

Law No. 9.433, of 8 January 1997

Institutes the National Water Resources Policy, creates the National Water Resources Management System, regulates Section XIX, Article 21 of the Federal Constitution, and amends Article 1, Law No. 8,001 of 13 March 1990, which amended Law No. 7,990 of 28 December 1989.

The President of the Republic

I hereby state that the National Congress decrees and I approve the following Law:

Title I

National Water Resources Policy

Chapter I

Fundamentals

Art. 1. The National Water Resources Policy is based on the following fundamentals:

I -- Water is a public good;

II -- Water is a limited natural resource with economic value;

III -- Under situations of scarcity, human consumption and the watering of animals shall be priority uses of water resources;

IV -- The management of water resources must always provide for multiple uses of water;

V -- The watershed is the territorial unit for the implementation of National Water Resources Policy and the activities of the National Water Resources Management system;

VI -- Water resources management must be decentralized and include the participation of the public authorities, users and communities.

Chapter II

Objectives

Art. 2. The objectives of the National Water Resources Policy are the following:

I -- To ensure the necessary availability of water to current and future generations, under appropriate quality standards for the respective users;

II -- The rational and integrated use of water resources, including water transport, with a view to sustainable development;

III -- The prevention and control of critical water events of natural origin or those which result from the inappropriate use of natural resources.

Chapter III

General Action Directives

Art. 3. The general action directives for the implementation of National Water Resources Policy are the following:

I -- The systematic management of water resources, including aspects of quantity and quality;

II -- Adaptation of the management of water resources to the physical, biological, demographic, economic, social and cultural needs of the country's various regions;

III -- Integrated management of water resources with environmental management;

IV -- The coordination of Water Resources Planning and that of the user sectors with regional, state and national planning;

V -- The coordination of water resources management and soil use;

VI -- The integration of watershed management with the management of river and coastal zone systems.

Art. 4. The Federal Government will cooperate with the states with a view to managing water resources of joint interest.

Chapter IV

Instruments

Art. 5. The instruments of National Water Resources Policy are the following:

- I -- Water resources plans;
- II -- The classification of bodies of water by type, according to predominant uses of the water;
- III -- The awarding of user rights for water resources;
- IV -- Charging for the use of water resources;
- V -- Compensation to municipalities;
- VI -- The water resources information system.

Section I

Water Resources Plans

Art. 6. Water resources plans are master plans aimed at justifying and guiding the implementation of National Water Resources Policy and the management of water resources.

Art. 7. Water Resources Plans are long-term plans, with a planning horizon consistent with the period for implementing their programs and projects, and will have the following minimum content:

- I -- Diagnostic of the current water resources situation;
- II -- Analysis of alternatives taking into consideration demographic growth, changes in productive activities and changes in soil-use patterns;
- III -- Balance between availability and future demands for water resources, in terms of quantity and quality, with identification of potential conflicts;
- IV -- Goals for rationalizing use, increasing quantity and improving the quality of available water resources;
- V -- Measures to be taken, programs to be developed and projects to be implemented to fulfill the anticipated goals;
- VI -- (Vetoed)
- VII -- (Vetoed)
- VIII -- Priorities for the awarding of water resources use rights;
- IX -- Directives and criteria for charging for the use of

water resources;

X -- Proposals for the creation of areas subject to use restrictions, with a view to protecting water resources.

Art. 8. Water Resources Plans will be prepared by watershed, by state and for the country.

Section II

Classification of Bodies of Water by Type, According to Predominate Use of the Water

Art. 9. The classification of bodies of water by type, according to the predominate use of the water, is intended to:

I -- Ensure water quality consistent with the most demanding uses for which it is intended;

II -- Reduce the costs of controlling water pollution, through ongoing preventive actions.

Art. 10. The types of bodies of water shall be established by environmental law.

Section III

Awarding Usage Rights for Water Resources

Art. 11. The system for granting usage rights for water resources is intended to ensure the quantitative and qualitative control of water use and the effective exercise of access rights to water.

Art. 12. Rights for the following uses of water resources shall be subject to award by the public authorities:

I -- Derivation or capture of a portion of the water existing in a body of water for final consumption, including public supply, or as an input into a productive process;

II -- Extraction of water from an underground aquifer for final consumption or as an input into a productive process;

III -- Emission into a body of water of drainage and other liquid or gaseous residue, treated or non-treated, for purposes of dilution, transport, or final disposal;

IV -- Use of hydroelectric potential;

V -- Other uses which alter the system, quantity or quality of the water existing in a body of water.

1. As defined in the regulation, the following shall not be subject to award by the public authorities:

I -- The use of water resources to satisfy the needs of small population centers, distributed within the rural environment;

II -- Derivations, capture and emissions considered insignificant;

III -- Accumulations of volumes of water considered insignificant.

2. The granting and use of water resources for purposes of generating electricity shall be subordinate to the National Water Resources Plan, approved pursuant to the provision contained in Paragraph VIII, Article 35 of this law, in accordance with the regulations contained in the specific sector laws.

Art. 13. All awards shall be conditional upon the use priorities established in the Water Resources Plan and must conform to the type within which the body of water is classified and the maintenance of appropriate water transport conditions, where applicable.

Sole Paragraph. Awards for the use of water resources must be consistent with the multiple use thereof.

Art. 14. Awards shall be granted by act of the authorities with jurisdiction within the federal, state or Federal District executive branches.

1. The Federal Executive Branch may delegate to the states or the Federal District the authority to award water resource usage rights for which the Federal Government is responsible.

2. (Vetoed)

Art. 15. The awarding of usage rights for water resources may be partially or totally suspended, permanently or for a specific period, under the following conditions:

I -- Violation of the terms of the award by the awardee;

II -- Failure to use such award for three consecutive years;

III -- Pressing need for water to address disaster situations, including those resulting from adverse weather conditions;

IV -- Need to prevent or reverse serious environmental damage;

V -- Need to address priority uses of the collective interest, for which there are no alternative sources available;

VI -- Need to maintain the navigability of a body of water.

Art. 16. Any usage rights for water resources shall be awarded for a period not to exceed 35 years, and shall be renewable.

Art. 17. (Vetoed)

Art. 18. An award shall not imply the partial transfer of the water, which is inalienable, but merely the transfer of usage rights.

Section IV

Charging for the Use of Water Resources

Art. 19. The objectives of charging for the use of water resources are the following:

I -- To recognize water as an economic good and to provide users an indication of its real value;

II -- To provide incentives for the rational use of water;

III -- To obtain financial resources for financing the programs and activities included in the Water Resource Plan.

Art. 20. Water resource uses subject to an award shall be charged for pursuant to the terms of article 12 of this law.

Sole Paragraph. (Vetoed)

Art. 21. In establishing the sums to be charged for the use of water resources, the following must be taken into

consideration, among other items:

I -- Derivation, capture and extraction of water, volumes removed and the variation system;

II -- Emissions of drainage and other liquids or gaseous waste, volumes emitted and the variation system, and the physical-chemical, biological and toxicity characteristics of the effluent.

Art. 22. Sums collected by charging for the use of water resources shall be applied on a priority basis in the watershed in which they were generated and shall be used:

I -- for financing studies, programs, projects and works included in the Water Resources Plan;

II -- for paying startup expenses and for the administrative financing of the bodies and entities forming part of the National Water Resources Management System.

1. Application of the expenditures provided for in Section II of this Article shall be limited to seven and one-half percent of the total amount collected.

2. The sums provided for in the main body of this Article may be applied to sunk costs in projects and works that change, taking into consideration the benefits to the community, and the quality, quantity of and the discharge system from a body of water.

3. (Vetoed)

Art. 23. (Vetoed)

Section V

Compensation to Municipalities

Art. 24. (Vetoed)

Section VI

Water Resources Information System

Art. 25. The Water Resources Information System is a system for the collection, processing, storage and recovery of information on water resources and factors involved in its management.

Sole Paragraph. The data generated by the agencies

forming part of the National Water Resources Management System shall be incorporated into the National Water Resources Information System.

Art. 26. Basic principles for operation of the Water Resources Information System:

I -- Decentralized acquisition and production of data and information;

II -- Unified coordination of the system;

III -- Access to data and information guaranteed to all society.

Art. 27. The following are objectives of the National Water Resources Information System:

I -- Consolidating, lending consistency to, and reporting data and information on the qualitative and quantitative status of water resources in Brazil;

II -- Continuous updating of information on the availability of and demand for water resources throughout the National Territory;

III -- Providing subsidies for the development of Water Resources Plans.

Chapter V

Distribution of the Costs of Works Involving Multiple Use, Joint Interest or the Collective Interest

Art. 28. (Vetoed)

Chapter VI

Actions by the Public Authorities

Art. 29. In implementing the National Water Resources Policy, the Federal Executive Branch shall be responsible for the following:

I -- Taking the measures necessary for implementing and operating the National Water Resources Management System;

II -- Granting usage rights for water resources, and regulating and monitoring use, within its area of authority;

III -- Implementing and managing the water resources

information system on a national scale;

IV -- Promoting integration of water resources management and environmental management.

Sole Paragraph. The Federal Executive Branch shall establish by decree the authority responsible for awarding usage rights for water resources within the Federal jurisdiction.

Art. 30. In implementing National Water Resources Policy, the State and Federal District Executive Branches shall be responsible within their areas of jurisdiction:

I -- for granting usage rights for water resources and regulating and monitoring their uses;

II -- for maintaining technical control over water supply works;

III -- for implementing and managing the Water Resources Information System within the State and Federal District environment;

IV -- for promoting integrated management of water resources and environmental management.

Art. 31. In implementing National Water Resources Policy, the Executive Branches of the Federal District and Municipalities shall promote the integration of local policies for basic health, use, occupation, and soil and environmental maintenance with Federal and State Water Resource Policies.

Title II

National Water Resources Management System

Chapter I

Objectives and Breakdowns

Art. 32. The National Water Resources Management System is hereby created, with the following objectives:

I -- Coordinating integrated water management;

II -- Providing administrative arbitration over disputes relating to water resources;

III -- Implementing National Water Resources Policy;

IV -- Planning, regulating and monitoring use, preservation and recovery of water resources;

V -- Applying charges for the use of water resources.

Art. 33. The National Water Resources Management System shall consist of the following:

I -- The National Water Resources Council;

II -- The State and Federal District Water Resources Councils;

III -- The Watershed Committees

IV -- Agencies of the federal, state and municipal authorities with jurisdiction over water resources management;

V -- Water Agencies.

Chapter II

National Water Resources Council

Art. 34. The National Water Resources Council shall consist of the following:

I -- Representatives from the Ministries and Secretariats of the Office of The President of the Republic involved in the management or use of water resources;

II -- Representatives appointed by the State Water Resources Council;

III -- Representatives of water resource users;

IV -- Representatives of Civil Water Resources Organizations.

Sole Paragraph. The number of government representatives may not exceed one-half plus one of all members of the National Water Resources Council.

Art. 35. The National Water Resources Council shall be responsible for the following:

I -- Promoting the coordinated in the planning of water resources with the National, Regional, State and User Sector Plans;

II -- Arbitrating, in the final administrative instance, disputes existing between State Water Resources Councils;

III -- Resolving on plans for the use of water resources whose impacts are extrapolated from the circumstances of the States in which they will be implemented;

IV -- Deliberating on issues sent thereto by the State Water Resources Councils or the Watershed Committees;

V -- Analyzing proposals for changing laws relating to water resources and National Water Resources Policy;

VI -- Establishing complementary directives for implementing National Water Resources Policy, applying its instruments and the actions of the National Water Resources Management System;

VII -- Approving proposals instituted by the Watershed Committees and establishing general criteria for preparing their regulations;

VIII -- (Vetoed)

IX -- Monitoring execution of the National Water Resources Plan and identifying the necessary measures for achieving its goals;

X -- Establishing general criteria for the awarding of usage rights for water resources and for charging for their use.

Art. 36. The National Water Resources Council shall be managed by:

I -- A chairman, who shall be the acting Minister of the Ministry of the Environment, Water Resources and the Legal Amazon;

II -- An executive secretary, who shall be the head of the agency forming part of the structure of the Ministry of the Environment, Water Resources and the Legal Amazon responsible for managing water resources.

Chapter III

Watershed Committees

Art. 37. The Watershed Committees shall have the following scope of activity:

I -- An entire watershed;

II -- A sub-watershed of the tributary of the basin's main water flow, or a tributary of that tributary; or

III -- A group of contiguous watersheds.

Sole Paragraph. The establishment of Watershed Committees in rivers under Federal jurisdiction shall be implemented by decree of the President of the Republic.

Art. 38. The Watershed Committee shall be responsible for the following within its scope of activity:

I -- Promoting debate on issues relating to water resources and defining the activities of the participating entities;

II -- Arbitrating, in the first administrative instance, disputes relating to water resources;

III -- Approving the Water Resources Plan for the watershed;

IV -- Monitoring execution of the Water Resources Plan for the watershed and suggesting the necessary measures to be taken for fulfillment of its goals;

V -- Proposing to the National and the State Water Resources Councils accumulations, derivations, capture and emissions of low significance, for purposes of exemption from the mandatory award of usage rights for water resources, in accordance with the jurisdictions thereof;

VI -- Establishing the mechanisms for charging for the use of water resources and suggesting the amounts to be charged;

VII -- (Vetoed)

VIII -- (Vetoed)

IX -- Establishing criteria to promote distribution of the costs of works involving multiple use, joint interest or collective interest.

Sole Paragraph. The decisions of the Watershed Committees shall be subject to appeal to the National or State Water Resources Councils, in accordance with their areas of jurisdiction.

Art. 39. The Watershed Committees shall consist of representatives:

I -- of the Federal Government;

II -- of the State and Federal District Governments whose territories are located, even if partially, within its respective areas of activity;

III -- Of municipalities located totally or partially in its area of activity;

IV -- Of water users and their areas of activities;

V -- Of civil water resources entities with proven activities in the watershed.

1. The number of representatives from each sector mentioned in this article, as well as the criteria for appointing them, shall be established within the committee regulations, with the representatives of the Executive Branches of the Federal, State, Federal District and Municipal Governments to be limited one-half of its members.

2. Federal Government representation on the Watershed Committees for border and trans-border river basins under shared management must include a representative from the Ministry of Foreign Relations.

3. The following representatives must also be included on Watershed Committees for basins whose territories cover indigenous lands:

I -- From the National Indian Foundation (FUNAI), as part of the Federal Government representation;

II -- From the indigenous communities residing therein or with interests in the basin.

4. The Federal Government shall participate on the Watershed Committees with areas of activity restricted to river basins under government domain, in the form established in the respective regulations.

Art. 40. The Watershed Committees shall be administered by a chairman and a secretary, elected from among their members.

Chapter IV

Water Agencies

Art. 41. Water Agencies shall perform the executive secretarial duties for the respective Watershed Committee or Committees.

Art. 42. The Water Agencies shall have the same activity area as one or more Watershed Committees.

Sole Paragraph. The creation of Water Agencies shall be authorized by the National Water Resources Council or by the State Water Resources Councils, through requests by one or more Watershed Committees.

Art. 43. The creation of a Water Agency shall be conditional upon satisfying the following requirements:

I -- Prior existence of the respective Watershed Committee or Committees;

II -- Financial feasibility ensured by charging for the use of water resources in its area of activity.

Art. 44. The Water Agencies shall be responsible for the following within their activity areas:

I -- Maintaining an updated balance of water resources availability in their activity area;

II -- Maintaining a record of water resource users;

III -- By delegation of the awarding authorities, charging for the use of water resources;

IV -- Analyzing and issuing opinions on projects and works to be financed with funds generated from charging for the use of water resources and remitting them to the financial institution responsible for the management of such funds;

V -- Monitoring the financial administration of the funds collected through charging for the use of water resources in their areas of activity;

VI -- Managing the water resources information system in their areas of activity;

VII -- Entering into agreements and engaging financing and services for carrying out their duties;

VIII -- Preparing the budget proposal and submitting it

for evaluation by the respective Watershed Committee or Committees;

IX -- Undertaking the studies necessary for water resources management in their areas of activity;

X -- Preparing the Water Resources Plan for evaluation by the respective Watershed Committee;

XI -- Proposing to the respective Watershed Committee or Committees the following:

a) The organization of water bodies into usage types, to be sent to the respective National or State Water Resources Councils, pursuant to the jurisdiction thereof;

b) The sums to be charged for the use of water resources;

c) The plan for investing the funds collected by charging for the use of water resources;

d) Distributing the cost of the works for multiple use, joint interest or collective interest.

Chapter V

Executive Secretariat of the National Water Resources Councils

Art. 45. The duties of the Executive Secretariat of the National Water Resources Council shall be performed by the body forming part of the structure of the Ministry of the Environment, Water Resources and the Legal Amazon responsible for water resources management.

Art. 46. The Executive Secretariat of the National Water Resources Council shall be responsible for the following:

I -- Providing administrative, technical, and financial support to the National Water Resources Council;

II -- Coordinating the preparation of the National Water Resources Plan and sending it to the National Water Resources Council for approval;

III -- Issuing orders originating from the State Water Resources Councils and the Watershed Committees;

IV -- Coordinating the Water Resources Information System;

V -- Preparing its work program and respective annual

budget proposal and submitting it to the National Water Resources Council for approval.

Chapter VI

Civil Water Resources Organizations

Art. 47. The following shall be considered water resources organizations for purposes of this law:

I -- joint ventures and inter-municipal watershed associations;

II -- regional, local, or sector water resource user associations;

III -- technical, educational and research organizations with interests in the water resources area;

IV -- Non-governmental organizations organized for the purpose of defending the disparate and collective interests of society;

V -- Other organizations recognized by the National or State Water Resources Councils.

Art. 48. In order to form part of the National Water Resources System, civil water resources organizations must be legally organized.

Title III

Violations and Penalties

Art. 49. Violations of the usage standards for surface or subterranean water resources shall include the following:

I -- Deriving or using water resources for any purpose, without the respective award of usage right;

II -- Initiating the establishment of or implementing an undertaking relating to the derivation or use of water resources, surface or subterranean, involving changes to the system, quantity or quality thereof, without authorization from the bodies or entities with jurisdiction;

III -- (Vetoed)

IV -- Using water resources or executing works or services relating thereto in violation of the conditions established in the award;

V -- Drilling wells to extract subterranean water or operating them without proper authorization;

VI -- Adulterating water volume measurements or declaring values different from those measured.

VII -- Violating regulations established in the regulation of this law and in the administrative regulations, including instructions and procedures established by the bodies or entities with jurisdiction;

VIII -- Preventing or impeding monitoring actions by the authorities with jurisdiction in the performance of their duties;

Art. 50. In the event of a violation of any legal or regulatory provisions relating to the execution of water-related works and services, the derivation or use of water resources under the jurisdiction or administration of the Federal Government, or failure to respond to requests made, the violator, at the discretion of the authorities with jurisdiction, shall be subject to the following penalties, regardless of their order of listing:

I -- Written warning, in which the periods for correcting the irregularities shall be established;

II -- Fines, on a flat-rate or daily basis, proportional to the seriousness of the violation, of from R 100.00 (one hundred Brazilian reais) to R 10,000.00 (ten thousand Brazilian reais);

III -- Provisional attachment, for a specific period, for execution of services and works necessary for full compliance with the conditions of the award or for the fulfillment of standards relating to the use, monitoring, upkeep and protection of the water resources.

IV -- Permanent attachment, with a revocation of the award, if applicable, to restore the water resources in their entirety in accordance with the terms of Articles 58 and 59 of the Water Code, or the capping of underground water extraction wells.

1. In the event of damage to the public water supply service, risk to health or life, the loss of goods or animals, or losses to any third parties as a consequence of the violation that was committed, the fines to be applied shall be no less than one-half the maximum amount agreed to in abstract.

2. In the case of sections III and IV, regardless of the penalty of a fine, the expenses incurred by the administration to enforce the measures provided for in the aforementioned items shall be charged to the violator, pursuant to Articles 36, 53, 56 and 58 of the Water Code, without prejudice to the violator's liability for indemnification of any harm that was caused.

3. Application of the penalties provided for in this title shall be subject to appeal to the administrative authorities with jurisdiction, in accordance with the regulation.

4. In the event of a repeated violation, the fine shall be doubled.

Title IV

General and Transitory Provisions

Art. 51. Inter-municipal watershed joint ventures and associations as mentioned in Article 47 may receive authorization from the National or State Water Resources Councils, for a specific period of time, to exercise the duties of jurisdiction of the Water Agencies, until such time as those organizations have been established.

Art. 52. Until such time as the National Water Resources Plan regulation has been approved and regulated, the use of hydraulic potential for purposes of generating electricity shall continue to be subordinate to the specific sector laws.

Art. 53. Within a period of one hundred twenty days after the publication of this law, the Executive Branch shall send the National Congress a bill providing for creation of the Water Agencies.

Art. 54. Article 1 of law 8,001 of 13 March 1990, shall read as follows:

"Article 1. [...]

III -- four and four-tenths percent to the Secretariat of Water Resources of the Ministry of the Environment, Water Resources, and the Legal Amazon;

IV -- three and six-tenths percent to the National Department for Water and Electrical Energy (DNAEE) of the Ministry of Mining and Energy;

V -- two percent to the Ministry of Science and Technology.

4. The portion intended for the Secretariat of Water Resources under the Ministry of the Environment, Water Resources and the Legal Amazon shall be used for implementing the National Water Resources Policy and the National Water Resources Management System and in managing a National Hydro-Meteorological Network.

5. The portion intended for the DNAEE must cover the operation and expansion of its Hydro-Meteorological Network, the study of water resources and services relating to the operation of hydraulic power."

Sole Paragraph. The new percentages defined in the main body of this Article shall enter into force within a period of one hundred eighty days after the date of publication of this law.

Art. 55. The Federal Executive Branch shall regulate this law within a period of one hundred eighty days, counting from the date of its publication.

Art. 56. This law shall enter into force on the date of its publication.

Art. 57. Provisions to the contrary shall be revoked.

Brasilia, 8 January 1997; 176th year of independence and 109th of the Republic.

Fernando Henrique Cardoso

Gustavo Krause

EFFECTIVE-DATE: 01/08/1997