

Water Trans-boundary Issues and the Need for a Law

Rosalie Arcala Hall, Ph.D.
University of the Philippines Visayas
rahall@upv.edu.ph

Fundamentals

- water is managed as a public good (provisioning requires state responsibility); common good (permitting non-state, local collective arrangements); private good/commoditized (bought and sold in a market with a price reflecting production costs)
- water is NOT a free good
- environmental constraints to water provisioning- seasonality, scarcity (supply)

Normative Societal Goals on Water

- equity (ensuring access to the poor)
- effectiveness (reliable, quality water to the largest number of people/users)
- resource maintenance (ensuring future availability of the resource)
- efficiency (provision at a minimum cost)

Philippine Legal Framework on Water

- property rights to water is separate from ownership of the resource; water right as “privilege granted by government to appropriate and use water”
- the state OWNS all water (surface, ground, atmosphere) in the country; but grants usufruct rights to utilize, develop and appropriate the resource to individuals and collectives through permit or concession

Philippine Legal Framework on Water

- state decides on sectoral (agriculture, domestic, industrial/commercial) prioritisation of water; reallocation during shortage or emergency
- decision making on water allocation through principle of subsidiarity (problems/concerns to be solved by LGU, local grouping or individual users; devolved)
- state through its agents provides subsidized water (cost of producing and distributing water partly offset by the state); regulates private sector participation in the water market

Philippine Legal Framework

- four laws- PD 198 (Provincial Water Utilities Act); PD 1067 (Water Code); RA 9041 (National Water Crisis Act); RA 9275 (Clean Water Act)
- collective right given to water districts (domestic water supply and distribution system; mandate includes wastewater collection and disposal); role of LWUA
- allow privatisation of MWSS

Philippine Legal Framework

- water rights through permits given by National Water Resources Board; permit can be leased, transferred, modified, reduced, suspended, revoked, cancelled
- permit required except for single household domestic use, which need to be registered (devolved task to LGU); abstract from surface water or drill for ground water
- conflict resolution mechanism on right for domestic use in line with Local Government Code

Philippine Legal Framework

- Water Quality Management Board for monitoring and surveillance; DENR sets effluent standards; DOH drinking water standards
- permit and fees for wastewater discharge (DENR)

Water for Domestic Use: Big Picture

- diverse set of domestic water providers (Level 2 and 3); variable in size of operations and coverage area
- weak monitoring on self-provisioning through wells; tapping of spring water) with sanitary and environmental consequences
- unevenness in supply of water (natural) and demand (varies between urban and rural areas)

Challenges

- most water managers are not familiar with water laws (except water district managers)
- unclear about cost of permits; pricing scheme that reflects more than cost recovery (resource maintenance, scarcity, opportunity cost)
- unclear about government role in lease and transfer of water permits

Water Transfers: Why It Matters

- physical transfer of water resources for domestic use from one locality to another; from water-plentiful communities to water-scarce communities
- contract-based (specified volume of extraction and multi-year); allows private water enterprises to go to rural areas to get water for distribution in urban areas
- allows supply augmentation for water districts and concessionaire faced with rising demand in their areas of coverage

Gaps in Law to Support Water Transfers

- supposed water-rich areas do not have science-based data on how much water supply they have
- water pricing— do water prices in contracts reflect the true cost of producing water?
- equitable use- how do transfers impact other sectoral users? what happens to the rural areas in the future when they need the water?
- transparency and accountability in contracting- are parties obliged to inform and consult their public/s?

Water Conflict Cases

- spring-abundant Laguna town- LGU officials found guilty by Ombudsman for entering into water contract absent public consultation and giving the the private firm unwarranted benefits
- Court of Appeals writ of Kalikasan against private water company plan to extract water from 4 Cavite rivers to supply Tagaytay City

Recommendation: Review Water Code to include...

- water data (per watershed) and planning for equitable water redistribution between rural and urban areas; academe-based Water Resource Centers to provide technical assistance
- requirement for public consultation of affected communities prior to issuance of water permits or conclusion of contracts for water transfers

Recommendation: Review Water Code to include...

- dedicated and robust conflict resolution platform to tackle cases involving water transfer
- investment towards educating water actors at the local level on formal rules regarding bulk water sale; market trade of water permits