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TRENDS AND DEVELOPMENTS IN WATER LEGISLATION – REVISITED

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SCOPE AND STRUCTURE OF PRESENTATION

1. SALIENT FEATURES AND TRENDS IN CONTEMPORARY DOMESTIC WATER LEGISLATION – SOME CLEARLY DISCERNIBLE, OTHERS EMERGING
2. ISSUES EMERGING FROM COMPARATIVE ANALYSIS

SALIENT FEATURES AND TRENDS

1. STEADY ATTRACTION OF WATER RESOURCES IN THE PUBLIC DOMAIN/TRUST OF THE STATE, AND IN THE SCOPE OF GOVERNMENTAL (OR JUDICIAL) ALLOCATION AUTHORITY – pockets persist where groundwater is private (Finland; Portugal; Texas SC 2012)
2. STEADY ATTRACTION OF GROUNDWATER IN THE SCOPE OF REGULATION AS REGARDS
 - ▣ WELL DRILLING AND EXTRACTION/USE
 - ▣ POLLUTION CONTROL FROM “POINT” SOURCES
 - ▣ LAND USE IMPACTS ON NATURAL RECHARGE PROCESSES

SALIENT FEATURES AND TRENDS

2. THE DISCRETIONARY AUTHORITY OF GOVERNMENT TO ALLOCATE AND RE-ALLOCATE WATER RESOURCES QUALIFIED – AND THE QUALITY OF RELEVANT DECISION-MAKING IMPROVED - THROUGH –

- ❑ EIA requirements of water projects
- ❑ water resources plans and relevant determinations
- ❑ minimum ecological flow requirements of watercourses
- ❑ the “reserve” of water volumes or flows for basic human needs and the environment

SALIENT FEATURES AND TRENDS

3. PURSUIT OF EFFICIENCY OF ALLOCATION (AND RE-ALLOCATION) THROUGH

- ▣ CONTROLLED TRADING OF WATER RIGHTS
- ▣ ABSTRACTION AND WASTEWATER DISPOSAL CHARGING
- ▣ ECONOMIC AND OTHER REWARDS TO EFFICIENT USER

4. RAISING THE PROFILE OF THE ENVIRONMENT IN THE ALLOCATION AND MANAGEMENT OF AVAILABLE WATER RESOURCES (“GREENING” OF WATER LAWS) – AS SEEN IN -

SALIENT FEATURES AND TRENDS

- ❑ Controlled trading of water abstraction rights
- ❑ Restricting groundwater extraction to ensure the ecosystem-support function of groundwater
- ❑ Priority of environmental allocations in water abstraction licensing, in particular at times of scarcity
- ❑ Environment-friendly terms and conditions of abstraction licences and of wastewater discharge permits
- ❑ The environmental “reserve” of water volumes or flows

SALIENT FEATURES AND TRENDS

- Environmental criteria entering determination of water abstraction and wastewater disposal charge tariffs (Peru, Uruguay)
- Review and downwards adjustment of licensed allocations as a result of
 - mandatory environmental protection goals (Spain, Honduras, Zambia) and
 - zoning for the protection of water-dependent ecosystems (Bhutan, Peru)
- Stretching the notion of “beneficial” use to leaving water in the stream for recreation & wildlife (Colorado)

SALIENT FEATURES AND TRENDS

5. CAPTURING THE LAND/WATER INTERFACE, VIA -

- ❑ internalization of water impact in land use planning regulation and determinations (e.g., “water assessment” prescribed by Dutch and Flemish town & country planning legislation; gw sustainability planning prescribed by SGMA California (2014); also Zambia WA 2011)
- ❑ regulation of cultivation practices giving rise to diffuse pollution of surface water and of groundwater from fertilizers and pesticides (e.g., EU Nitrates Directive 1991, Bhutan, Philippines)
- ❑ restrictions on land uses interfering with groundwater recharge processes (EU WFD; zoning of gw recharge areas under German, Tanzanian, Philippine, Barbados legislation; India’s Model Groundwater Bill 2011. Note: green space compensation under Honduran law)

SALIENT FEATURES AND TRENDS

- ❑ empowering public water supply utilities to make land management agreements with landowners to protect upstream drinking water sources (PES/PWS in Scotland, England, New York Catskills)
- ❑ empowering public water supply utilities to compulsorily purchase parts of their groundwater source capture zones from landowners, and then permit farming or recreational use under licence (e.g., Denmark, England, Germany)

SALIENT FEATURES AND TRENDS

6. PARTICIPATION OF WATER USERS IN THE MANAGEMENT OF THE RESOURCE, EVIDENCED BY -

- ❑ the formation and functioning of formal users' groups for the management of, in particular, groundwater under stress,
- ❑ experiments in "collaborative" water management, with coalition of water users, local governments and conservation interests taking up the use and re-distribution of water under existing water rights (Oregon, USA)
- ❑ the reservation of seats for users' representatives – including reps of native communities - in the makeup of river basin governance structures

SALIENT FEATURES AND TRENDS

- ❑ 7. ACCOUNTING IN MAINSTREAM WATER LEGISLATION FOR INTERSECTION/INTERACTION (AND POTENTIAL COLLISION) OF TRADITIONAL COMMUNITIES AND WATER-BASED PRACTICES WITH
 - ❑ MODERN/FORMAL WATER ABSTRACTION AND WASTEWATER DISPOSAL RIGHTS
 - ❑ THE GOVERNMENT WATER ADMINISTRATION
 - ❑ FORMAL WATER USERS' GROUPS

ISSUES EMERGING

1. Balancing security of legal title to water with the administrative flexibility required to re-allocate available water resources in response to changing circumstances and to the risk and uncertainty of resource availability heightened by climate variability
2. Reconciling efficiency of resource allocation and re-allocation through water rights trading and user charging with social and environmental equity

ISSUES EMERGING

3. In recognition of the strategic value of the resource, insulating groundwater's lifecycle from man-made stress on
 - ▣ available groundwater stocks
 - ▣ natural groundwater quality
 - ▣ natural recharge and discharge processes
4. Raising the profile of the environment in the allocation and re-allocation of available water resources to competing uses

ISSUES EMERGING

5. Recouping the elusive connection between water regulation (and administration) and land use regulation (and administration), particularly as regards groundwater
6. Empowering users to shoulder greater responsibilities in managing water resources, in particular those under stress

ISSUES EMERGING

7. Mapping out and sorting out the interplay of customary/ancestral communities and their water-based practices with modern, formal water abstraction, impoundment and wastewater disposal rights derived from statute

THANK YOU!

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