

Voluntary Report – Voluntary - Public Distribution

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Report Name: Modernization of Chile's Water Code

Country: Chile

Post: Santiago

Report Category: Agricultural Situation

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Report Highlights:

On January 12, 2022, the Chilean Senate approved the modernization of the Water Code after 11 years of debate. The Chilean Water Code is the legislation that controls distribution of the country's water resources.

Background

On January 12, 2022, the Chilean Senate approved the modernization of the Water Code after 11 years of debate. The Chilean Water Code is the legislation that controls distribution of the country's water resources.

According to the Chilean Ministry of Public Works, agriculture is the largest user of water in Chile, consuming 72 percent of the total. Following agriculture, drinking water, industrial consumption, and mining use twelve, seven, and four percent of Chile's water, respectively. The remaining five percent is associated with electricity generation and livestock grazing. The new legislation will impact Chilean agriculture, as the principal consumer of water in the country.

Currently, water rights are controlled by the Water Code of 1951. The 1951 law defines water as a "national good of public use" and grants its use to *individuals*, a term which has been subsequently applied to both natural and legal persons. The statute grants *shares* of water to individuals and companies, which may be held for the lifetime of the person or transferred to heirs or buyers. The volume of water associated with each share varies according to the source of the water and associated waterflow.

Opponents of the current system point out two primary defects. First, the system does not incentivize efficient usage of water. A shareholder may choose not to use their water for many years. If that water is surface water, a river for example, then the water will discharge into the ocean as waste, while other potential non-shareholders go without. Second, shares are not updated to account for increasingly prolonged droughts and diminished waterflows. As surface water levels have decreased in recent years, upstream users (often farmers) continue to pull their standard share, leaving downstream users with no water. In some cases, the downstream users are agricultural producers, but in other examples entire communities are left without drinking water.

These two problems forced public discussion of the topic and eventually spurred the Chilean legislature to consider updates to the 1951 Water Code.

Approved Update

The updated Water Code changes the premise of water rights by guaranteeing water for human consumption, not only for drinking but also for sanitation and daily subsistence. The new law establishes that shares of water will be granted under a 30-year renewable concession. The volume of water allocated per share will be based on the availability of the supply source, or sustainability of the aquifer in the case of underground water. Authorities may grant water shares for shorter periods, if necessary.

Renewals will be offered unless the water authority determines that shares are being underutilized or that there is an impact on the sustainability of the water source. The water authority may totally or partially revoke unused or underutilized shares. In the case of water not used for direct consumption, that is water returned to the waterflow after use (i.e. power generation), authorities may revoke unused

or underused water rights after ten years. In the case of water used for direct consumption (i.e. human consumption, agriculture, etc.), authorities may revoke water rights after five years of non-use or underuse.

The General Directorate of Water (DGA) will be the authority responsible of enforcing the new Water Code. The law requires that any change in the use of a share must be reported to the DGA, who will evaluate the situation and take the appropriate actions under the new statute.

Impacts

The new Water Code will have impacts on Chilean agriculture and associated investment. In recent years, the northern and central regions of the country have grown progressively drier, forcing agriculture to depend more heavily on irrigation. If access to water in those regions is no longer guaranteed for the 20 to 30 years needed to ensure a return on investment in fruit orchards, producers will consider alternate crops with a shorter lifecycle or move further south where water is more abundant. That same trend will be even more apparent with foreign firms looking to protect their investments in Chile.

An additional uncertainty surrounding water shares is the ongoing constitutional convention. The constitutional assembly tasked with rewriting the country's founding document is under pressure to include environmental concerns and water rights in the updated constitution. The outcome that process is still very uncertain and may drastically alter the paradigm surrounding water rights.

For more information on the measure and full text (Spanish only), please see Chilean Senate's [webpage](#).

Attachments:

No Attachments.