

State of Water Governance in the Mackenzie River Basin:

What We Heard and Strategic Questions and Considerations for the Mackenzie River Basin Board

Report prepared by Compass Resource Management, May 2024



Contents

Overview	2
Report Purpose and Scope	4
Part I: Introduction.....	5
Key Features of the Transboundary Context.....	6
Part II: Strategic Questions and Considerations for the MRBB.....	10
Conclusion	14
Appendix A: Examples of Innovative Watershed Governance.....	15
Appendix B: What We Heard – Other Themes from Interviews.....	18

Overview

In 1997, the governments of Canada, British Columbia, Alberta, Saskatchewan, Northwest Territories, and the Yukon agreed water is a precious resource. They agreed to work cooperatively to manage water for the benefit of future generations. The Mackenzie River Basin Transboundary Waters Master Agreement (Master Agreement) was signed, establishing the Mackenzie River Basin Board (MRBB).

This report explores how water governance has changed since 1997, and what this means for the MRBB today.

Drivers of Change in Water Governance

A lot has changed since 1997. The following three trends are especially transformative.

Climate change

In 1997, the Kyoto Protocol was signed. Kyoto was the first international treaty to set legally binding targets to cut greenhouse gas emissions. Fast forward almost 30 years. Communities are now experiencing the effects of a changing climate first-hand – and rates of change are happening fastest in the North.ⁱ

Across the Mackenzie Basin, temperatures are rising, increasing winter stream flows, reducing ice and snow cover, and impacting fish species distribution and populations. Permafrost thaw in northern sub-basins is causing erosion and impacting water quantity and quality. Extreme events, such as wildfires and floods, are threatening the safety and security of communities and ecosystems. Emergency response and climate adaptation are absorbing significant government and community resources, diminishing capacity to “get ahead” in planning and preparing for change. Indigenous communities are losing, or risk losing, access to lands and waters, fish, animal and plant species, and cultural and spiritual traditions. Meanwhile, resource extraction pressures continue to grow.ⁱⁱ

For the MRBB, the threats of climate change put a spotlight on the original premise of the Master Agreement. It is arguably more important than ever before to cooperate to “manage waters to preserve the ecological integrity of the aquatic ecosystem and to facilitate reasonable, equitable, and sustainable use of water for present and future generations.”

Reconciliation and legal reform

Since 1997, Canada's social, political, and legal landscape has shifted towards greater recognition and respect of the rights of Indigenous peoples.

Courts have continued to clarify rights and title and the legal obligations of Canadian governments to Indigenous peoples (e.g., *Haida* 2004, *Tsilhqot'in* 2014, *Yahey v. British Columbia* 2021). On top of the evolving jurisprudence, between 2007-2015, the National Truth and Reconciliation Commission (TRC) created a historical record of Canada's residential school system, hearing from more than 6,500 witnesses. In 2015, the TRC presented its final report and 94 Calls to Action to further reconciliation between Canadians and Indigenous peoples.

At the centre of the TRC's vision of reconciliation is the *United Nations Declaration on the Rights of Indigenous People*. The TRC calls on governments to adopt and implement the Declaration as the framework for reconciliation. In the past 3 years, the federal government (along with B.C. and the NWT) developed legislation and action plans to implement the UN Declaration. Legislation will focus on bringing existing Canadian laws into alignment with Declaration principles.

At the same time, Indigenous Nations across Canada and the Mackenzie River Basin are asserting their inherent and treaty rights, and applying their Indigenous laws, in the conservation and development decisions in their territories. They are bringing their own language, knowledge, culture, spirituality, laws, governance, and human and financial resources to bear in decision-making.

According to the TRC, for organizations like the MRBB, truth and reconciliation means engaging in the ongoing process of establishing and maintaining respectful relationships... repairing damaged trust by making apologies, providing individual and collective reparations.... and following through with concrete actions that demonstrate real change.ⁱⁱⁱ

Bilateral Agreements

Recognizing the principle of respecting jurisdictional authority, it was envisioned in 1997 that the Master Agreement would achieve its vision through bilateral agreements. The Master Agreement itself is an umbrella agreement. It is based on principles of ecological integrity, sustainability for future generations, respect for jurisdictional authority, cooperation, information sharing, and harmony.

Today, the Alberta/NWT, the B.C./Yukon, and the B.C./NWT bilateral agreements, as well as two Yukon/NWT bilateral agreements – one for the Peel and Mackenzie Delta River basins and one for the small shared portion of the Liard basin – are complete. These bilaterals are designed to achieve the vision of nested, adaptive, basin-wide governance.

For the MRBB, the existence of bilaterals is an opportunity to review (and potentially shift) the MRBB's role, priorities, and structure.

Report Purpose and Scope

The MRBB is considering its future role and mandate in the governance and management of water. This report assists MRBB members in building a common understanding of the changing water governance landscape in the Mackenzie Basin. It is intended as a basis for conversations about what it means to move forward.

The report was authored by Compass Resource Management, an independent third party consultant. It reflects “what we heard” from interviews conducted with MRBB members in spring of 2024.

Part I of this report is an introduction. It defines governance vs. management – and suggests what the take-aways are for the MRBB from these concepts. It briefly summarizes key geographic and jurisdictional features of the Basin’s transboundary context. This is not an exhaustive description of the Basin – it was outside the scope of this report to characterize in detail the political, legal, regulatory, policy and management regimes that comprise each jurisdiction’s system of governance for water.

Instead, this report focuses on strategic considerations related to the MRBB’s role in helping to enhance accountability and promote equality in the transboundary context. Part II unpacks three strategic questions:

1. What is the MRBB’s role in a context where bilateral water management agreements are completed?
2. What is the future role and representation of Indigenous governments in the MRBB?
3. How can the MRBB build a stronger collective identity and “think like a watershed”?

Appendix A offers examples of case studies and concepts for water governance from elsewhere that may be inspiring for the MRBB to reflect on and further explore.

Appendix B summarizes other themes Compass heard in interviews – while main themes are captured in the report’s main-body, this appendix adds and elaborates on additional points that may be relevant in MRBB deliberations.

Part I: Introduction

Understanding Governance vs. Management

Governance refers to decision-making and accountability: accepting responsibility and being accountable and answerable to those impacted by the consequences of actions and decisions. Governance focuses on questions of who, what, and why. It is values-focused. Governance occurs at many scales (family, institution, organization, state).

While governance provides an overarching framework and direction, management is what translates governance directives into action and ensures their implementation on the ground. Management focuses on questions of how. Management (for water) refers to practices to monitor and control the allocation, use, demand, and supply of water; practices to monitor water quality and aquatic life, and control substances released to water; as well as practices to protect, restore, and steward water bodies and aquatic habitats.

Governance of water is usually a cumulative effects management challenge. It involves addressing a wide range of impacts on land and in the water that combine and compound over time and space, across multiple jurisdictions.

For the purposes of building a shared understanding, there are at least four key take-aways for the MRBB from the concepts of governance and management (and probably others!). These are:

- 1) **There is no possibility of good governance without management – and there is no effective management without good governance.** For example, who is responsible and accountable for decisions on water allocations is a part of governance, while the specific methods and guidelines for allocation decisions, license decisions themselves, and monitoring of compliance with the decisions are all a part of management. In the Mackenzie context, the Master Agreement and the Bilateral Water Management Agreements are part of governance. The agreements reflect commitments to cooperate to achieve mutual goals, and give direction to how this cooperation is intended to occur. The agreements include overseeing and being accountable for the achievement of water objectives – this is governance. They establish Bilateral Management Committees (BMCs) to be responsible for the specific methods for setting objectives, monitoring and learning, etc. - this is all part of management.
- 2) **Even without having formal authority, organizations like the MRBB can still be influential leaders.** Organizations can define their role, and choose activities that help to inform decision-making and enhance accountability, even if they do not have specific delegated statutory authority or enforcement powers.
- 3) **The governance and management of water are integral to reconciliation.** Water intersects with cultural, environmental, legal, and socio-economic dimensions of Indigenous rights and well-being. The *United Nations Declaration on the Rights of Indigenous Peoples* emphasizes

Indigenous peoples' rights to participate in decision-making processes that affect them. This includes those related to water.

- 4) A commonly-cited strength of collaborative, multi-party watershed entities is that they bring together diverse interests to work on a common vision of a healthy watershed. This point is discussed further below, and examples are provided in Appendix A.

Key Features of the Transboundary Context

The Mackenzie River Basin comprises nearly 1/5th of Canada's land mass. To say governance in the Basin is complex is an understatement.

Jurisdictions in the Basin include three provinces, two territories, the federal government, two historic treaties (Treaty 8 and 11), and modern treaties (e.g., land claim agreements, self-government agreements, resource agreements, and other agreements between Indigenous and non-Indigenous governing bodies).

To have a common starting point in governance discussions, at least four geographic and jurisdictional features of the MRB context are important to highlight. Of course, *there are many other important features* – this summary is very brief and high-level. It is by no means comprehensive. The governance landscape is living and constantly evolving. It is shaped by people and politics, and the land and water itself.

1) Upstream and downstream dynamics shape power dynamics

The fragmentation of a watershed into jurisdictions with independent authorities is what creates the need for cooperation and transboundary governance.

Global experience suggests that upstream and downstream dynamics can cause power inequalities between jurisdictions.

Due to their geographic position, upstream jurisdictions typically exert greater influence over water allocation and management decisions. This is because they have first access and opportunity to use and control water sources, and they may be less immediately and directly affected by risks of adverse downstream outcomes.^{iv}

Like all watersheds, the physical geography and hydrology of the Mackenzie River Basin, and its upstream-downstream dynamics, are complex. Past reports have described the Basin's hydrology in detail (see the 2013 Rosenberg International Forum Mackenzie River Basin report for a

comprehensive plain-language summary). In the *simplest terms*, waters in the Mackenzie River Basin flow from south to north. The Yukon is a solely upstream jurisdiction. B.C., Alberta, and Saskatchewan are both up and downstream to different extents. Tributaries to the Athabasca River flow from Saskatchewan into Alberta and then north. Lake Athabasca, a major lake, is shared by Alberta and Saskatchewan. The significant upstream players in the Basin are considered to be B.C. and Alberta, due to the development activities in these jurisdictions that are a concern for downstream water flows and water quality (i.e., Peace River hydroelectric dams in B.C. and Athabasca River region oil sands in Alberta). The Basin includes the Peace-Athabasca Delta; at 3900 km², it is one of the largest inland freshwater deltas in the world. Eighty percent (80%) of the delta is within Wood Buffalo National Park, which is a World Heritage Site.^v The NWT is the sole downstream jurisdiction, receiving water flows from the south and west. Most of the NWT land mass is in the Mackenzie River Basin.

2) Treaties and modern agreements are core to MRB governance

The purpose of treaties and agreements is to formally establish the respective legal commitments, obligations, rights, authorities, and relationships of the parties to the agreement.

Historic treaties, signed in the late 1800s-early 1900s, affirm (among other commitments) the Crown's guarantee of Indigenous peoples' continued ability to hunt, fish, and trap. The underlying assumption of these promises is enduring healthy lands and waters. Historic treaty promises were made to last as a long as "the sun shines, the grass grows, and the river flows."^{vi}

The original spirit and intent of historic treaty promises are still central for governance of water today.

The Mackenzie River Basin includes historic treaty areas of Treaty 8 and Treaty 11. Overlapping these historic treaty areas are many modern treaties and other agreements between Indigenous governments and provincial, territorial, and federal governments.

Differences in rights agreements in the territories versus in the provinces is key to shaping transboundary governance. In the NWT and Yukon, modern Indigenous rights agreements (e.g., comprehensive land claims, resource and self-government agreements) create the territorial systems of land and resource (including water) co-management. Some agreements are still being negotiated. Rights agreements establish the decision-making and management roles of Indigenous governments, resource management boards, and territorial and municipal governments. The federal government is party to rights agreements and has roles in both their negotiation and implementation. In both the NWT and Yukon, agreements provide for the rights of Indigenous people to have water remain "substantially unaltered." As a downstream jurisdiction, the ability of the Government of the Northwest Territories (and the federal government) to fulfill this and other obligations is affected in large part by the effectiveness of transboundary governance.

In the provinces, provincial governments govern water, with a duty to consult Indigenous Nations (as well as others who are impacted by decisions on water). The federal government has a lesser role. Provincial governments may form agreements with Indigenous Nations related to water governance, rights recognition, and title. There are many examples of such agreements. They vary widely, and shape provincial water management to differing degrees. A recent example in the Mackenzie River Basin is the B.C. Blueberry River First Nations Implementation Agreement. This Agreement responds to a B.C. Supreme Court decision that found the Province had infringed on Blueberry River Treaty 8 rights due to the cumulative impact of decades of industrial development. This Agreement does not replace provincial authority or the provincial management regime. Rather, the Blueberry Agreement defines restoration and land protection measures, establishes an ecosystem-based planning and management approach, and clarifies how engagement and consultation will take place going forward.^{vii}

The complexity and fragmentation of the legal landscape underscores the value of having a central watershed entity that focuses on common, cross-cutting Mackenzie River Basin watershed goals and outcomes, and enhances accountability for those outcomes.

3) Sources of authority for water differ – but water management activities are fundamentally similar across the Mackenzie River Basin

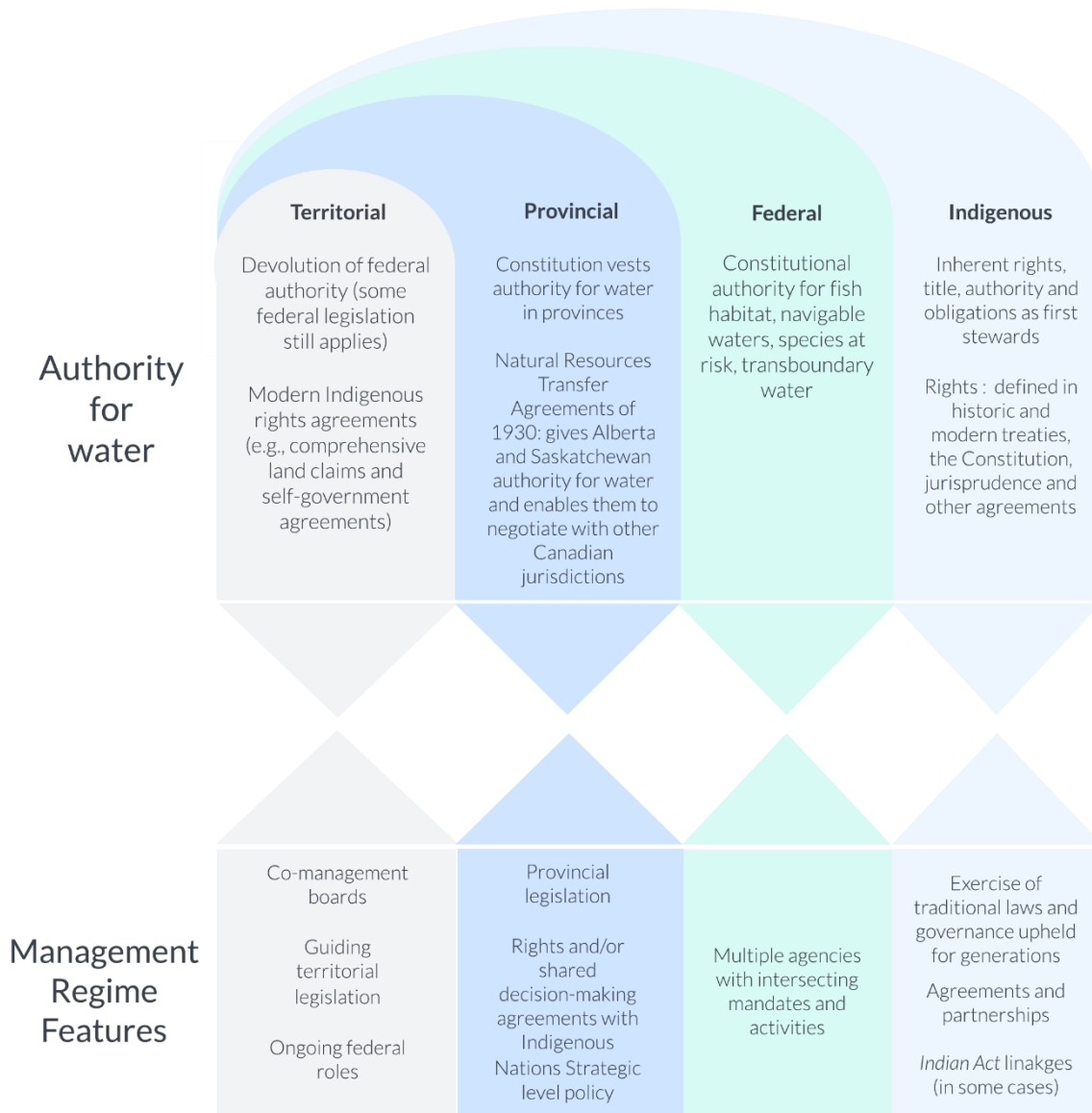
Differences between Indigenous, territorial and provincial governance regimes – different sources of jurisdictional authority – result in different roles and responsibilities in water governance and management. See Figure 1 for a visual summary of this context. However, all jurisdictions engage in similar activities, e.g.,:

- Priority setting through overarching water policies, strategies, action plans (e.g., the Alberta Water for Life Strategy, GNWT Water Stewardship Strategy, BC Watershed Security Strategy, etc.)
- Consultation and engagement with rights holders
- Regional or territorial-level watershed planning
- Collaborative partnerships with other governments, academic institutions, and other non-government organizations
- Surface and groundwater monitoring, mapping, and other studies to inform water policies and water management
- Infrastructure planning and investment
- Conservation and aquatic ecosystem conservation and protection initiatives
- Drinking water source water protection and management
- ... and more..

What this context means for collaborative transboundary governance in the Mackenzie River Basin is: 1) In the NWT and Yukon, authorities, roles and responsibilities for water are more distributed than in the provinces, with defined roles for co-management boards and Indigenous governments. Provincial authority and water management is more centralized. 2) Federal roles

and relationships are more pronounced in territories versus provinces given the federal government is party to Indigenous rights agreements in the North and federal legislation still applies in areas where responsibilities were not devolved. 3) Practically, there are commonalities in how jurisdictions are approaching water management – the key differences lie in authority, priorities and priority-setting (how and where resources are allocated), and mechanisms for oversight.

Figure 1. Roles and Responsibilities in Water Governance and Management



4) Federal roles for water are shifting

Freshwater is a federal priority. A new Canada Water Agency (CWA) is now launched. The federal government committed to review and modernize the *Canada Water Act*. Among other goals, the CWA states that it will provide policy leadership and develop whole-of-government approaches to freshwater challenges and opportunities, and promote federal-provincial-territorial collaboration. The implications of the CWA and *Canada Water Act* modernization for the Mackenzie River Basin and the MRBB are still emerging.

Part II: Strategic Questions and Considerations for the MRBB

1. What is the MRBB's role now that bilateral agreements are complete?

Recognizing the principle of respecting jurisdictional authority, it was always envisioned that the Master Agreement would achieve its vision through bilateral agreements. Several bilateral agreements now exist. The bilaterals contain many of the necessary foundations for nested adaptive basin-wide cooperative governance. The bilaterals create a mechanism for a tiered management system that involves (among other things):

- Establishing Bilateral Management Committees (BMCs)
- Classifying waterbodies based on level of risk (Risk Informed Management)
- Monitoring and learning programs to track their condition
- Increasing levels of oversight and responsibility as risks rise
- Setting objectives for water quality, water quantity and aquatic ecosystem health that the BMC monitors and is responsible for achieving.

This effectively establishes a transboundary cumulative effects framework, in which the level of bilateral involvement/joint action increases as upstream risks and downstream concerns intensify. The bilaterals also create procedures to ensure consideration of Indigenous knowledge in monitoring and bilateral decision making.

The envisioned role of the MRBB relative to the bilaterals is limited, but important. While some parties during some bilateral negotiation may have liked a stronger role for the MRBB, there is nothing in the Master Agreement that gives the MRBB any authority to act proactively or intervene in the environmental decisions of individual jurisdictions. However, the MRBB (currently) does have a mandate/duties for:

- Coordination
- Considering the needs and concerns of Indigenous people through strengthening Indigenous knowledge gathering/use
- Research on basin-wide issues
- Monitoring the process of implementing the Bilateral Water Management Agreements
- Reporting (including state of the ecosystem reporting)

Of these activities, the MRBB has chosen to focus its limited resources on the state of the aquatic ecosystem reporting (SOAER reports). Some MRBB members indicated that the SOAER is the most useful work the MRBB has completed, and could even be a template for other watershed organizations. MRBB members described that the SOAERs created space for meaningful learning about the opportunities and challenges for braiding Indigenous and western knowledge.

However, MRBB members also expressed that the SOAER's intended impact and audience is unclear. How are results of the SOAER making a difference, or having impact? Interviewees pointed out that the MRBB has not actively used the SOAER as a tool to raise awareness, educate, engage in decision-making, or advocate for management actions. Finally, given responsibility for monitoring and management lies with the jurisdictions, and the bilaterals create key roles for BMCs in monitoring, the relative value-add of the SOAER needs more clarity.

Key Questions and Considerations for the MRBB

A surprising gap from project scoping and interviews was that the bilateral agreements were *not* identified as a key opportunity or mechanism for the MRBB to engage in governance. Is this a priority topic for the MRBB? If yes, key questions might include:

- Could/ Should MRBB re-new itself as an entity that helps to strengthen oversight and accountability for basin-wide governance? For example, could the MRBB shift its state of the basin reporting to focus on which BMCs have set water objectives, classified water bodies, and implemented monitoring and learning plans? I.e., reporting that puts the spotlight on what the BMCs are doing and whether they are fulfilling their responsibilities in the bilaterals?
- Could the MRBB shift its research role to help the BMCs to adopt common best practices and methodologies? For example, strengthen research, shared learning, and best practices related to methodologies for braiding of Indigenous and western knowledge; methodologies for setting water objectives in a climate change context, and other relevant topics?
- Could the MRBB facilitate and coordinate information sharing more targeted at supporting BMCs? For example, hosting annual shared learning sessions across BMC's that allow them to share experiences, methods, and expertise?
- Would such roles and related governance and management activities be consistent with the role of the MRBB in the Master Agreement, as well as in the bilateral agreements? Would they be consistent with MRBB resourcing?

2. What is the future role and representation of Indigenous Nations?

Federal, provincial, and territorial governments in the MRBB have stated commitments to advancing reconciliation. Reconciliation is also an MRBB priority. The 2020 survey of MRBB members indicated that support was strongest for the strategic goal of “support and facilitate the increased participation of Indigenous Peoples in MRBB activities.” The MRBB has focused on elevating Indigenous Knowledge in the SOAER, which MRBB members describe has resulted in meaningful and important shared learning. However, several MRBB members described that they are interested in stronger Indigenous representation and cultural diversity on the MRBB, and greater influence of Indigenous Nations laws and knowledge. This raises several strategic considerations for moving forward.

The first consideration is the design of the MRBB structure and membership. In 1997, the Master Agreement established a total of five Indigenous Board members; one member for each of the provincial and territorial jurisdictions. The Agreement states that “Aboriginal organizations in each jurisdiction shall nominate a person for appointment, and that these nominees shall be appointed by and serve at the pleasure of the Minister.” In 1997, this structure may have been considered progressive and inclusive. Today, this model is seen to have legitimacy challenges. There is a risk that Indigenous participation is perceived as tokenism.

However, the Master Agreement does not define “Aboriginal organization.” It does not limit how Indigenous Nations choose to organize or represent themselves. This suggests flexibility, and that there could be opportunities to achieve improved representation without opening the Master Agreement to renegotiation. For example, could new Indigenous organizations be created? Could agreements be formed within individual jurisdictions and/or between Nations to define expectations and roles? These may be promising questions to explore.

The second consideration is related to internal Indigenous governance. Currently there are limited opportunities (both within provinces/territories and Basin-wide) for Nations to gather, engage their community members, affirm common Indigenous water interests and priorities, and nominate individuals to represent these interests. Indigenous Nations are experiencing heavy demands on their capacity for this kind of organizing. Competing interests are also a factor. Yet, healthy water is a treaty commitment. Water governance is important to all First Nation communities.

Key Questions and Considerations

- If the MRBB had a stronger influence in transboundary governance and management, would this make the MRBB a strategic opportunity for Indigenous Nations to leverage and organize around?
- Could the MRBB support Indigenous Nations in the Basin to gather and discuss shared interests and representation (e.g., could the MRBB play a convening role?)
- What changes are needed (if any) to the MRBB structure or the Master Agreement to enable stronger Indigenous involvement?

3. How can the MRBB build a stronger collective identity and “think like a watershed”?

A commonly-cited strength of collaborative, multi-party watershed entities is that they bring together diverse interests to work on a common vision of a healthy watershed. Members of watershed entities must balance their individual perspective with their commitment to finding mutually beneficial solutions. In other words, individuals in watershed organizations wear multiple hats. Watershed entities are typically guided by overarching set of collaborative principles or a unifying vision. These help to shape the entity’s identity.

The Master Agreement contains limited guidance in this regard. It’s not clear that the MRBB today has a collective focus, a watershed identity. It’s not clear that there is a spirit of watershed-scale thinking and problem solving. Outside the SOAER and learning about Indigenous knowledge, the MRBB seems to serve more as a venue for jurisdictions to share information and advocate for (or defend) their individual interests, than advance collective goals.

Part of an organization having a cohesive collective identity is related to who is involved (membership), and leadership roles. With respect to leadership roles, questions were raised about the federal government. The federal government is party to rights agreements in the NWT that commit to “substantially unaltered” flows. These commitments depend on effective transboundary water governance. Canada also has strong reconciliation and water commitments (e.g., Canada Water Agency, DRIPA). Yet, individual federal agencies with roles in water (e.g., ECCC, PCA), and roles in the negotiation and implementation of modern rights agreements (e.g., CIRNAC, ISC) do not have well-defined roles, accountabilities, and mandates for transboundary water. This appears to be a disconnect. With respect to membership, current MRBB members, are not (for the most part) executive level decision-makers. If the MRBB’s role and focus shifts (i.e., to be more explicitly strategic and accountability-centered) this may require adjustments to membership.

Key Questions and Considerations

- Can / should the MRBB create a more collective “watershed” culture?
- Going forward, who needs to be at the table to fulfill the MRBB’s mandate? Who should be an MRBB member? How should decision-makers be engaged?
- As the Canada Water Agency looks to provide policy leadership and a whole-of-government approach to freshwater, what does this mean for the MRBB?
- How can the MRBB cultivate a culture and deliberations that promote collaboration and “thinking like a watershed?”

Conclusion

This report reviews how water governance has changed in the Mackenzie River Basin since six governments first agreed, in 1997, to work cooperatively to manage water for the benefit of future generations.

The MRBB is now at a critical juncture. Like other watersheds, the Basin faces a climate emergency, social and political polarization, and growing public mistrust in government. At the same time, reconciliation and action on climate change are top priorities for Canadians. As the MRBB considers its future role and mandate, this report aims to build a common understanding of the Basin’s governance landscape. It identifies key questions and considerations for the MRBB moving forward. The key point is that the MRBB can choose to be an increasingly influential player in water governance. The Basin’s hydrological and jurisdictional complexity need not be a barrier to having a strong role and impact.

This analysis points to one potential starting point: could the MRBB realize the vision of nested, adaptive, basin-wide governance by focusing on enhancing accountabilities for the existing bilateral agreements, and helping these bilaterals succeed (e.g., through supporting shared learning of BMCs)? This report also raises MRBB members’ ideas and questions for how the MRBB could actualize its aspirations to meaningfully involve Indigenous governments.

Progress (in any direction) will require change, commitment, and leadership. Any changes in the MRBB’s scope and mandate will have practical implications. Going forward, the MRBB could look at how to adopt more of a collective watershed identity and approach; and could consider whether changes are needed to the Board’s membership. Questions about Canada’s role will also be important to address. Many important conversations and decisions are ahead for the MRBB. This report supports those deliberations.

Appendix A: Examples of Innovative Watershed Governance

Other transboundary watersheds may serve as a source of inspiration and insight to the MRBB as it considers its role and structure going forward. While there are many examples to look to, both in Canada and internationally, this report highlights three cases that offer insight to the MRBB.

1. Columbia River Treaty modernization
2. Elk-Kootenai Watershed Collaborative Governance (International Joint Commission reference)
3. Rights of Nature (legal personhood) concept

Cases 1 and 2 were selected because they are:

- Comparably complex to the MRBB, in terms of the concerns and power dynamics present
- Transboundary watersheds
- Comprised of multiple governments
- Inclusive of Indigenous Nations

Case 3 was selected because rights of nature is a broadly applicable concept. It is also a subject of existing interest and research in the Mackenzie River Basin.

Case 1: Columbia River Treaty Modernization

Quick Facts:

- The Columbia River Treaty (CRT) is a transboundary water management agreement between the United States and Canada signed in 1961 and ratified in 1964. The Treaty optimizes flood management and power generation, requiring coordinated operations of reservoirs and water flows for the Columbia River and Kootenay River on both sides of the border.^{viii}
- As of 2018, Canada and the U.S. are engaged in negotiations regarding modernizing the CRT. These negotiations including a focus not only on flood-risk management and hydropower coordination, but also ecosystem cooperation, and increased flexibility for Canadian operations. Added domestic flexibility would enable Canada to meet domestic objectives, including for Indigenous cultural values and socio-economic interests.^{ix}
- In Canada, agreement was reached in 2019 that representatives of the Ktunaxa, Secwepemc, and Syilx/Okanagan Nations would participate as observers at the Canada-U.S. Columbia River Treaty negotiations. Since then, representatives of the Ktunaxa, Secwepemc, and Syilx/Okanagan Nations have been present in the negotiating room and full participants in caucus meetings with Canada and B.C. during negotiating sessions. The Indigenous Nations are also partners with Canada and B.C. in developing negotiations positions and proposals, in preparatory meetings before each round of negotiations, and in debrief meetings after each round.^x

- Canada's process includes advisory committees and tables, as well as formal consultation with First Nations and the public.

Why relevant for the MRBB?

CRT modernization illustrates how...

- Cultural and ecological values can be elevated and meaningfully advanced in a transboundary treaty, even when there are trade-offs with economic objectives.
- Indigenous Nations can have significant influence in governance of water, and Indigenous and Crown governments can work as partners, on the basis of shared commitment.
- In a highly complex, highly political environment, collaboration can occur and achieve more inclusive, holistic outcomes (i.e., consideration of cultural and ecological values is now a priority, in a system that has been historically dominated by flood/power concerns).
- Structures for engaging citizens to give input and advice can be established.

Case 2: Elk-Kootenai Watershed Collaborative Governance

Quick Facts:

- The International Joint Commission (IJC) was created by the Canada-US Boundary Waters Treaty in 1909. The IJC plays a role preventing and resolving disputes regarding waters along the transboundary.
- Water pollution related to mining is a concern in the transboundary Elk-Kootenai watershed, located in British Columbia and the states of Montana and Idaho.
- In 2024, Canada and the United States provided a reference to the IJC to carry out actions to address the impacts of transboundary water pollution. These actions include assisting in the establishment of a collaborative governance body to develop and report on an action plan to reduce/mitigate the impacts of water pollution.

Why relevant for the MRBB?

The IJC reference demonstrates that...

- Collaborative structures continue to be a contemporary, necessary feature in governance of transboundary water.
- Collaborative structures are considered desirable even in complex contexts with multiple governments (in this case, two national governments, multiple Crown agencies, and six Indigenous governments).
- The creation of a new structure does not require treaty or other sweeping legal modifications.

Case 3: Rights of Nature

Quick facts:

- Rights of Nature is a legal concept and global movement. It assigns environmental entities, such as a river or glacier, the rights, protections, privileges, responsibilities, and liabilities of a legal person. Guardians can be appointed to act on the river's behalf at decision-making tables. There is growing interest worldwide in the opportunities that Rights of Nature affords for protecting nature and promoting collaboration between Indigenous and non-Indigenous governing bodies. A range of examples can be found of granting legal personhood to a waterbody or ecosystem (e.g., in the US, Ecuador, New Zealand, and elsewhere).^{xi}
- In Canada, the Mutehekau Shipu/Magpie River legal personhood case in Quebec is the first legal personhood example in Canada. It was enacted through two parallel resolutions adopted by the neighbouring Innu Council of Ekuanitshit and the Minganie Regional County Municipality (RCM).^{xii}
- Rights of Nature has been explored and advocated for by Keepers of the Water, an Indigenous-led environmental non-profit organization working in the Mackenzie River Basin.^{xiii}

Why relevant for the MRBB?

Establishing rights of nature may be a means for governments to...

- Symbolically and/or legally assert their commitments and leadership (whether or not the rights of nature are recognized by federal/provincial governments or courts)
- Recognize and make space for Indigenous authorities
- Catalyze action and relationship-building based on a common vision of the future

Appendix B: What We Heard – Other Themes from Interviews

The main body of the report **synthesizes the themes we heard in interviews** with MRBB members. Additional important points and considerations are captured or elaborated on in Table 1 below.

Theme	What We Heard
Climate change	<ul style="list-style-type: none"> Fears, concerns; questions about how climate change affects the MRBB and how the MRBB can contribute How climate change is affecting (weakening) government and civil society’s capacity for addressing governance (e.g., drawing resources to emergency response)
Treaties and Indigenous governance	<ul style="list-style-type: none"> Recognition of how legal landscape is shifting (examples from different jurisdictions of Indigenous-led initiatives, Indigenous rights and other agreements, UNDRIP legislation) Concern that treaties need to be honoured – and they continue not to be Questions about how to pivot from colonial governance structures to structures based on the land and knowledge of the land Observations that Indigenous people across the Mackenzie River Basin have their own governance systems and agreements/land claims Perspectives that it is important for Indigenous peoples to come together, to work together on water, stay focused in their message on water (a clear, consistent message), have a strong voice about water; right now there is not a clear mechanism, either within territories/provinces, or between/across jurisdictions, for Indigenous governments to come together Differing perspectives on whether this is something provinces/territories/the MRBB should resource and support
Water legislative and policy frameworks; water priorities	<ul style="list-style-type: none"> Overviews of the legislative and regulatory systems in each jurisdiction Observations of the differences between provincial and territorial regimes and how this impacts transboundary governance of water Overviews of key policies and priorities related to water and major resource development <p><i>*Agency reports, published on the MRBB website, as well as additional written materials/links shared by interviewees, were the primary source of information for this theme.*</i></p>
UNDRIP and reconciliation implementation	<ul style="list-style-type: none"> Overviews of different approaches jurisdictions are taking to recognize and implement reconciliation; different examples of how Indigenous-led initiatives are changing the landscape of governance
Governance vs. Management	<ul style="list-style-type: none"> Different perspectives on what constitutes governance vs. management and where the MRBB should focus its efforts Questions about the core tenets of these concepts – e.g., the colonial understanding of governance and how it differs from Indigenous understandings of governance Cross-cutting perspective that the MRBB would benefit from building shared understanding
Master Agreement	<ul style="list-style-type: none"> Different perspectives on whether it is necessary or not to open the Master Agreement to renegotiation (some feel it should be opened, others feel it would be risky to do so in case jurisdictions no longer want to be committed to collaboration on transboundary water)
Resource extraction	<ul style="list-style-type: none"> Concern that there are unresolved conflicts in values and in science/knowledge related to major developments (mines, hydroelectric dams, oil sands) Different perspectives about whether MRBB has a role (some interested in MRBB having stronger role in oversight or developing regulatory standards; others focused on bilaterals as main mechanism)
Shifting Baselines	<ul style="list-style-type: none"> Recognition that the river and watershed are changing from generation to generation. Questions about what is natural and unnatural in terms of quality, quantity, and flows of water? What is the baseline the MRBB is working to protect and maintain?

<p>MRBB advocacy role</p>	<ul style="list-style-type: none">• Questions about whether the MRBB could do more related to advocacy and education, and different perspectives on what this might look like/how far it might go (e.g., some Indigenous members interested in a national/international lobby, activities like documentary films).
-------------------------------	--

ⁱ The Mackenzie River Basin State of the Aquatic Ecosystem Report, 2021. Mackenzie River Basin Board.

ⁱⁱ Ibid.

ⁱⁱⁱ Honour the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada. 2015. The Truth and Reconciliation Commission of Canada.

^{iv} Morris, M. and De Loe, R.C. 2016. Cooperative and adaptive transboundary water governance in Canada's Mackenzie River Basin : status and prospects. *Ecology and Society* 21 (1) :26

^v The Rosenberg International Forum : The Mackenzie River Basin. 2013. Report of the Rosenberg International Forum's Workshop on Transboundary Relations in the Mackenzie River Basin.

^{vi} Treaties and the Treaty Relationship. 2018. Canada's History.

^{vii} Province, Blueberry River First Nations reach agreement. 2023. News Release, British Columbia.

^{viii} Columbia River Treaty FAQ (website). 2024. British Columbia.

^{ix} Ibid.

^x Federal government announces Columbia River Basin Indigenous Nations to participate as observers in Columbia River Treaty negotiations. 2019. News Release, Global Affairs Canada

^{xi} Rights of Nature: A Plain Language Legal Guide. 2033. Centre for Law and the Environment, UBC Allard School of Law.

^{xii} Hoppe, E. 2022. Legal Personhood Rights for the Mutehekau Shipu/Magpie River: Rights of Nature approaches and policy tools for a path forward in so-called "Canada". Concordia University.

^{xiii} Legal Personhood for the DehCho River? Research to inform a community-led campaign. 2023. Keepers of the Water.