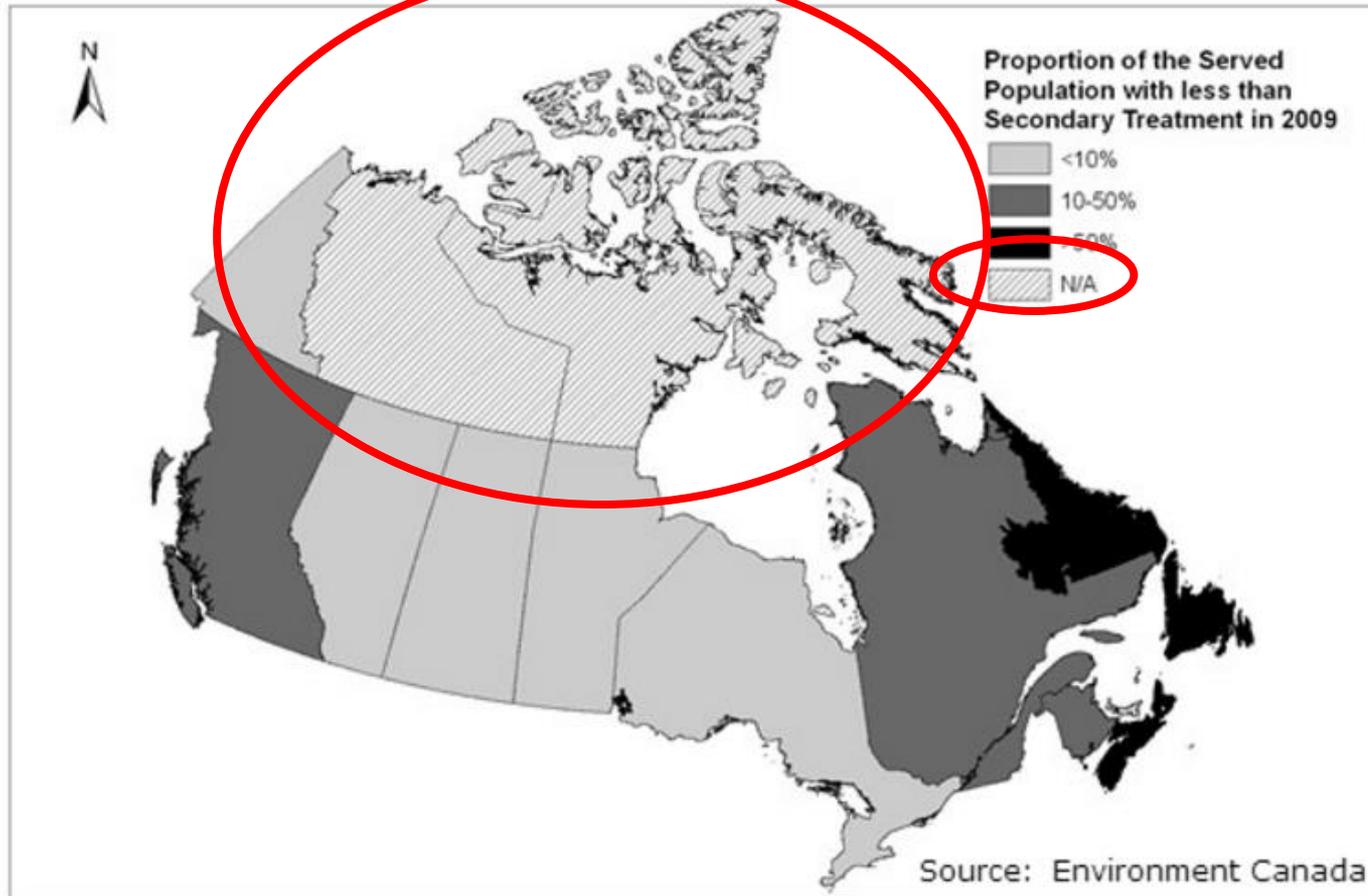


[View issue TOC](#)
Volume 4, Issue 1
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Objective 3:

Why Collaboration is Important

2009 Federal Regulations: Unintended Consequences



Nunavut Government's Response to CCME's 2009 Municipal Wastewater Effluent Strategy



Source:

http://www.infrastructure.gc.ca/images/NU_cambridge_bay_waste_treatment_traitement_dechets_df.jpg

Nunavut Government's Response to CCME's 2009 Municipal Wastewater Effluent Strategy



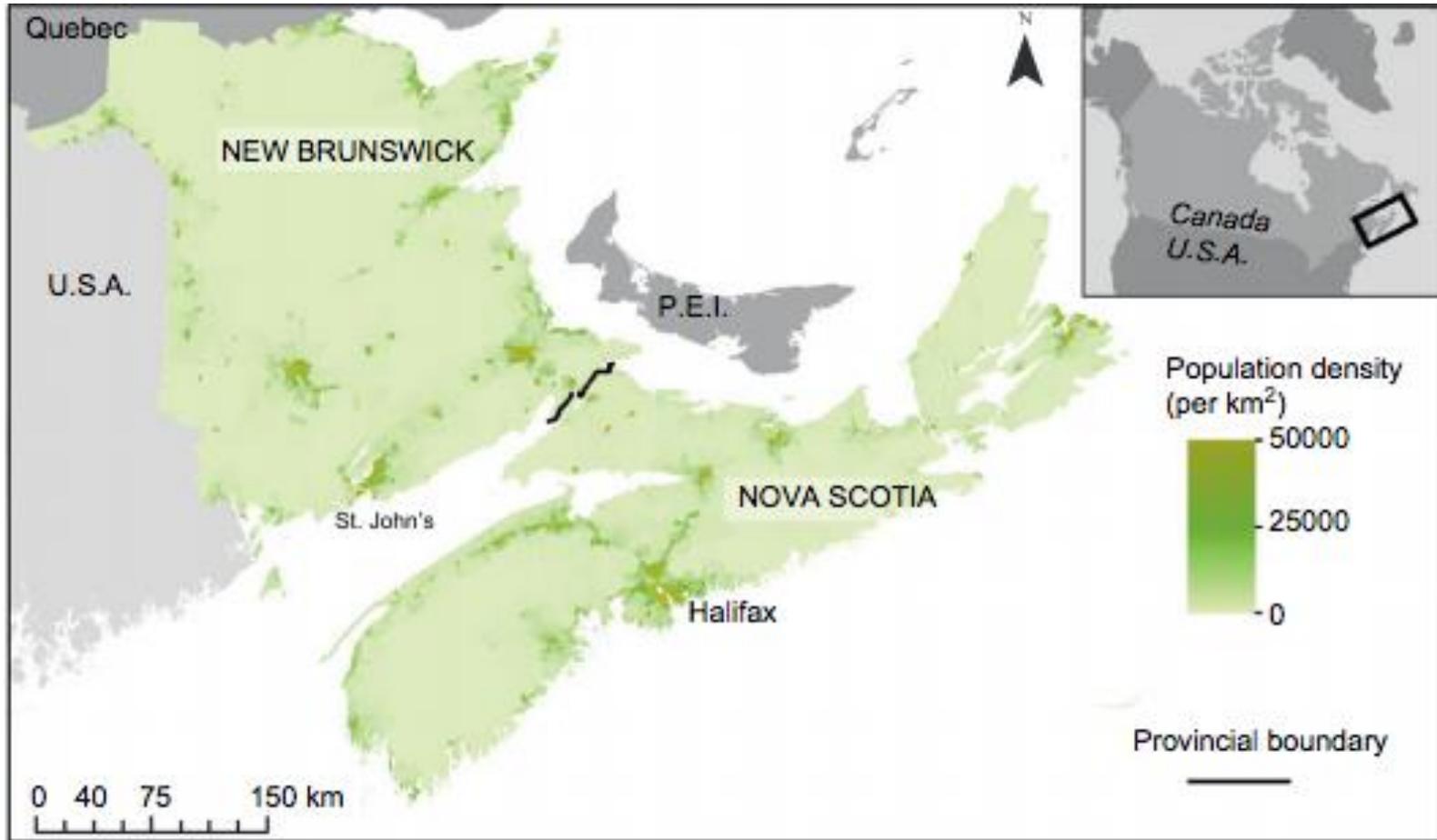
Source: http://www.heclab.com/wp-content/uploads/2013/07/7_WastewaterRemoval.jpg

Nunavut Government's Response



Source: <https://www.canada.ca/en/polar-knowledge/publications/polarleads/vol1-no2-2016.html> Read more: Daley, K., Castleden, H., Jamieson, R., Furgal, C., & Ell, L. (2015). Water systems, sanitation, and public health risks in remote communities: Inuit resident perspectives from the Canadian Arctic. *Social Science & Medicine*, 135, 124-132.

Collaboration = Joint Ventures / Cost Sharing



Kot, M., Castleden, H., & Gagnon, G. A. (2011). Unintended consequences of regulating drinking water in rural Canadian communities: Examples from Atlantic Canada. *Health & Place*, 17(5), 1030-1037.

Objective 4: How Do You Begin Scoping in a 'New Relationship'

- Eight modest recommendations for promising practice in 'waste water solutions' work

Eight Modest Recommendations

1. Recognize and affirm that **the Western 'norm' is not the only way** of scoping and stakeholder engagement; there are many ways of knowing and doing.
2. **Become a practitioner of integrative approaches** to creating new knowledge.



Eight Modest Recommendations

3. Recognize and affirm **that local problems require local solutions**, and build this into scoping, stakeholder engagement, policy, and funding opportunities.
4. Recognize that projects involving Indigenous peoples means **a relational commitment to each other** long before a project begins and long after a project ends and act on that awareness.

Eight Modest Recommendations

5. Recognize and enact the need to **take time** to carefully and thoughtfully implement Indigenous peoples' knowledge systems in wastewater policy, programs, and practice.
6. **Recognize and affirm** Indigenous peoples rights to Free, Prior, and Informed Consent as articulated in UNDRIP.

Eight Modest Recommendations

7. **Reject** water-related policies that directly affect Indigenous peoples without their Free, Prior, and Informed Consent.
8. **Relinquish** policy-making and decision-making power concerning water within the boundaries of Indigenous jurisdiction in Canada, and **create governance structures that share these powers** equally elsewhere.

Why?

To avoid this!

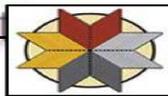


Source: http://www.cbc.ca/gfx/images/news/photos/2010/07/10/t_w-oka-crisis-cp-9016034.jpg

**And get to this (Objective 5)!
So we can all live better, together.**



← Photo ©Lori Hoddinot

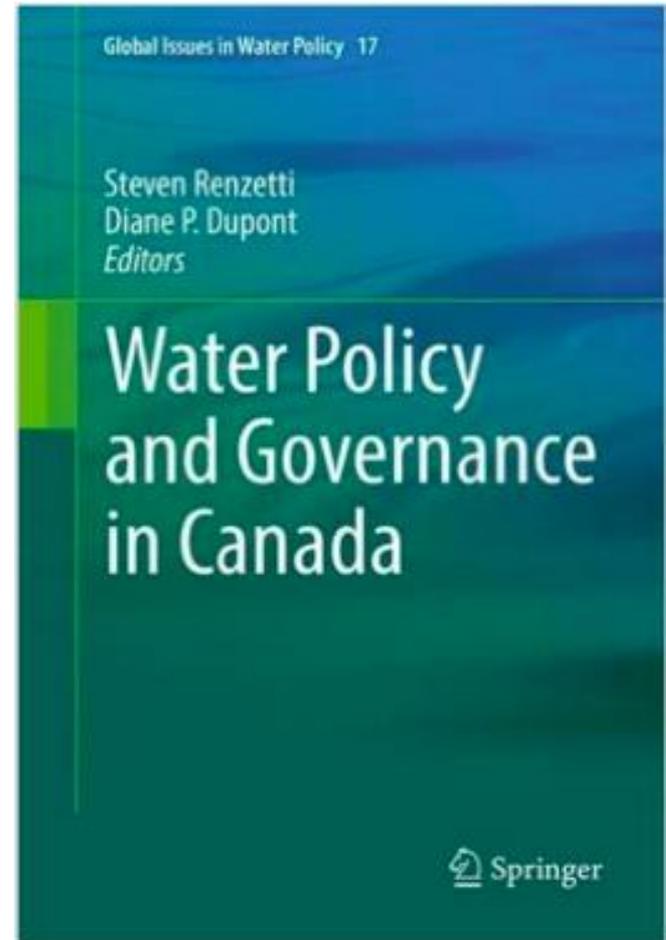


→ http://www.cbc.ca/gfx/images/news/photos/2010/07/10/t_w-oka-crisis-cp-9016034.jpg

To learn more...

Chapter 5 Reconciliation and Relationality in Water Research and Management in Canada: Implementing Indigenous Ontologies, Epistemologies, and Methodologies

**Heather Castleden, Catherine Hart, Ashlee Cunsolo, Sherilee Harper,
and Debbie Martin**

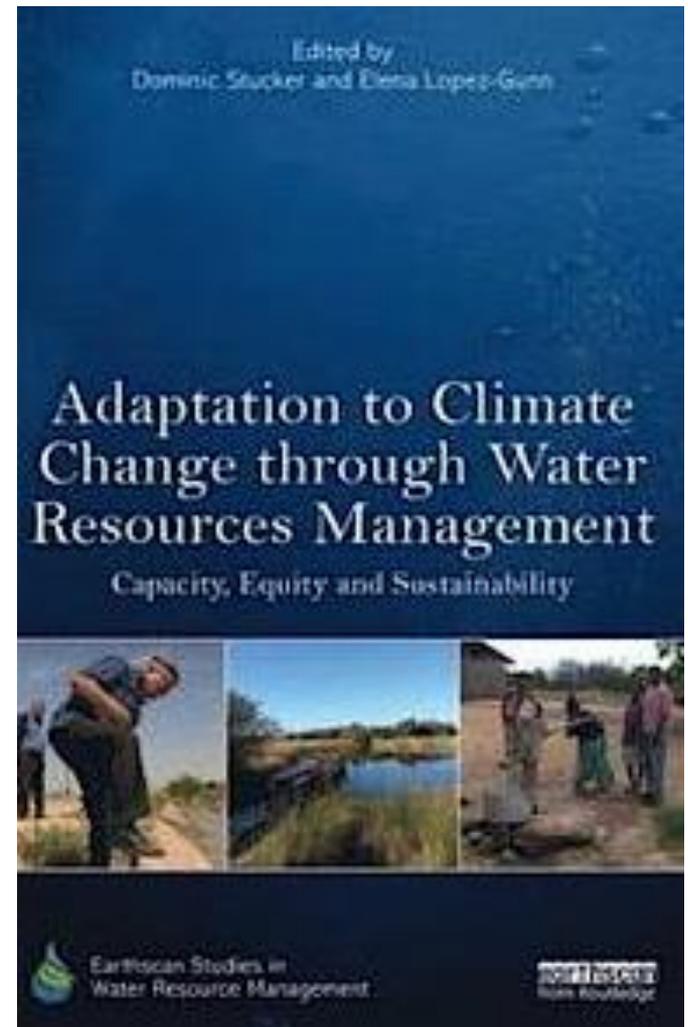


To learn more...

Ensuring equity

- 11 Whitewashing Indigenous water rights in Canada: how can we Indigenize climate change adaptation if we ignore the fundamentals?

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