



International Association for Water Law
Asociación Internacional de Derecho de Aguas
ASSOCIATION INTERNATIONALE DU DROIT DES EAUX



TRAINING COURSE on
the « GREENING » of WATER LAW:
***Implementing environment-friendly principles in
contemporary water treaties and laws***

Module A
Water Law and the Environment

Class 2 – Integrating Environmental Concerns in
National Water Law (abridged version)

Stefano Burchi, 2017

“Greening” of domestic water law

“Greening” connotes the recognition of the ecosystem-support function of water resources in domestic water legislation as regards-

- water pollution control, and
- the allocation and re-allocation of water resources

Water pollution control from “point” sources

Point-source pollution control is pursued through -

- wastewater discharge permits
- effluent quality standards and ambient water quality standards/criteria/objectives
- charges for the discharge of wastewater (“polluter-pays” principle)

Water pollution control from “diffuse” sources

Approaches to non-point-source (or diffuse) pollution control include –

- regulation of agricultural land use and practices
- regulation of urban stormwater runoff
- regulation of the siting and operation of landfills and waste dumps

Greening of water allocation mechanisms

Environmental Impact Assessment of proposed water projects

Minimum (ecological) flows of watercourses

“Reserve” of water for environmental purposes

Greening of water allocation mechanisms

Controlled trading of water rights

Priority ranking of environmental water allocations

Zoning for water-dependent ecosystem protection

Greening of water allocation mechanisms

Entering environmental criteria in water abstraction & wastewater disposal charges

Capping groundwater extractions to safeguard groundwater's ecosystem-support function

Greening of water allocation mechanisms

Downscaling water abstraction and wastewater discharge rights in response to environmental concerns

Factoring the environment in

- the formation of water resources plans, and
- water allocation decision-making

Greening of water allocation mechanisms

Entitling the environment to hold a legal right to water (Australia)

Mother Earth personified as the holder of original water conservation rights (Ecuador)

Rivers granted legal personality (New Zealand, India)

Links with MEAs

“Greening” mechanisms resonate with, and are instrumental to implementing, the pro-environment obligations and commitments of states crystallized in a number of MEAs

The bulk of such obligations and commitments reverberates on the protection of water resources from pollution

A few others reverberate on the allocation and re-allocation of water resources for environmental conservation purposes

Conclusions/1

The known water pollution control mechanisms, and the novel “greening” mechanisms of water allocation, attest to, respectively –

- the established role of the environment as a catalyst and target of attention of water pollution laws, and
- the rising profile of the environment as a competitor for water allocation

Striking the “right” balance between water’s competing functions is a moving target

Conclusions/2

Arguably domestic water pollution control laws have been influenced or encouraged by relevant MEAs

The influence of MEAs in general on the “greening” of domestic water allocation laws can also be inferred, however at a high level of generality