

LAW No. 9,433 OF JANUARY 8, 1997

Wherein the National Water Resource Policy is established; the National Water Resource Management System is created; regulations are provided for Paragraph XIX, Article 21, of the Federal Constitution; and Article 1 of Law No. 8,001 dated March 13, 1990, which had amended Law No. 7,990 dated December 28, 1989, is in turn amended.

I, THE PRESIDENT OF THE REPUBLIC,

HEREBY DECLARE that the National Congress has decreed and I have approved the following Law:

TITLE I NATIONAL WATER RESOURCES POLICY

CHAPTER I BASIC PRINCIPLES

Art. 1. The National Water Resource Policy is based on the following principles:

- Water is public property;
- Water is a limited natural resource, which has economic value;
- When there is a shortage, priority in the use of water resources is given to human consumption and the watering of animals;
- The management of water resources should always allow for multiple uses of water;
- The river basin is the territorial unit for the implementation of the National Water Resources Policy and the actions of National Water Resources Management System;
- The management of water resources should be decentralized and should involve participation by the Government, the users, and the communities.

CHAPTER II OBJECTIVES

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

- To ensure that present and future generations have the necessary access to water of a quality adequate for their various uses;
- To ensure the rational and integrated use of water resources, including transportation by aqueduct, with a view to achieving sustainable development;
- To prevent and protect against water crises due to either natural causes or the inappropriate use of natural resources.

CHAPTER III GENERAL GUIDELINES FOR ACTION

Art. 3. The implementation of the National Water Resources Policy shall be guided by the following general criteria:

- Systematic management of water resources with equal regard to quantity and quality;
- The adjustment of water resources management to the physical, biotic, demographic, economic, social, and cultural differences between the various regions of Brazil;

- The integration of water resources management with environmental management;
- The coordination of water resources planning with that of the user sectors and with planning at the regional, state, and national levels;
- The coordination of water resources management with that of land use;
- The integration of river basin management with that of estuary systems and coastal zones.

Art. 4. The Federal Union shall coordinate with the States on the management of water resources of common interest.

CHAPTER IV INSTRUMENTS

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

- The Water Resources Plans;
- The classification of bodies of water according to the principal uses made of their water;
- The award of rights to the use of water resources;
- Fees for the use of water resources;
- Compensation to municipalities;
- The Water Resources Information System.

SECTION I WATER RESOURCES PLANNING

Art. 6. The Water Resources Plans are master plans that undertake to provide bases for and orient the implementation of the National Water Resources Policy and water resources management.

Art. 7. The Water Resources Plans are long-term plans, with a planning horizon compatible with the period over which their programs and projects are to be implemented, and shall contain at least the following:

- Diagnoses of the current status of water resources;
- An analysis of alternatives for population growth, for the evolution of production activities, and for changes in land-use patterns;
- A statement of the future supply of and demand for water resources in terms of both quantity and quality, and an identification of potential areas of conflict;
- Targets for rationalizing the use, increasing the volume, and improving the quality of the water available;
- Measures to be taken, programs to be developed, and projects to be implemented for attaining the targets envisaged;
- Vetoed.
- Vetoed.
- Priorities for the award of water-use rights;
- Guidelines and criteria for water-use fees;
- Proposals for the creation of areas subject to restrictions on water use, with a view to protecting water resources.

Art. 8. Water Use Plans shall be developed by river basin, by State, and for the country as a whole.

SECTION II CLASSIFICATION OF BODIES OF WATER ACCORDING TO PRINCIPAL WATER USES

Art. 9. The classification of bodies of water according to the principal uses made of their water shall have the following objectives:

- To ensure a level of water quality that is compatible with the most demanding uses

for which the water is intended;

- To reduce the cost of combating water pollution through constant preventive actions.

Art. 10. The classes of bodies of water shall be established by environmental legislation.

SECTION III

AWARD OF WATER-USE RIGHTS

Art. 11. The objectives of the water-rights guidelines are to ensure the quantitative and qualitative control of water use and the effective exercise of rights of access to water.

Art. 12. Rights to the following water uses are subject to Government award:

- The diversion or impoundment of water from a body of water for final consumption, including public water supply or use in a production process.

- The extraction of water from subterranean aquifers for final consumption or for use in a production process

- The discharge of treated or untreated sewage and other liquid or gaseous waste into a body of water with a view to diluting, transporting, or disposing of it;

- The utilization of hydroelectric potential;

- Other uses that affect the flow, quantity, or quality of water existing in a body of water.

1. The following, as defined in the regulations, do not require Government award:

- The use of water resources to meet the needs of small population groups scattered in rural areas;

- Diversion, catchments, or discharges that are considered insignificant;

- Impoundments of volumes of water that are considered insignificant.

2. The award and utilization of water resources for the generation of electric power shall be provided for the National Water Resources Plan, as approved in the manner set forth in paragraph VIII, Art. 35, of the present Law, subject to compliance with the legislation of the specific sector.

Art. 13. All awards shall be subject to the priorities for land use established in the Water Resources Plans and shall respect the class to which the body of water has been assigned and, when applicable, the maintenance of conditions suitable for transport via aqueduct.

Sole Paragraph. The award of rights to water shall maintain its multiple use.

Art. 14. The award shall be made by the responsible authority of the Executive Branch of the Federal Government, of the States, or of the Federal District.

1. The Federal Executive Branch may delegate to the States and to the Federal District the authority to award rights to the use of water resources that are their property of the Union.

2. Vetoed.

Art. 15. The award of rights to the use of water may be partially or entirely suspended, either indefinitely or for a specified period of time, in the following circumstances:

- Failure to comply with the terms of the award;
- Failure to use the resources for three consecutive years;
- An urgent need for water in the event of a disaster, including those caused by adverse weather conditions;
- A need to prevent or reverse major environmental degradation;
- A need to provide for priority uses in the interest of the community, when there are no alternative sources;
- A need to preserve the navigability of the body of water.

Art. 16. No award for water use shall be made for a period exceeding thirty-five years, which may be renewed.

Art. 17. Vetoed.

Sole Paragraph. Vetoed.

Art. 18. The award in no way implies partial alienation of the water itself, which is inalienable; it merely awards the right to use it.

SECTION IV FEES FOR WATER USE

Art. 19. Fees for the use of water are intended:

- To recognize that water is an economic good and give the user a sense of its real value;
- To encourage the rationalization of water use;
- To raise revenue for financing the programs and interventions provided for in the Water Resources Plans.

Art. 20. Fees shall be charged for the use of water resources subject to award under the terms of Art. 12 of the present Law.

Sole Paragraph. Vetoed

Art. 21. In the setting of fees for the use of water resources, the following elements, among others, should be taken into account:

- In diversions, catchments, and extractions of water, the volume removed and the variation in its flow;
- In the discharge of effluents and other liquid or gaseous waste, the volume discharged, the variation in its flow, and the physical-chemical and biological characteristics and toxicity of the effluent.

Art. 22. In the allocation of funds collected from fees for the use of water, priority shall be given to the river basin in which they were generated, and they shall be applied toward:

- Financing studies, programs, and projects under the Water Resources Plans;
 - Defraying implementation costs and administrative overhead for agencies and entities of the National Water Resources Management System.
1. The payment of the costs referred to in paragraph II of the present article shall be limited to seven and one-half percent (7.5%) of the total amount collected.
 2. The funds mentioned at the beginning of this article may be applied without limitation to projects and public works that alter, in a manner considered to be of benefit to the community, the quality, quantity, and flow rate of 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 retrieval of information on water resources and the factors involved in their management.

Sole Paragraph. The data generated by the agencies in the National Water Resources Management System shall be included in the National Water Resources Information System.

Art. 26. The operation of the Water Resources Information System shall be governed by the following principles:

- Decentralization of the gathering and production of data and information;
- Standardized coordination of the system;
- Guaranteed access to the data and information for the whole society.

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

- To collect, standardize, and disseminate data and information on the quality and quantity of water resources in Brazil;
- To update regularly information on the availability of and demand for water resources throughout the national territory;
- To provide subsidies for the preparation of the Water Resources Plans.

CHAPTER V APPORTIONMENT OF COSTS FOR MULTIPLE-USE PROJECTS OF COMMON OR COLLECTIVE INTEREST

Art. 28. Vetoed.

CHAPTER VI ACTION BY THE GOVERNMENT

Art. 29. In the implementation of the National Water Resources Policy, the functions of the Federal Executive Branch are:

- To take the steps necessary for the implementation and operation of the National Water Resources Management System;
- To award rights to the use of water resources, and regulate and monitor such use within its sphere of competence;
- To institute and manage the Water Resources Information System at the national level;
- To promote the integration of water-resources management with environmental management.

Sole Paragraph. The Federal Executive Branch shall designate by decree the agency responsible for the award of rights to the use of water resources that are the property of the Union.

Art. 30. In the implementation of the National Water Resources Policy, the Executive Branches of the States and the Federal District shall have the following responsibilities within their sphere of competence:

- To award rights to the use of water, and to regulate and monitor such usage;
- To exercise technical supervision of water-supply projects;
- To institute and manage the Water Resources Information System at the level of the States and the Federal District;
- To promote the integration of water-resources management with environmental management.

Art. 31. In implementing the National Water Resources Policy, the Executive Branches of the Federal District and the municipalities shall promote the integration of the local policies on basic sanitation, land use and occupancy, soil conservation, and environmental protection with the Federal and State policies on water resources.

TITLE II

NATIONAL WATER RESOURCES MANAGEMENT SYSTEM

CHAPTER I

OBJECTIVES AND COMPOSITION

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

- To coordinate integrated water management;
- To arbitrate at the administrative level any conflicts related to water resources;
- To implement the National Water Resources Policy
- To plan, regulate, and supervise the use, conservation, and recovery of water resources;
- To encourage the charging of fees for use of water resources.

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

- The National Council on Water Resources;
- The State and Federal District Councils on Water Resources;
- The River Basin Committees;
- The organs at the Federal, State, and municipal levels whose respective areas of competence are related to the management of water resources;
- The Water Agencies.

CHAPTER II

NATIONAL COUNCIL ON WATER RESOURCES

Art. 34. The National Council on Water Resources is composed of:

- Representatives of the Presidential Ministries and Departments concerned with the management or use of water resources;
- Representatives designated by the State Councils on Water Resources;
- Representatives of users of water resources;
- Representatives of civil organizations concerned with water resources.

Sole Paragraph. The number of representatives of the Federal Executive Branch may not be more than half plus one of the total number of members of the National Council on Water Resources.

Art. 35. The National Council on Water Resources has the following responsibilities:

- To promote the integration of water resources planning with planning at the national, regional, and state levels and with the user sectors;
- To arbitrate, as the final administrative recourse, conflicts between State Councils on Water Resources;
- To review water resources utilization projects whose impact extends beyond the

States in which they are to be implemented;

- To discuss any questions that have been submitted to them by the State Councils on Water Resources or the River Basin Committees;

- To review proposals for amending existing legislation on water resources and the National Water Resources Policy;

- To establish supplementary guidelines for the implementation of the National Water Resources Policy, the application of its instruments, and the operations of the National Water Resources Management System;

- To approve proposals for the creation of the River Basin Committees and to establish broad criteria for the setting of their rules;

- Vetoed.

- To monitor the execution of the National Water Resources Plan and decide on the measures required for its goals to be met;

- To establish broad criteria for the award of rights to water use and for the fees to be charged.

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

- A Chairman, who shall be the Minister of Environment, Water Resources, and Legal Amazonia;

- An Executive Secretary, who shall be the head of the organ within the Ministry of Environment, Water Resources, and Legal Amazonia that is responsible for the management of water resources.

CHAPTER III

RIVER BASIN COMMITTEES

Art. 37. The River Basin Committees shall act in the following spheres:

- An entire river basin;

- The river sub-basin of any tributary to the principal watercourse of the basin, or any tributary of that tributary; or

- A group of contiguous river basins or sub-basins.

Sole Paragraph. The establishment of River Basin Committees for rivers that are the property of the Union shall be by act of the President of the Republic.

Art. 38. River Basin Committees shall have the following responsibilities in their respective areas of action:

- To promote the discussion of issues relating to water resources, and to coordinate the work of the entities involved;

- To arbitrate, as the first administrative recourse, conflicts relating to water resources;

- To approve the Water Resources Plan for the river basin;

- To monitor the execution of the Water Resources Plan for the river basin and suggest the measures required for its goals to be met;

- To propose to the State and National Councils on Water Resources which impoundments, diversions, catchments, and discharges are of minor importance for purposes of exemption from the necessity of obtaining an award of water-use rights, depending on the ownership of the water;

- To establish mechanisms for the receipt of fees for the use of water resources and suggest the fees to be charged;

- Vetoed.

- Vetoed.

- To establish criteria for and promote the apportionment of the cost of multiple-use projects of common or collective interest.

Sole Paragraph. Decisions of the River Basin Committees may be appealed to the

State or National Councils on Water Resources, depending on their respective sphere of competence.

Art. 39. The River Basin Committees are composed of representatives of:

- The Federal Government;
- The States or the Federal District in which they are located, even if only partially, in their respective areas of action;
- The Municipalities in which they are located, entirely or in part, in their areas of action;
- The water users in their areas of action;
- Civil water-resources agencies that have a demonstrated record of action in the basin.

1. The number of representatives from each sector mentioned above, and the criteria for their appointment, shall be determined in the regulations of the committees; the representation of the executive powers of the Federal Government, the States, the Federal District, and the Municipalities shall be limited to half the total number of members.

2. In the case of River Basin Committees that share in the management of basins of rivers that run along and across borders, the representatives of the Union must include one from the Ministry of Foreign Affairs.

3. The River Basin Committees of basins whose territory includes indigenous lands must include representatives from:

- The National Indian Foundation (FUNAI), as part of the representation of the Union;
- The indigenous communities living or having interests in the basin.

4. The participation of the Union in River Basin Committees whose sphere of action is limited to river basins belonging to a State shall be governed by their respective regulations.

Art. 40. River Basin Committees will be directed by a Chairman and a Secretary, elected from among its members.

CHAPTER IV WATER AGENCIES

Art 41. The Water Agencies shall serve as the executive secretariats of the River Basin Committees.

Art. 42. The Water Agencies shall have the same area of action as one or more River Basin Committees.

Sole Paragraph. The creation of Water Agencies shall be authorized by either the National or the State Councils on Water Resources at the request of one or more River Basin Committees.

Art. 43. The creation of a Water Agency is subject to the fulfillment of the following requirements:

- The prior existence of the River Basin Committee or Committees;
- Financial viability ensured by fees for the use of water resources in its area of action.

Art. 44. Water Agencies shall have the following responsibilities within their area of action:

- To maintain an up-to-date register of water resources available in their area of action;
- To maintain a roster of users of the water resources;
- To collect fees for water use, under authority delegated by the grantor;
- To review and comment on proposals for projects to be financed from fees collected

for water use, and transmit their comments to the financial institution responsible for administering these resources;

- To monitor the financial management of fees collected for water use in their area of action;

- To manage the Water Resources Information System in their area of action;

- To enter into agreements and contracts for the financing and services with which to carry out their responsibilities;

- To prepare a budget proposal and submit it for review by the respective River Basin Committee(s);

- To arrange for the studies necessary for the management of water resources in their area of action;

- To prepare the Water Resources Plan for review by the corresponding River Basin Committee;

- To propose to the corresponding River Basin Committee or Committees:

The classification of bodies of water according to their use, for transmittal to the appropriate National or State Councils on Water Resources, depending on their ownership;

The fees to be charged for water use;

The plan for the application of the fees collected for water use;

The apportionment of costs of multiple-use projects of common or collective interest.

CHAPTER V

EXECUTIVE SECRETARIAT OF THE

NATIONAL COUNCIL ON WATER RESOURCES

Art. 45. The body within the Ministry of Environment, Water Resources, and Legal Amazonia responsible for the management of water resources shall serve as the Executive Secretariat of the National Council on Water Resources.

Art. 46. The Executive Secretariat of the National Council on Water Resources shall have the following responsibilities:

- To provide administrative, technical, and financial support to the National Council on Water Resources;

- To coordinate the preparation of the National Water Resources Plan and submit it to the National Council on Water Resources for approval;

- To report on the proceedings of the State Councils on Water Resources and the River Basin Committees;

- To coordinate the Water Resources Information System;

- To prepare a work program and the corresponding annual budget proposal and submit them to the National Council on Water Resources for its approval.

CHAPTER VI

CIVIL WATER RESOURCES ORGANIZATIONS

Art. 47. For purposes of the present law, the following shall be considered civil water-resources organizations:

- Intermunicipal consortia and associations dealing with river basins;

- Regional, local, or sectoral associations of water users;

- Technical, teaching, and research organizations concerned with the subject of water

resources;

- Nongovernmental organizations committed to defending broad collective interests of society;

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

Art. 48. In order to participate in the National Water Resources System, a civil water-resources organization must be legally constituted.

TITLE III

INFRACTIONS AND PENALTIES

Art. 49. The following shall constitute a violation of the statutes governing the utilization of surface-water or groundwater resources:

- Diverting or using water resources for any purpose without having been awarded a right to that use;

- Beginning to undertake or undertaking any action related to the diversion or utilization of surface-water or groundwater resources that alters their flow rate, quantity, or quality without prior authorization from the responsible agencies or entities;

- Vetoed.

- Using water resources or performing works or services related thereto in any way that contravenes the terms of the award;

- Drilling wells for the extraction of groundwater, or operating such wells without due authorization;

- Committing fraud in measuring the volume of water used, or declaring values that are different from those measured;

- Violating rules established in the regulations and administrative provisions of the present Law, including instructions and procedures established by the responsible bodies or agencies;

- Impeding or hampering the supervisory activities of the responsible authorities in the exercise of their duties.

Art. 50. For the violation of any law or regulation regarding the execution of hydraulic works and services, the diversion or utilization of water resources owned or administered by the Union, or for failure to respond to requests submitted, the violator, subject to the judgment of the responsible authority, shall be subject to the following penalties, listed in no particular order:

- Written censure, with specification of a time limit for correcting the irregularities;

- A single or daily fine proportional to the seriousness of the violation, ranging from R\$ 100.00 (one hundred reais) to R\$ 10,000.00 (ten thousand reais);

- A temporary injunction, for a fixed period of time, to permit the performance of any services and activities necessary for effective compliance with the terms of the award or with the statutes and regulations concerned with the use, control, conservation, and protection of the water resources;

- A permanent injunction, with revocation of the award if appropriate, to permit the restoration of the water resources, riverbed, and riverbanks to their previous condition, pursuant to Arts. 58 and 59 of the Water Code, or the capping of the wells being used to extract groundwater.

1. If the violation results in any impairment of the public water-supply service, risk to health or life, loss of goods or animals, or other damage of any kind to third parties, the fine to be imposed shall not be less than one-half of the maximum value agreed upon in abstract.

2. In the case of paragraphs III and IV, apart from the prescribed fine, the violator shall be charged for any costs incurred by the Administration to implement the

measures stipulated in these paragraphs, pursuant to Arts. 36, 53, 56, and 58 of the Water Code, without prejudice to the payment of indemnity for any damage caused.

3. The imposition of the penalties provided for under this title may be appealed to the competent administrative authority under the terms of the regulations.

4. In the event that the violation is repeated, the fine shall be doubled.

TITLE IV

GENERAL AND TRANSITORY PROVISIONS

Art 51. The intermunicipal consortia and associations for river basins referred to in Art. 47 may receive delegated authority from the National or State Water Resources Councils for a specified period to carry out the duties for which the Water Agencies are responsible, prior to the establishment of the latter.

Art. 52. Until the National Water Resources Plan has been approved and regulated, the utilization of hydraulic potential for purposes of electricity generation shall continue to be governed by the specific sectoral legislation.

Art 53. Within one hundred and twenty days from the publication of this Law, the Executive Power shall submit a draft law to the National Congress on the creation of the Water Agencies.

Art. 54. Art. 1 of Law No. 8,001, dated March 13, 1990, hereby enters into effect with the following text:

"Art. 10

..... III -

Four and four-tenths per cent to the Secretariat of Water Resources of the Ministry of the Environment, Water Resources, and Legal Amazonia;

IV - Three and six-tenths per cent to the National Department of Water and Electrical Energy (DNAEE) of the Ministry of Mines and Energy;

V - Two per cent to the Ministry of Science and Technology.

.....
4. The quota allocated to the Secretariat of Water Resources of the Ministry of Environment, Water Resources, and Legal Amazonia shall be used for implementing the National Water Resources Policy and the National Water Resource Management System and for managing the national hydrometeorological network.

5. The quota allocated to the DNAEE shall be used for the operation and expansion of its hydrometeorological network, for studies on water resources, and for services related to the utilization of hydropower."

Sole Paragraph. The new percentages established at the beginning of this article shall enter into effect one hundred and eighty days from the date on which this Law is published.

Art. 55. The Federal Executive Branch shall issue regulations for this Law within one hundred and eighty days from the date of its publication.

Art. 56. This Law enters into effect on the date of its publication.

Art. 57. Any provisions to the contrary are hereby revoked.

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

FERNANDO HENRIQUE CARDOSO
Gustavo Krause