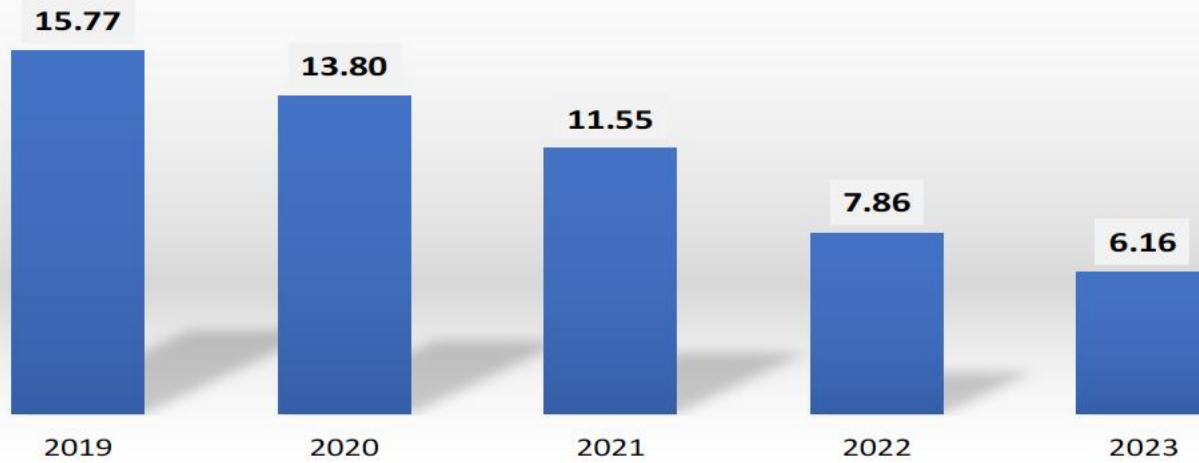


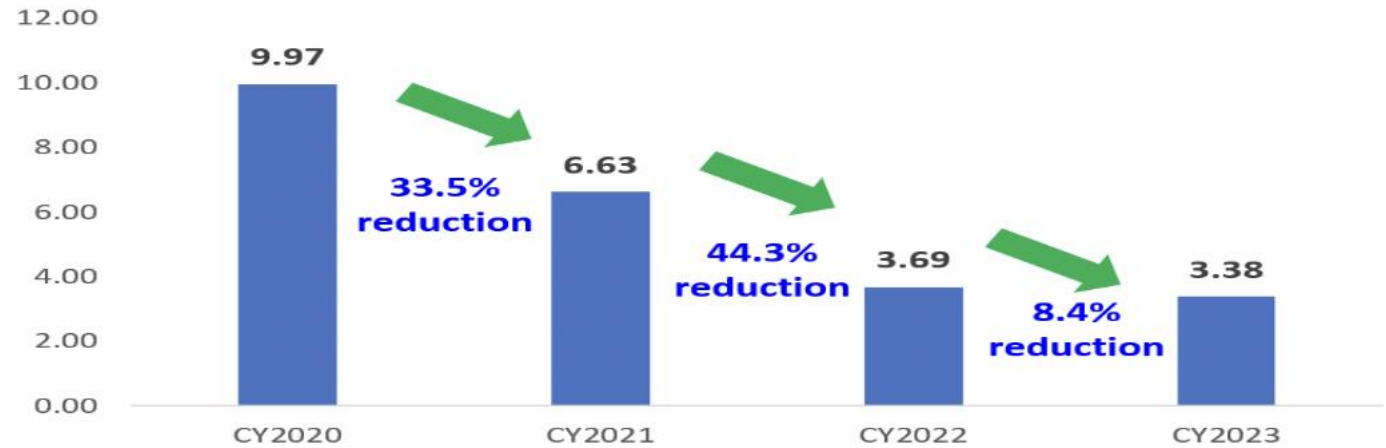
**WATER UNDER THE BRIDGE:
Challenges and Opportunities
in Traversing the Conflict
between “*Beneficial Use*” and
the Conservation of Water
Resources under the Philippine
Water Law Regime**

Rebyanne Giselle C. Diaz
Head, Adjudication and Litigation
Water Rights Division
National Water Resources Board

Water Usage Ratio



WUR (CY2020-CY2023)



Flow of Presentation

- I. Introduction
- II. Historical Background of the Philippine Law Regime on the Appropriation of Water
- III. Beneficial Use and Prior Appropriator Rule
- IV. Disconnect between Beneficial Use and Conservation of Water
- V. Traversing the Conflict – Opportunities



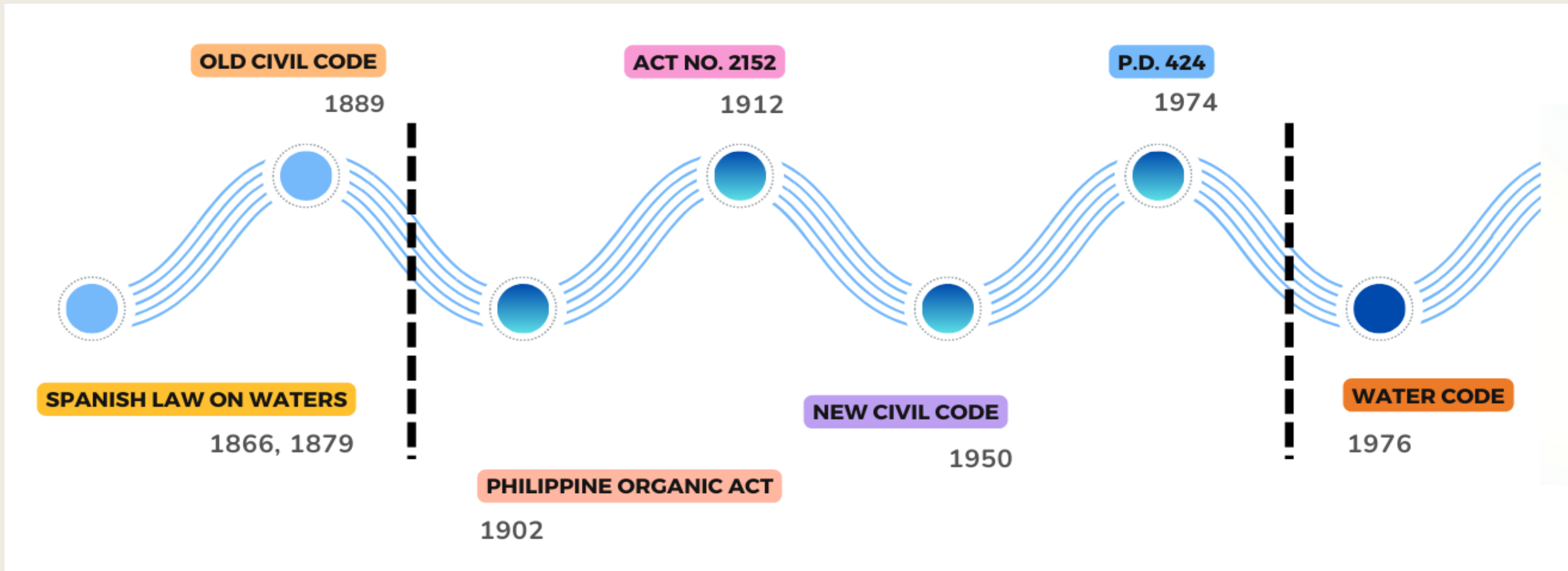
HISTORY OF PHILIPPINE LAW ON APPROPRIATION OF WATERS

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**RIPARIAN
RIGHTS**

**BENEFICIAL USE
+
PRIORITY
OF
APPROPRIATION**

**BENEFICIAL USE
+
PRIORITY
OF
APPROPRIATION
+
STATE
OWNERSHIP**



PERIOD OF RIPARIAN WATER RIGHTS AND ACQUISITIVE PRESCRIPTION

SPANISH LAW ON WATERS AND THE OLD CIVIL CODE

APPROPRIATION OF WATERS

General rule: waters follow the condition of the land upon which they flow

1. Natural Watercourse

- as soon as running waters leave private land, they become public
- riparian landowners are entitled to the natural flow of water running through or along their land
- water may be used in a manner as to not injure the right of any owner below (downstream)

PERIOD OF RIPARIAN WATER RIGHTS AND ACQUISITIVE PRESCRIPTION

2. Lakes and Ponds

- Riparian owners have the right to use the water running along their lands

3. Subterranean waters

- Owners of private estates have the right of absolute dominion over waters found underneath
- Subterranean waters under public lands are public waters

PERIOD OF RIPARIAN WATER RIGHTS AND ACQUISITIVE PRESCRIPTION

4. Rain water

- rain water that falls or collects upon a private estate belong to the owner of the estate so long as it flows upon such land

5. Spring

- The owner of the estate from which waters spring intermittently or continuously may appropriate, as owner, such waters
- As soon as waters flow out of private estate, they become public

PERIOD OF RIPARIAN WATER RIGHTS AND ACQUISITIVE PRESCRIPTION

SPANISH LAW ON WATERS AND THE OLD CIVIL CODE

Prescription

Article 194, L.W. and Article 409, O.C.C.

Any person who enjoyed the use of public waters for a term of twenty years without objection of on the part of the authorities or of any third person, shall continue in its enjoyment even though he may not be able to show that he secured proper permission.

INTRODUCTION OF BENEFICIAL USE AND PRIORITY OF APPROPRIATION

ORGANIC ACT OF 1902

Section 19. That the **beneficial use** shall be the basis, the measure, and the limit of all rights to water in said Islands, and the Government of said Islands is hereby authorised to make such rules and regulations for the use of water, and to make such reservations of public lands for the protection of the water supply, and for other public purposes not in conflict with the provisions of this Act, as it may deem best for the public good.

INTRODUCTION OF BENEFICIAL USE AND PRIORITY OF APPROPRIATION

ORGANIC ACT OF 1902

Section 50. That whenever by **priority of possession rights** to the use of water for mining, agricultural, manufacturing, or other purposes have vested and accrued and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same, and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed, but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

INTRODUCTION OF BENEFICIAL USE AND PRIORITY OF APPROPRIATION

ACT NO. 926

Section 75. The **beneficial use of water** shall be the basis, the measure, and the limit of all rights thereto in said islands, and the patents herein granted shall be subject to the right of the Government of these islands to make sure rules and regulations for the use of water and the protection of the water supply, and for other public purposes, as it may deem best for the public good. Whenever, by **priority of possession**, rights to the use of water for mining, agricultural, manufacturing, or other purposes have vested and accrued, and the same are recognized and acknowledged by the local customs, laws and decisions of the courts, the possessors and owners of such vested rights shall be maintained and protected in the same, and all patents granted under this Act shall be subject to any vested and accrued rights to ditches and reservoirs used in connection with such water rights as may have been acquired in the manner above described prior to April eleventh eighteen hundred and ninety-nine.

INTRODUCTION OF BENEFICIAL USE AND PRIORITY OF APPROPRIATION

ACT NO. 2152

Section 1. Subject to existing rights, the public waters of the Philippine Islands may be appropriated for **beneficial use**, in the manner provided in this Act.

INTRODUCTION OF BENEFICIAL USE AND PRIORITY OF APPROPRIATION

ACT NO. 2152

Section 3. Priority of appropriation shall give the better right as between two or more persons using the public waters. In determining the priority, the nonuser of the water for a period of five years shall extinguish any claim of priority unless such nonuser shall have been caused by force majeure. When the waters of any source of supply are not sufficient for the service of all those desiring the use of the same, and when priority of appropriation can not established, the order of preference shall be as follows:

- (a) Domestic purposes.
- (b) Agricultural purposes or power development for agricultural purposes.
- (c) Industrial purposes.
- (d) Ponds for fisheries.
- (e) Mining purposes or milling connected with mining purposes.

INTRODUCTION OF BENEFICIAL USE AND PRIORITY OF APPROPRIATION

NEW CIVIL CODE

Article 502. The following are of public dominion:

- (1) Rivers and their natural beds;
- (2) Continuous or intermittent waters of springs and brooks running in their natural beds and the beds themselves;
- (3) Waters rising continuously or intermittently on lands of public dominion;
- (4) Lakes and lagoons formed by Nature on public lands, and their beds;
- (5) Rain waters running through ravines or sand beds, which are also of public dominion;
- (6) Subterranean waters on public lands;
- (7) Waters found within the zone of operation of public works, even if constructed by a contractor;
- (8) Waters rising continuously or intermittently on lands belonging to private persons, to the State, to a province, or to a city or a municipality from the moment they leave such lands;
- (9) The waste waters of fountains, sewers and public establishments. (407)

INTRODUCTION OF PRIORITY OF APPROPRIATION

NEW CIVIL CODE

Article 503. The following are of private ownership:

- (1) Continuous or intermittent waters rising on lands of private ownership, while running through the same;
- (2) Lakes and lagoons, and their beds, formed by Nature on such lands;
- (3) Subterranean waters found on the same;
- (4) Rain waters falling on said lands, as long as they remain within the boundaries;
- (5) The beds of flowing waters, continuous or intermittent, formed by rain water, and those of brooks, crossing lands which are not of public dominion.

INTRODUCTION OF PRIORITY OF APPROPRIATION

NEW CIVIL CODE

Article 504. The use of public waters is acquired:

- (1) By administrative concession;
- (2) By prescription for ten years.

XXX

Article 505. Every concession for the use of waters is understood to be without prejudice to third persons. (410)

Article 506. The right to make use of public waters is extinguished by the lapse of the concession and by **non-user for five years.** (411a)

CURRENT SYSTEM OF WATER RIGHTS

WATER CODE

Article 3. The underlying principles of this Code are:

(a) **All waters belong to the State.**

(b) All waters that belong to the state **cannot be subject of acquisitive prescription.**

(c) The State may allow the use and development of waters by **administrative concession.**

(d) The utilization, exploitation, development, conservation, and protection of water resources shall be subject to the control and regulation of the government through the National Water Resources Council, hereinafter referred to as the Council.

(e) Preference in the use and development of water shall consider current usages and be responsive to the changing needs of the country.

CURRENT SYSTEM OF WATER RIGHTS

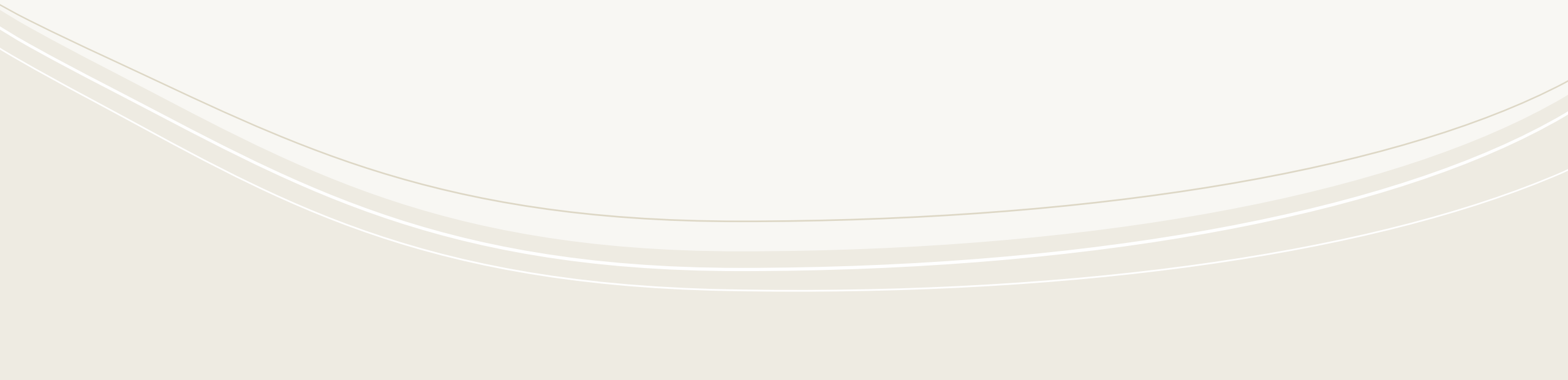
WATER CODE

Article 20. The measure and limit of appropriation of water shall be **beneficial use**.

Beneficial use of water is the utilization of water in the right amount during the period that the water is needed for producing the benefits for which the water is appropriated.

Article 22. Between two or more appropriators of water from the same sources of supply, **priority in time of appropriation shall give the better right**, except that in times of emergency the use of water for domestic and municipal purposes shall have a better right over all other uses; Provided, the where water shortage is recurrent and the appropriator for municipal use has a lower priority in time of appropriation, then it shall be his duty to find an alternative source of supply in accordance with conditions prescribed by the Council.

BENEFICIAL USE AND PRIOR APPROPRIATOR RULE

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BENEFICIAL USE

- a concept b
- many state
right.
- Texas, for e
economical
reasonable
- common be
reclamation



limit of a water
water which is
intelligence and
ed land
rposes.

Picture from Business Insider

BENEFICIAL USE

WATER CODE

Article 20. The measure and limit of appropriation of water shall be **beneficial use**.

Beneficial use of water is the utilization of water in the right amount during the period that the water is needed for producing the benefits for which the water is appropriated.

ELEMENTS:

- 1) Right amount
- 2) Proper Period
- 3) Purpose for which water is appropriated

PRIOR APPROPRIATOR RULE

WATER CODE

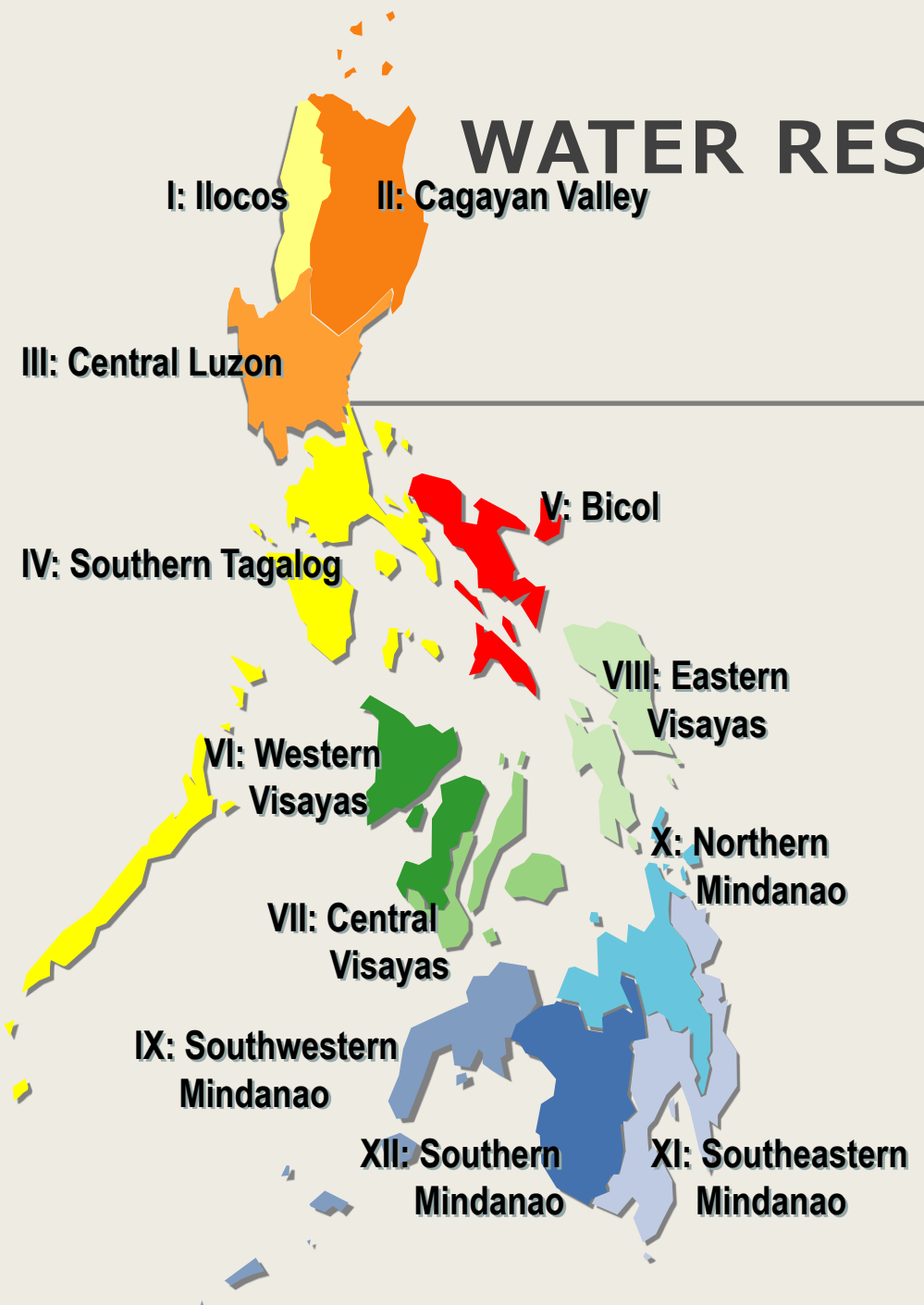
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PRIOR APPROPRIATOR RULE

- Established during the gold-rush of the mid-1800s
- Adopted from mining traditions
- Earlier in time of appropriation, priority



WATER RESOURCE REGIONS IN THE PHILIPPINES



- 1) Type I: Two pronounced seasons, dry from November to April, wet during the rest of the year
- 2) Type II: No dry season with a very pronounced maximum rainfall period from November to January
- 3) Type III: Seasons are not very pronounced with relatively dry season from November to April and wet season during the rest of the year
- 4) Type IV: Rainfall more or less distributed throughout the year

FORFEITURE STATUTES

WATER CODE

Article 28. Water permits shall continue to be valid as long as water is beneficially used; however, it maybe suspended on the grounds of non-compliance with approved plans and specifications or schedules of water distribution; use of water for a purpose other than that for which it was granted; non-payment of water charges; wastage; failure to keep records of water diversion, when required; and violation of any term or condition of any permit or rules and regulations promulgated by the Council.

Temporary permits may be issued for the appropriation and use of water for short periods under special circumstances.

FORFEITURE STATUTES

WATER CODE

Article 29. Water permits may be revoked after due notice and hearing on grounds of non-use; gross violation of the conditions imposed in the permit; unauthorized sale of water; willful failure or refusal to comply with rules and regulations of any lawful order; pollution, public nuisance or acts detrimental to public health and safety; when the appropriator is found to be disqualified under the law to exploit and develop natural resources of the Philippines; when, in the case, of irrigation, the land is converted to non-agricultural purposes; and other similar grounds.

FORFEITURE STATUTES

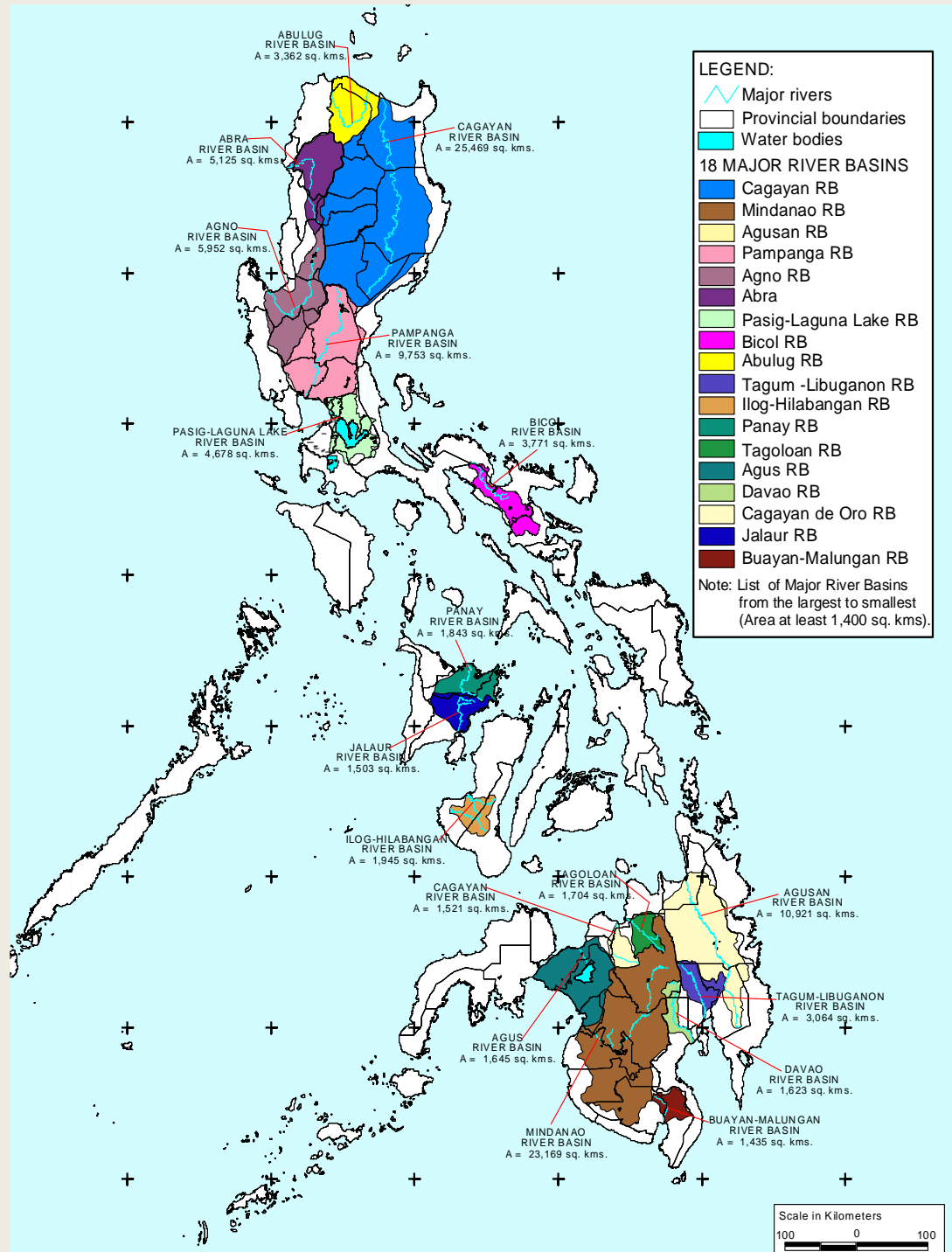
WATER CODE, IRR

Section 13. g. At any time after completion of diversion works and necessary structures, non-use of the water for the purpose stipulated in the permit for a period of **three consecutive years**, shall render said permit null and void, except as the Council may otherwise allow for reasons beyond the control of the permittee.

LEGAL CHALLENGES TO THE CONSERVATION OF WATER RESOURCES

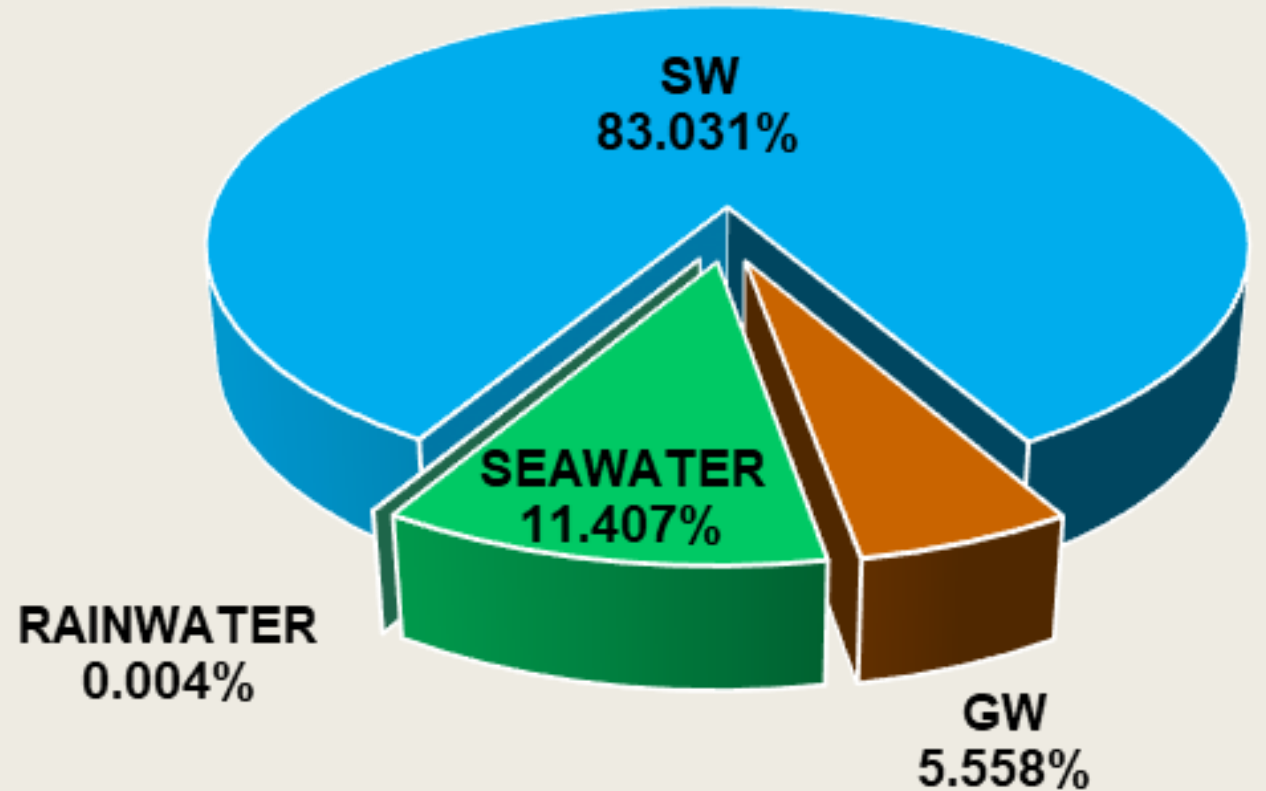
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- Beneficial Use
- Prior Appropriator Rule
- Forfeiture Statutes



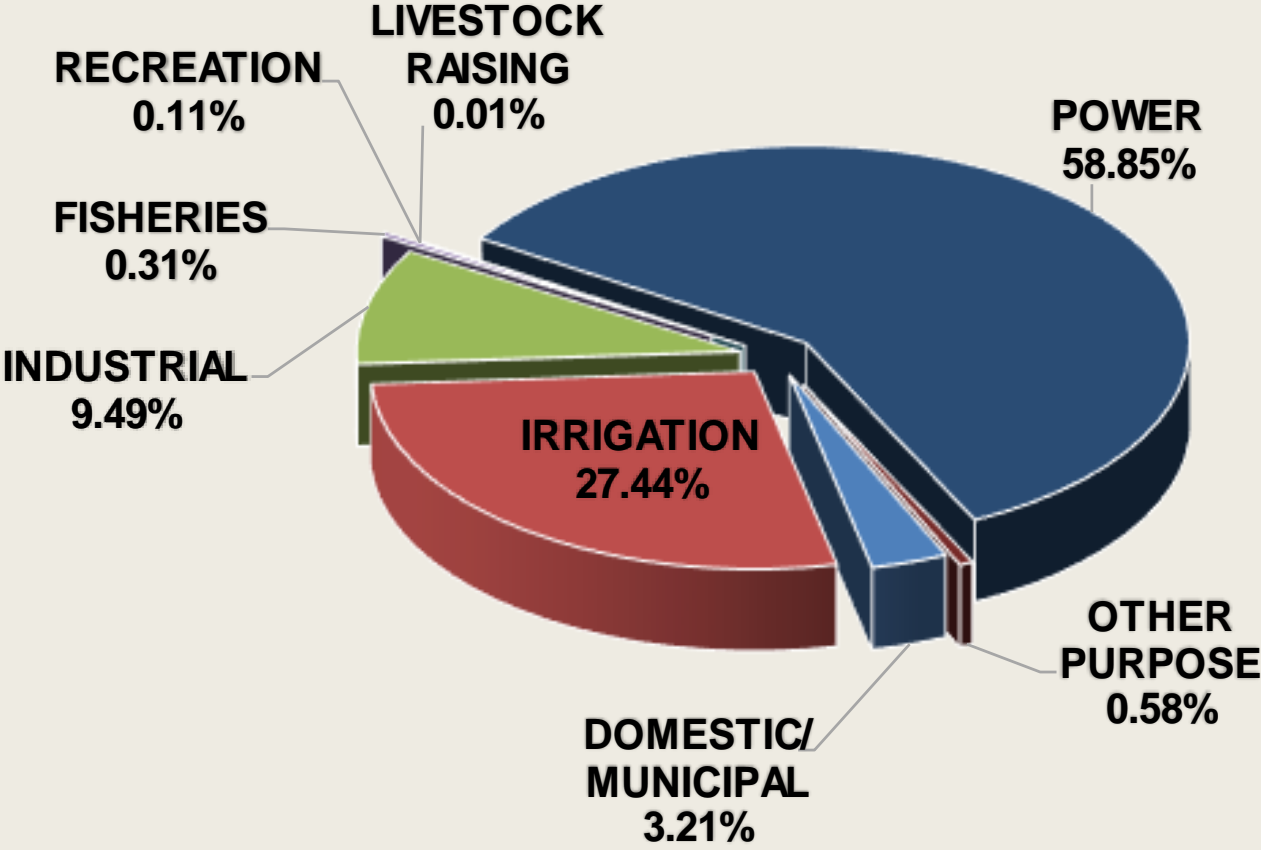
1. Use of entire allocation

Around 52% of the country's water resources (SW and GW) are allocated for different purposes based on the water permit issued by the NWRB



Allocated water resources by source
(as of December 2022)

2. Purpose is inherent to the user in the particular time and state



Allocated water resources by purpose (as of December 2022)

3. Deference to appropriators

4. Water permits are perpetual

5. Forfeiture of water rights due to non-use

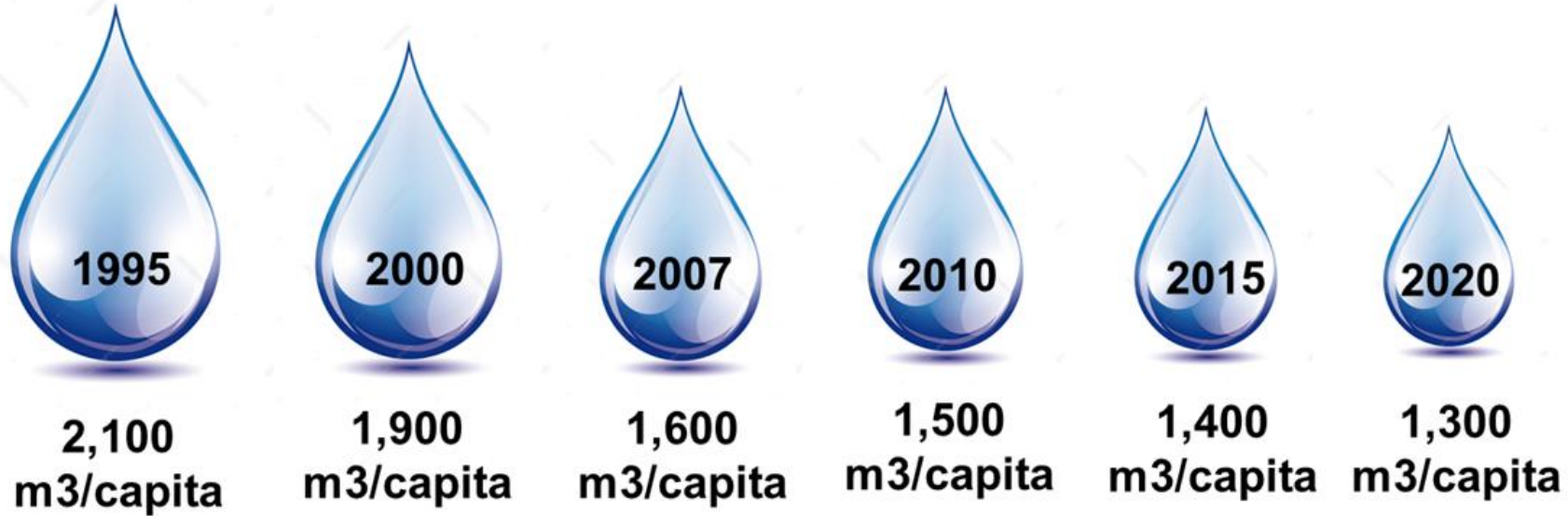
6. The definition of appropriation requires some type of diversion

WATER CODE

Article 9. Waters may be appropriated and used in accordance with the provisions of this Code.

Appropriation of water, as used in this Code, is the acquisition of rights over the use of waters or the taking or diverting of waters from a natural source in the manner and for any purpose allowed by law.

Declining Per Capita Water Availability (based on water stress index)



38%
estimated
drop in water
availability in
25 years

Based on the water stress index thresholds, the Philippines is already under water stress since 2007 having water availability between 1,000 to 1,700 m³/capita.

TRAVERSING THE CONFLICT

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REGULATORY

- A. Water conservation and efficiency plan as a condition in the conditional water permits of large water consumers

FLOW CHART FOR WATER PERMIT APPLICATION PROCESS

Only WPA's with basic requirements will be accepted:

- Proof of ownership
- Vicinity map
- Certificate of Registration
- For Hydro-DOE Endorsement
- For Bulk-Bulk Water Supply Purchase Agreement

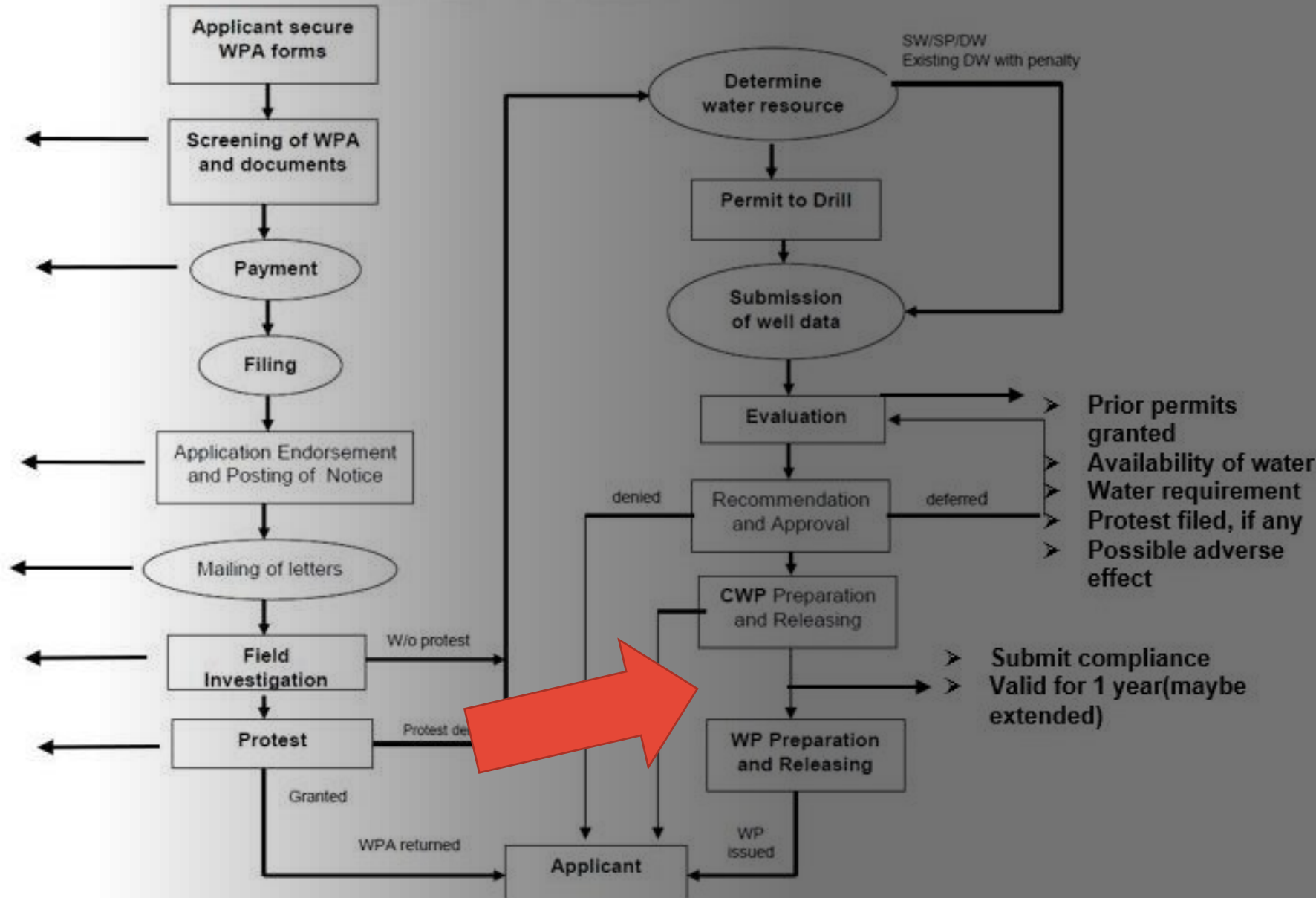
P 7, 200.00 - All other purpose
 P 550.00 - Level 1 and 2 Irrigation (Communal)

15-day posting
 15-day "waiting period"

E-mail of notices

NWRB Staff to conduct investigation

- Conduct hearing and investigation
- Resolution / decision



REGULATORY

A. Water conservation and efficiency plan as a condition in the conditional water permits of large water consumers

B. Wa
con

**USE OF ENTIRE ALLOCATION
IS STILL REQUIRED**

2. new water permit applications of water permittees in the same area for the same purpose

C. Agency monitoring of the implementation of the plans

LEGISLATIVE

1. The definition of appropriation must **not** be limited to use and diversion of waters
2. "Conservation" as a secondary purpose in the water permit
 - Conservation program approved by the NWRB

**STRICT MONITORING AND
IMPLEMENTATION OF
CANCELLATION OF
ALLOCATED VOLUME NOT
USED**

**DISINCENTIVIZING
PETITIONS FOR INCREASE
OF ALLOWABLE VOLUME
PUTS PRESSURE ON THE
APPROPRIATOR TO BE MORE
EFFICIENT RATHER THAN
PRESSURE ON THE
RESOURCES**

LEGISLATIVE

3. More proactive agency mandate
 - more proactive exercise by the State of its ownership of all waters
 - not bound by deference to appropriators
 - able to match supply to demand
 - can respond timely to demand shifts (e.g. short-term transfers)
- A. Water Rights Trust Program
- B. Water Banks

CONCLUSION

WHEREAS, Article XIV, Section 8 of the New Constitution of the Philippines provides, inter alia, that all waters of the Philippines belong to the State;

WHEREAS, existing water legislations are piece-meal and **inadequate to cope with increasing scarcity of water and changing patterns of water use;**

WHEREAS, there is a need for a Water Code based on rational concepts or integrated and multipurpose management of water resources and **sufficiently flexible to adequately meet future developments;**

WHEREAS, water is vital to national development and it has become increasingly **necessary for government to intervene actively in improving the management of water resources;**

