THE POTENTIAL OF WATER LAW FOR CLIMATE CHANGE ADAPTATION & MITIGATION
SCOPE AND PURPOSE

This presentation will illustrate how domestic water law (also in synergy with other laws) contributes to:

- adaptation of water allocation patterns to dwindling and unreliable natural water supplies, and
- mitigation of the impact of climate variability on the availability of water supplies for allocation & use
ADAPTATION POTENTIAL

Water law instruments for adaptation include –

- water’s legal status as public property, with the result that water comes under the scope of Government’s allocation authority, in the public interest – this is a well-established trend in contemporary water laws

- government-administered water abstraction permits & the likes – this is also a well-established trend
ADAPTATION POTENTIAL: ABSTRACTION PERMITS

The adaptation potential of Government-administered abstraction permits & the likes is all the greater if
- permits are time-bound (i.e., not granted for an indefinite duration), and
- permits are made subject to periodic review & variation by Government, in response to changing circumstances

Both are well-entrenched features of contemporary water laws
A novel feature of water abstraction permit systems that enhances their adaptive potential is the shift from

- fixed volumetric or flow allocations to
- variable shares in the water that is available at any time

The issue of compensation looms large in connection with the downscaling eventually of permitted abstraction volumes or flows, be these fixed or also share-based – with the contemporary water laws providing a mixed response
MITIGATION POTENTIAL

Water laws, sometime with the contribution of other laws, can contribute to mitigation through mechanisms that

- improve the efficiency of water allocation
- protect water resources from pollution
- minimize the impact of human activities on the natural water-retaining/regenerating processes that occur overland and underground
In particular, as seen in many contemporary water law, efficiency of allocation is pursued through –

- water abstraction charges ("user pays")
- controlled trading of water abstraction permits & the likes, and
- financial and other incentives to water recycling & re-use
As equally seen in many contemporary water laws, “point-source” water pollution is regulated by –

- Government-administered, time-bound permits for the discharge of wastewater to rivers, lakes, and underground
- effluent and/or ambient water quality standards, and
- wastewater discharge charges (“polluter pays”)
Water pollution from “diffuse” (or “non-point”) sources, notably the surface and sub-surface runoff of land under cultivation, is regulated differently, also with the contribution of non-water laws.

The target of regulation are, in particular –
- cultivation practices, including
- the sale, application and use of pesticides & fertilizers
Minimization of the impact of human activities on natural water-friendly processes is a growing concern in contemporary water laws, and it is echoed—in particular—in town & country planning laws.

Notable mechanisms in this regard include—

- zoning (e.g., of groundwater recharge areas)
- requiring that the impact of land uses on water sources be factored in land use planning determinations (also re: mining & other uses of subsurface space)
THANK YOU!

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