




Experiences on Water Rights System in Japan

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Introduction



Introduction (1/4)

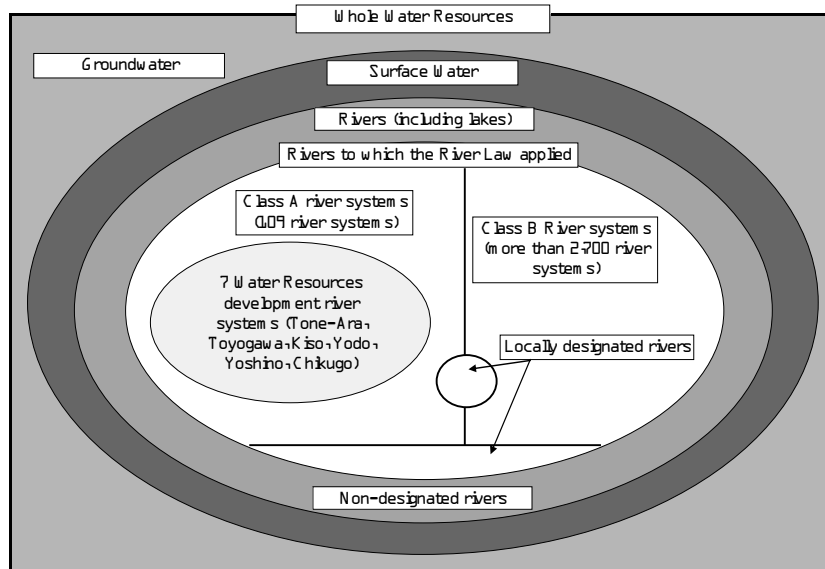
- The main legal framework on water resources is **the River Law**, which administrates only river and lake water (namely, surface water).
- **We have well-functioned water rights system provided by the River Law**, but this system is only for river water (To be explained later).
- The River Law does not cover all kinds of water resources, but covers only river water. Also, Japan has no law which covers all kinds of water resources.
- We have no comprehensive legal framework for groundwater management, and there is no water rights system for groundwater extraction.



Introduction (2/4)

- In some river basins which have metro city areas (i.e. Tokyo, Osaka, or Nagoya), we had to develop water resources in a planned manner. It is because industrialization, urbanization and population increase were remarkable in these basins.
- Due to that, we formulated water resources development plan in 7 river systems (Tone, Ara, Toyogawa, Kiso, Yodo, Yoshino, Chikugo), which is the “Basic plan for Water Resources Development” (To be explained later).
- Implementation body was the “Water Resources Development Public Corporation (At present, Japan Water Agency)”.

Introduction (3/4) ~ Conceptual Table



Introduction (4/4) ~ Conceptual Table

Surface Water					Ground Water
River (Including Lake)					
Class A rivers (109 river systems)	Class B Rivers (More than 2,700 river systems)	Locally designated river	Other Rivers	Others	There's no integrated law related to ground water management. In principle, according to the Civil Law, ground water belongs to the owner of land in which it exists. In some cases, however, the Industrial Water Law, some local government ordinances and guidelines regulate ground water management, from the viewpoint of prevention of ground settlement or saline contamination.
Water Resources Development River System (7 river systems)					
The River Law is applied					
(The River Law plus) Specified Multi-Purpose Dams Law etc					
(The River Law, Specified Multi-Purpose Dams Law plus) The Water Resources Development Promotion Law, and The Water Resources Development Corporation Law (At present, Japan Water Agency Law)					



The River Law



The River Law (1/2)

- The River Law
 - (1) is the basic legal framework for river administration
 - (2) consists of more than 100 articles.
 - (3) enacted in 1896 first, and fully amended in 1964.
 - (4) has contributed to appropriate river management including flood control and river water utilization.
- The purpose of the River Law (Article 1)
(i) flood management, (ii) river water utilization, and (iii) maintaining and conserving the river environment
- River water use occupies 87% of all the water use in Japan (13%-groundwater). Thus, river administration is important from the viewpoint of water allocation.



The River Law (2/2)

- Ownership of River Water
River water is regarded as **public property**, cannot be under private control
- Integrated River Administration
“**One river system, One administration**”
- River Administrator (Responsible person)
Class A river systems : National Government (Minister of Land, Infrastructure, and Transport)
Class B river systems : Each prefecture (Governor of concerned prefectures)
- Permission for River Water Use (Article 23)
Close relationship with water rights system
- Drought Conciliation (Article 53, and 53-2)



Water Rights System



History of River Water Use in Japan

- River water utilization has been developed mainly for paddy irrigation through our long history.
- Water rights have generally developed as customary rights through the long history of irrigation water use, and then, these customary rights had been recognized as substantive rights.
- In many cases, a large part of the natural flows had been occupied by agricultural water users with vested customary water rights by the middle of the 19th century.
- The River Law introduced permission system for river water use, but customary water rights holders were deemed to have the permission (water rights de facto) to conserve the existing order of river water use.
- After WWII, demand for municipal water uses have been increased remarkably because of economic growth, so that water allocation became one of the most important issues in Japan.



Outline of Water Rights System (1/3)

- Definition of water rights
“Entitlement to use river water for a specified purpose and to the extent required to achieve this purpose”
- Permitted rights and Customary rights
Permitted water rights - Obtained through the permission from the Government (Principle)
Customary water rights - Having existed before enactment of the River Law (Exception)
In principle, we have to obtain permission from river administrators to acquire water rights, excluding customary water uses. In this sense, a water right is not a natural right, but only a right given by the Government.
- Priority among water rights holders
“**First in time, First in Rights**” is the principle, namely, older water rights are superior to newer water rights.



Outline of Water Rights System (2/3)

- Contents of water rights

1) Purpose of water use, 2) Venue of water intake, 3) The way of water intake, 4) The amount of water intake, 5) Drop regarding hydropower generation (in the case of water use for hydropower), 6) The amount of storage in a reservoir, 7) Permission term, etc.,

- Regarding the permitted water rights, the above items are directed by Permitter (river administrator)
- Regarding the customary water rights, the above items are decided based on historically-accepted practices.



Outline of Water Rights System (3/3)

- Permitter: River administrator (Article 23)

“**One river system, One permitter**” is important.

Class A river systems : Minister of Land, Infrastructure, and Transport

Class B river systems : Governor of concerned prefectures

- Permission term

- Permitted water rights: **hydropower use - 30 years**

Other uses - 10 years

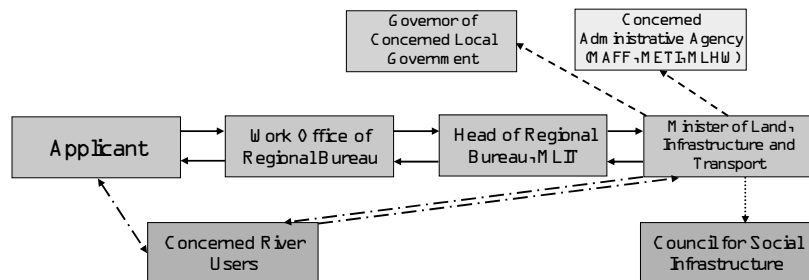
- Customary water rights: Permanent de facto

Procedure for Permitted Water Rights (1/2)

- **Application** from applicants of water use
- **Investigation** for the application by river administrator
- **Consultation** with the concerned agencies at national level and local level
- **Coordination among concerned river users**
- **Compensation**
- **Issuance** of permission for river water use

Procedure for Permitted Water Rights (2/2)

Procedural Flow (Example of Class A River, Permitter: Minister of Land, Infrastructure and Transport)



- ⇔ Application, investigation and issuance of permission for river water use (Art 23)
- · - · - · Notification on receipt of application for water use and submission of opinion (Art 38 & 3)
- - - - - { Consultation with concerned administrative agency (Art 35)
Consultation with concerned Prefecture and Municipalities (Art 36)
- Consultation with Council for Social Infrastructure regarding judgement of public interest (Art 40, Paragraph 2)



Procedure for Customary Water Rights

- **Customary water users shall notify the river administrator of the necessary matters including the followings**
 - 1) Name and address of the person who is using river waters
 - 2) Purpose of the river water use
 - 3) Quantity of water intake
 - 4) Location of intake or outlet and other places of river water use
 - 5) Facilities for river water use...
- **Efforts for converting customary water rights into permitted water rights by river administrators**



Technical Criteria for Permission (1/4)

- **Purpose of planned water use**

The water use must be contributory to enhancing the living standard of the public and to increasing public welfare and well-being.
- **Practicability of the planned water use**

The operational plans for the water-using activity must be reasonable and water use itself must be compatible with the relevant laws.
- **Security of water intake (to be mentioned later)**
 - 1) Protection of existing water users & river environment
 - 2) Beneficial water uses
- **Detriment to public benefit**

The water use must not compromise flood control or be injurious to the public benefit

Technical Criteria for Permission (2/4)

- Security of water intake

Condition of Granting water right

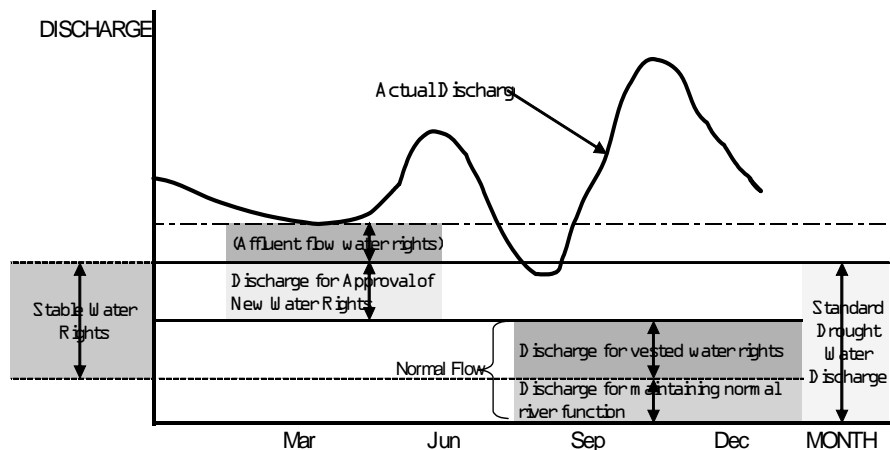
[Planned water use] [Standard drought water discharge (355-day discharge)] – [Normal discharge (Discharge for vested water rights) +(Discharge for maintenance)]

Drought water discharge (DWD): the 11th smallest amount of discharge in a certain year

Standard DWD: the least DWD during the recent 10 years

Discharge for maintenance: nearly equal to “Environmental Flow”

Technical Criteria for Permission (3/4)





Technical Criteria for Permission (4/4)

- If there is no room for granting permission for new water users in the standard drought discharge (355day discharge)...
- In that case, new water users have to develop water resources by constructing reservoirs or other measures (because old water users have priority over new users in Japan.)
- **In reality, in almost all river systems, new water permissions have not been granted unless new water users took measurement to develop new water resources.**



Water Rights and Water Resources Development (1/3)

- There is a close relation between water resource development and water rights.
- In a lot of rivers in Japan, a large part of natural river flows had been occupied by agricultural water users, which means that there has been little room to allocate for new water users (Due to “First in time, First in Rights” principle).
- Therefore, new water users have to be involved in new water resources development including reservoir construction with sharing costs.
- A lot of multi-purpose reservoirs has constructed by Ministry of Land, Infrastructure & Transport (MLIT), or Japan Water Agency (JWA) under supervision of MLIT.

Water Rights and Water Resources Development (2/3)

MLIT has had both the power for granting permission for water right and the responsibility related to constructing multi-purpose reservoirs.

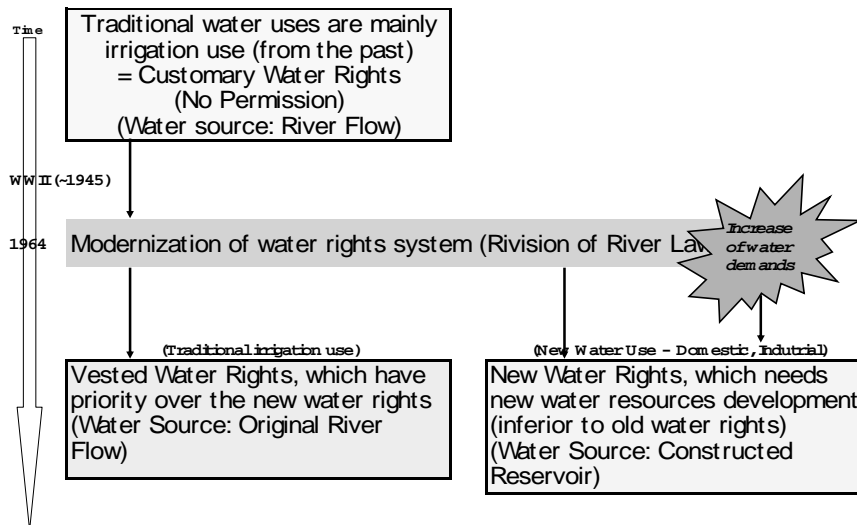
That is to say

MLIT has allocated the developed water resources for new water users with granting new water rights.

As a result

Smooth Water Allocation was achieved.

Water Rights and Water Resources Development (3/3)





Other Important Points

- Transfers of Water Rights are quite restricted by the River Law.
- River Ledger (Registration Book) is properly prepared by river administrators.
- Data and Information Management is conducted appropriately by river administrators.
- Enforcement Measures are equipped by the River Law.



Drought Conciliation



Drought Conciliation (1/2)

- Necessity to modify the principle “First in time, First in Rights” during the drought term
- Principle of drought conciliation
 - ~ Voluntary coordination by stakeholders themselves
 - 1. Firstly, stakeholders including water users within the river basin coordinate their water uses with each other - through “Drought Conciliation Council”
 - 2. Secondary, river administrator make an intervention among stakeholders directly.
- Each river basin has its own way and rule for drought management based on its historical tradition.



Drought Conciliation (2/2)

- There are some examples that RBO (JWA) contributed to the droughts conciliation in Japan. JWA initiates and facilitates the coordination among water users through operating its water facilities.



Conclusions



Conclusions (1/2)

- Water rights system is provided by the River Law, which makes the system more stabilized.
- Secondary legislatures including technical guidelines for implementation have been enacted.
- Organization in charge of implementation has adequate administrative and regulatory power, supported by “One river system, One Permitter” principle, with adequate capacities.
- Data and information on water resources have been collected and managed by river administrators appropriately.



Conclusions (2/2)

- Consensus for introducing water rights system could be built among nations because existing order of river water uses has been protected.
- In the River Law, there are some schemes for consensus building among stakeholders in implementing water rights system; such as consultation with other agencies, coordination with concerned river users, and drought conciliation.
- Efforts for water resources development have contributed to allocating water resources for more new water users in a sustainable manner.



Arguments and Issues



Arguments and Issues

- Argument on water rights system
Flexible water rights transfer
- Issues on implementation on water rights system
Illegal water intake



**Thank you very much for
your attention !**