



Toward energy autonomous  
public utilities infrastructure:  
The Water Energy Nexus

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Indigenous rights and Water  
Management : The Case of  
Chile

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# Indigenous rights and water management

## The Case of Chile

### Main Topics

- ▶ Conflict over Water
  - ▶ Water Legal and Institutional Framework
  - ▶ Indigenous People Legislation
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# The Conflict Over Water Rights

- Land ownership and water rights are independent in the Chilean law
- Water issues differ between the north, and the central and south regions.
- In the north, the water traditionally used by small farmers and indigenous communities have been threatened by demand of large users. In the south, indigenous conflict focus on land issues, not water.
- Although the need is generally recognized, Chile lacks a system of water basin administration and coordination, as well as good data on the hydrological behavior of the different basins.
- Since the approval of the Water Code Reform in 2005, the Government has concentrated efforts to update information on water rights, demand and supply in the different basins.
- A proposal of a “Basin Management Coordination Body” is currently under debate.

# The Conflict Over Water Rights

- In the northern regions (desertic areas) indigenous people are mainly small farmers, and cattle raisers, and live on the highlands ( altiplano).
- In most basins in the north water is scarce, and existing legal rights exceed the available resource on an average hidrologic year.
- Since the law protects historical indigenous water rights, these have been under supervision by the CONADI and DGA (Indigenous and water agencies).
- However, there is intense competition for the resource, with mining and (in some cases) export agriculture demand rapidly growing and competing against traditional farming.
- “Mesas del Agua” (Water Tables) have been organized as a first step towards a “Basin Management or Coordination System”

# The Conflict Over Water Rights

- The Aymara, Atacameños, Quechua and Colla, all people of the north, have seen their water resources reduced by the extraccion of water by mining and modern farming.
  - Shortage is the normal situation for the most part of the year.
  - Market prices of water make very difficult to maintain the availability for small and low technology farmers.
  - Restriction of water use is being considered in some basins in order to allow the recuperation of the acuifer.
  - Long term solutions include sea water desalinisation, financed by large users (mining and other industry) to free other sources for human, small agriculture, etc.
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# Water Legal and Institutional Framework

## The Water Code

Water Legislation was passed on 1981 seeking a market based allocation system. (Water Code, 1981)

- Water rights requested to public agency (DGA) on the basis of eventual or planned use.
- Water rights constituted on permanent basis, without restriction on any form of transference.
- Water property rights protected by the National Constitution
- Water rights must be registered as real state property
- Users, with or without formal entitlement had to register their rights after the approval of the Law.

# Water Legal and Institutional Framework

## The Water Code

- Lack of information and legal advice conspired and water rights were registered by new entrepreneurs and lost by many small traditional users.
- During the 80's demand for water for industry, mining and modern agriculture had a steep increase.
- Small traditional farmers and indigenous communities confronted strong competition from new users.
- At the beginning of the 90's, prices of water and conflict between traditional and new users, and between agriculture, mining and hidroelectricity were growing fast.
- The problem was particularly evident in the northern regions, where traditional small farmers are mostly indigenous.

# Water Legal and Institutional Framework

## The Water Code

In 1994 the Government presented a reform of the Water Code. It was only approved in 2005. The reform included:

- A tax for water rights registered but not used, to inhibit speculation
- Stronger supervision instruments for the public agencies ( as public bidding in cases of conflicts over acquisition of rights)
- Ecological limits to water rights allocation and use.
- More strict norms on information related to registration of rights.



# Indigenous People Legislation

- In 1972, the Congress passed a Law that recognized indigenous people traditional economic and social structure, based on community property and use of land and other resources.
- In 1978 the new government abolished this law, and approved a legal reform inspired in the belief that indigenous communities should be subject to the same rules and regulation applied to the rest of the population, in order to favor a better integration into a modern economy.
- After 1990 and the end of the military government, pressure had built up to review the situation of the indigenous people and their legal and institutional standing, specially regarding land and water rights.

# Indigenous People Legislation

Several legal reforms have been approved between 1993 and 2009.

## I. The “Protection and Development of Indigenous People” Law of 1993, that among other aspects:

- Recognized the different ethnical groups that conform the indigenous people in Chile;
- Provided a general framework and recognized their right to develop and maintain their original culture, traditions, and social and economic organization.
- Created a public agency (National Corporation for Indigenous Development) to carry out the land and water programs
- Created a Fund to finance the acquisition of ancestral land and return it to the indigenous communities.
- Established protection of traditional water resources used by the indigenous communities of the north of Chile.

# Indigenous People Legislation

## II. “Historic Truth and New Deal of the Indigenous People”

In 2001 a Commission was appointed to further study the reality of indigenous people in Chile. The final report was issued in 2008. The report analyzed the different realities of communities belonging to different ethnic groups, including:

- Land demands,
- Conflicts on ancestral resources, and economic development
- Cultural issues, political participation, integration and multicultural education, language protection and conservation, among other issues.

The report is the base for the proposal of new reforms, (“New Deal”) to improve policy

# Indigenous People Legislation

## III. The Law on “Coastal and Marine Indigenous People Areas” (2008):

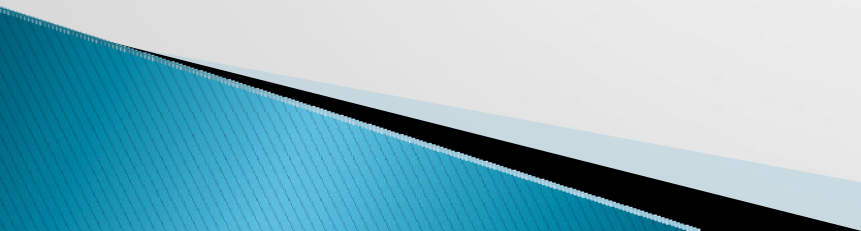
- Recognizes the right to preserve coastal and marine areas traditionally used by indigenous communities.
- Provides a formal procedure to process the specific requests
- Coastal Areas are declared “indigenous” if the communities have historically used them and they are part of their economic and social traditions.

# Indigenous People Legislation

## IV. The Environment Law (General Law on Environment) of 1994,

- Provided a formal participation system for affected parties in the Environmental Impact Assessment System; this system has allowed indigenous People (and other local parties) to be informed of investment projects that can affect them, their communities, and the natural resources needed for their sustenance.

## FINAL COMMENTS

- Chile confronts great challenges related to water management and energy.
  - Although great political efforts have been invested to solve both the access to water of small traditional communities, indigenous people, and the demand of modern industry, the process has been difficult because of high scarcity in regions of high development, and a legal framework based exclusively on market forces and protected by the Constitution (Water Code, 1981)
  - Loss of water rights during the 80´ s and first part of the 90´ s has made it difficult to reverse the situation.
  - With time, conflict has grown to critical levels
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## FINAL COMMENTS

On the positive side,

- Legislation and policy starting 1993 has been directed to reverse small communities situation and recognize their rights.
- Environmental legislation has provided a formal participation system
- Public Transparency Law has made management of rights open to public scrutiny
- Indigenous people general legal framework has being upgraded and is under strong debate
- Water crisis in the north and the advance of new technologies are opening the door to public-private solutions to improve dramatically water availability

**THANK YOU**

