



The implementation of the FTA puts the sustainability of water resources at risk¹

- The Peruvian government approved L.D. N° 1081 despite the fact that Congress is debating a new, more complete and consensus-based Law on Water.
- The publication of these decrees seeks to promote private investment in fallow land and to facilitate the use of limited water in the coastal region of Peru, favoring agro-exporters and also mining companies.

The Peruvian government, in an excessive use of extraordinary faculties it was granted by Congress to implement the FTA with the United States, modified legislation pertaining to water, although it left several aspects undeveloped. These reforms aim to take advantage of the phase prior to the implementation of the FTA in order to lower some social and environmental standards to favor private investment. With these decrees it has given investors some facility for the use of water, thereby affecting the sustainability of this resource and also the rights of indigenous people and peasant farmer communities.

The current policy of the Peruvian government contradicts the spirit of the addendums of the FTA, including an express ban on lowering these environmental standards to attract private investment. This process has generated national protest and could affect the sustainable use of water, national governance and even the legitimacy of the FTA itself.

Promotion of irrigation on supposedly "fallow" lands will affect land and water

L.D. N° 994 promotes private investment in fallow land that is the property of the state to expand the agricultural frontier. Lands that cannot be cultivated due to excessive water or a lack of water are considered fallow. The government can now adjudicate these lands through their sale or other forms of payment.

Initially this decree considered all fallow land that was not registered in the public registry as State land, affecting close to 100 peasant farmer communities. This was later corrected by L.D. N° 1064. However, the definition of fallow land varies in some of these legislative decrees. It was finally left in the hands of the Ministry of Agriculture to qualify the land, which could affect the rights of communities and small property owners.

Another decree, L.D. N° 1081 limits the authority of Regional Governments to promote irrigation work as it will be the National Government, from Lima, that will approve the projects in order to determine which freely available water will be affected. Here it is important to take into account the fact that in most rivers along the coast, above all where there are agro-export crops, there is no available water. As a result, this legislative decree seeks to allow waters to be channeled from the highlands to the coastal region, affecting small farmers and highland communities, where the greatest poverty indexes are presented.

The different and confusing definition of fallow land in the Law threaten the property of nearly 100 peasant farmer communities. It could also additionally affect small farmers and native communities.

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A National Water Authority aside from the Ministry of Environment

L.D. N° 997 modifies the organization of the Ministry of Agriculture and creates the National Water Authority (ANA), a body dependent on this ministry. Months later, L.D. N° 1081 regulated the role of this authority, naming it responsible for the National Water Resources System rather than the Ministry of Environment, to which this responsibility would correspond.

While L.D. N° 1081 repeatedly refers to integrated and multi-sector water management, an agrarian bias is maintained in the law and a series of roles are concentrated in ANA. At the same time, references to the importance of water management by water basin disappear as the new Water Basin Councils are regulated in a very restricted fashion. The decree fails to take into account the experience of the existing Autonomous Water Basin Authorities, which will be dissolved. Therefore, the attributions of these Councils, which have better knowledge of the water basins, will be minimal, leaving decisions about the use of water to the national body.

Moreover, the participation of water users is also not foreseen in L.D. N° 1081 and only vaguely in the Water Basin Councils. The recognition of the rights of peasant farmer and native communities to use the water that runs through their lands does not go beyond being a principle, without greater development in the regulation and without guaranteeing them the right to water use.

Water users are also concerned that the ANA can delegate its role to individuals or legal bodies, both from the public sector and the private sector, as this is interpreted as an attempt to privatize the role of a body that has a very delicate task.

Tendency toward the privatization of water?

L.D. N° 1083 seeks to promote the efficient use of water resources. For this, the ANA will grant efficiency certificates to the users and operators of water infrastructure allowing them to participate in competitions, educational experiences and other types of promotion. Those who obtain these certificates will be able to supply treated residual water and receive payment for that service. It corresponds to ANA to establish parameters of efficiency, criteria and procedures for the application of incentives. ANA must also approve the Adaptation Plans for those who do not meet the efficiency parameters. These costs must be covered by the users themselves, which could be onerous for small-scale producers.

L.D. N° 1007 promotes the use of fallow land on the coast for irrigation purposes and permits the use of desalinated waters for farmer and agro-industrial purposes. This decree proposes that water obtained through desalination could be used or sold to third parties, even for population use.

While the promotion of incentives for the treatment and use of water is interesting, there are serious questions regarding the facilities for its commercialization. Opening up the option of commercializing water, generating a private benefit at the cost of exploiting a public resource (like water) could tend to privatize access to a good that is property of the nation, violating a constitutionally recognized principle.

These arguments demonstrate that these decrees not only fail to contribute to the sustainability of water resources but, to the contrary, put them at risk. Therefore, there is an urgent need to repeal these laws and work to complement and improve the laws that are in effect on this matter.

Legislative Decrees N° 1083 and N° 1007 authorize the sale of water, which contradicts the Constitution and the Law on the Sustainable Use of Natural Resources.

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