

Searching for Equity, Efficiency and Sustainability in Water Management. In Latin America

a) The purpose of the paper is to discuss institutions for water management to highlight areas for improvement, and to propose remediation alternatives.

b) Summary of issues: Institutions influence the outcomes of management processes. Professional and administrative roles are often secondary to political short-term objectives. The result is poor management associated to patronage.

Legislation without a proper balance between private and public rights allows the resource to be deteriorated and monopolized. Even good legislation is of little use when water management institutions are underfinanced, understaffed, and culturally passive.

In Chile, water management based on full privatization resulted in resource deterioration and monopolization. Other systems reject marketing as sacrilegious to "sacred" condition of water. The result is rigidity and inefficiency.

Systems that allow nominal rights and their marketing do not control externalities. It is assumed that ownership is absolute, that there is no public trust, and that nominal trading is efficient. Damages to third parties and the environment are not accounted for. Rights cannot be regulated, except as a result of natural scarcity.

Several systems join water management with functional sectors, such as irrigation, sector development and construction of water works. When sectors and water works are joined to water administration and management vested interests and patronage trump efficiency and sustainability. Water institutions are therefore captured.

Planning criteria are basically poor on three grounds: economics, environment and society. In some countries poor assessment of public investments has been associated to economic and environmental losses.

Some countries have carried the philosophy of political decentralization to water resource management, ignoring the systemic nature of hydrological networks. Fragmentation and transaction costs have made management impossible. Poor management is reinforced by the lack of adequate conflict solving mechanisms.

While countries often accept a basic set of rules concerning water ownership and control, however poor their implementation, foreign investors are afforded their own rights and procedures. The result of privileged *Fora* has often been regulatory freezing, and, when regulations have been enacted, state liability. The system affects resource sustainability, third parties injured by externalities, and traditional water rights.

c) The paper is based on legislative research, analysis of secondary information, review of performance assessments, personal interviews and correspondence, and comparative review of legislation, judiciary decisions, and organizational arrangements both, in the analyzed countries and in systems outside the Region. The author has also relied on his personal experiences as a practitioner.

d) There is a need to improve institutional arrangements with a view greater efficiency, equity and sustainability.

e) Each actual system analyzed in the paper is amenable to suggestions concerning manners in which it may be upgraded. The principles applied by international investment arbitration need to pay greater attention to the principles for water management developed by nations.

f) "The life of the law is experience". Countries and international development organizations should promote institutional development according to experiences proven beneficial.