



International E-mail Conference on Irrigation Management Transfer

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WUA Legislation Country Profiles: CHILE

Constitutional framework Water resources management is a responsibility of the national Government

1. Name of organization

The generic term used in the law is Users' Organizations (*Organizaciones de Usuarios*). The types of associations are: Water Communities (*Comunidades de aguas*), Canal Users' Associations (*Asociaciones de Canalistas*), Drainage Communities (*Comunidades de obras de drenaje*) and Boards of Control (*Junta de Vigilancia*). However, the term Users' Organizations is used in this document to refer to all organizations.

2. Purpose

Water Communities: Manage irrigation and drainage systems and use of groundwater resources.

Canal Users' Associations: Manage irrigation infrastructure to provide irrigation and drainage services."

Boards of Control: Management of water resources within a drainage basin or watershed.

3. Legal status and capacity

Water Communities: are *de facto* organizations until they acquire the status of a legal entity by registering with the Water Department (*Dirección General de Aguas*) and constituting themselves as a Canal Users' Association or as any other type of association.

Canal Users' Associations: acquire the status of a legal entity by registering with the Water Department and obtaining the approval of the President of the Republic.

Boards of Control: acquire the status of a legal entity by registering with the Water Department and with the approval of the President of the Republic.

4. Establishment

Water Communities: Two or more persons having water rights on the same canal or reservoir or using the same groundwater extraction equipment can organize themselves as any type of association to manage water resources and the infrastructure they use.

The establishment of a water community is mandatory in areas that have been declared "restricted" (*area de restricción*) for the conservation of groundwater resources.

Canal Users' Associations: voluntary.

Boards of Control: voluntary.

Users' Organizations can also be established by a Court decision, on the initiative of an interested party or of the Government.

Procedure for establishment Users' Organizations are established by public deed, underwritten by all persons having a water right on the same canal or reservoir or on the same natural watercourse. The deed establishing a Users' Organization must indicate: name and purpose of the organization, name and addresses of members, water use rights, composition

and functions of the governing bodies, and the date on which the annual general council will be held.

5. Membership

Voluntary, unless the Users' Organization is established by judicial decision.

5.1 Eligibility criteria

Water Communities: all holders of water rights on the same canal or reservoir or using the same groundwater extraction equipment.

Canal Users' Associations: users of the same irrigation system.

Boards of Control: all natural and legal persons who use water in the same drainage basin or watershed.

5.2 Rights and Duties of members

Duties of members of Water Communities are spelled out in the law. They are the same for all other Users' Organizations, as applicable. Duties of members comprise:

- participating in the General Assembly of members (Non participation is sanctioned with a fine, the amount being set in the statute of the Community or, if not, being decided by the Board of Directors);
- paying for the construction and maintenance of the infrastructure required to abstract water from the main canal;
- participating, in proportion to one's rights, in the costs of irrigation and drainage operations and paying all charges and assessments.

All costs of construction, maintenance and improvement of the common system must be covered by members in proportion to their water rights. Voting rights are assigned in proportion to water rights. Members of Users' Organizations can appeal to the ordinary courts against decisions taken by the Organizations to which they belong.

6. Internal structure

Water Communities and Canal Users' Associations:

The main governing body is the General Assembly of members (*junta general de comuneros*) composed of all members of the Community. It has to meet in ordinary session at least once a year; the statute of the Community shall set the date and time. If it fails to do so, the law prescribes that the annual session be on the first Saturday of April. Its functions comprise the election of the Board of Directors (*Directorio*), the approval of the annual budget of the Community and the setting of sanctions on defaulters.

Board of Directors, elected by the General Assembly of members for one year. When members are less than five, they shall appoint one or more Directors to perform the functions and duties of the Board of Directors. Elections take place during the annual ordinary meeting of the General Assembly. In its first session, the Board of Directors elects a President and determines the order in which other Board members should substitute for him in case of absence. The President is the legal representative of the Community. The Board of Directors is responsible for the management of the Community. Its functions and powers are set in the statute of the Community. If there are no specific provisions, the law indicates the main functions of the Board of Directors. If a Director misses more than three meetings of the Board of Directors, she/he will lose her/his office.

A Secretary (*Secretario*) is responsible for the administration of the Community.

Statutes. Statutes of the Organizations are approved by a majority vote. Changes in the statutes need to be approved by the ordinary General Assembly of members.

Boards of Control:

Assembly (Asamblea) of all members. Users' Organizations are represented in the Assembly by their President or by the person indicated in the respective statute of each Organization.

Board of Directors, elected in compliance with the provisions of the statute of each Board of Control. The law spells out the functions and duties of the Board of Directors, which comprise: allocating the water under the jurisdiction of the Board of Control; declaring water scarcity and maintaining a register of the canals under the jurisdiction of the Board of Control.

7. Functions, Powers and Rights

7.1 Functions

Water Communities and Canal Users' Associations:

Delivery of irrigation water and operation and maintenance of canals

Dispute settlement: The Board of Directors of the Water Communities is responsible for the settlement of disputes among members. Decisions of the Board of Directors can be appealed to the ordinary courts.

Others Keeping and updating a Register of Members (*Registro de Comuneros*) with the indication of the water rights held by each.

Boards of Control:

Delivery of irrigation water and operation and maintenance of canals.

Dispute settlement no specific provision.

Other Each Board of Control must be notified of the construction and location of all temporary works in the area under its jurisdiction.

7.2 Powers

Water Communities and Canal Users' Associations:

Levying and collection of assessments Users' Organizations can levy and collect charges and assessments from their members.

Imposition of fines General Assembly of members sets the fines to be paid by members who default on their obligations.

The statutes or the Board of Directors set fines for non-attendance at the sessions of the General Assembly of members.

Others Users' Organizations can suspend the delivery of water to members who do not pay their charges or assessments.

Boards of Control:

Levying and collection of assessments no specific provision, however, the general provisions concerning Users' Organizations apply by implication.

Imposition of fines Boards of Control can impose fines on their members who default on their obligations.

Others with the authorization of the Government, Boards of Control can improve the existing water resources management infrastructure or construct new infrastructure. Boards of Control can suspend the delivery of water under the circumstances provided by their statutes or by the law.

7.3 Rights

Water rights are granted to members of the various Users' Organizations and not to the Users' Organizations as separate legal entities.

Rights in the infrastructure According to the law, under conditions to be set by the Government for each work, certain works built by the Government can be transferred to Users' Organizations.

Rights of way Members of Users' Organizations cannot stop representatives of the Organizations from entering private property in the performance of their duties.

Other Users' Organizations can keep bank accounts.

8. Financing

Water Communities and Canal Users' Associations: Revenue from the collection of charges and assessments paid by members, revenue from the collection of fines imposed on members and from loans. The law specifies that the amount of the loan cannot exceed the annual estimated income of the Organization.

Boards of Control: Boards of Control can raise loans, in an amount not exceeding the estimated annual income of the Organization.

9. Government role

Users' Organizations must register with the Government. Changes in the statutes of Users' Organizations must be registered as well.

The Government may take the initiative in the establishment of Users' Organizations.

The Government can be called to audit all records of a Users' Organization, at the request of an aggrieved person.

If so required by any member of a Users' Organization, the Government can summon the General Assembly of members of the Users' Organization if they have failed to elect the Board of Directors.

10. Dissolution

Water Communities and Canal Users' Associations cease to exist if all water rights are consolidated in the hands of a single landowner.

Boards of Control: no specific provision.

11. Federation of Associations

No specific provision.

References

Legislation

Law 18.450 – on the promotion of private investment in irrigation and drainage (*Ley N° 18.450 - Normas para el fomento de la inversión privada en obras de riego y drenaje*) 22 October 1985; Decree Law 1.122: Water Code (*Decreto con fuerza de Ley N° 1.122 - Código de Aguas*) 13 August 1981; Decree 187, regulation on the Register of Users' Organizations (*Decreto Supremo n. 187, Reglamento sobre Registro de Organizaciones de Usuarios*) 28 June 1983; Decree 388 on the execution of irrigation works by the Government (*Decreto N° 388 - Reglamenta parcialmente el DFL N° 1.123 de 1981, sobre ejecución de obras de riego por el Estado*) 11 August 1982.

All documents are available in the FAOLEX database at URL <http://faolex.fao.org/faolex>

Literature

Solanes, Miguel, 1983 **Irrigation Users' Organizations in the Legislation and Administration of Certain Latin American Countries**. FAO Legislative Study no. 24, Rome: FAO

Fundación Nacional para la Superación de la Pobreza, 2000 **Cartillas Educativa. Tema de Asociatividad. Tipos de Organización**, available on the Internet through the homepage of the National Foundation for Overcoming Poverty at URL:

http://www.fundacionpobreza.cl/redes/Cartillas/Tipos_de_Organizacion_1/tipos_de_organizacion_1.html