

# 水權費徵收行政作業之法制化

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## 摘要

水利法自民國 32 年 4 月施行時即設有開徵「水權費」之相關規定，惟台灣地區早年水資源供需尚能維持平衡，是以政府在減輕各用水標的水權人之負擔，加速國家社會及經濟整體發展之政策考量下，縱使水利

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法第 84 條已明文規定「政府為發展及維護水利事業，得徵收水權費」，然而政府從水利法開始施行迄今，均未徵收過水權費，因此相關徵收作業之法律制度及費用保管支用之細部規劃，付之闕如。由於，水資源不僅攸關民生福利，同時也牽涉到國土規劃、水土保持及環境保護等各項問題，在國家整體經濟建設發展中實位居重要之環節，互古以來「興修水利」即為歷代執政者所必然揭櫫之施政重點。因此，中央水利主管機關乃於民國 92 年召開「全國水利會議」，是項會議除確立水利政策將朝治水、利水、活水與親水四大施政主軸的推動外，亦檢討得出導致我國用水效率低落的之部分癥結在於水價低廉及取用水制度未臻健全等因素，並達成開徵水權費之共識。

然而，開徵水權費涉及對人民課予金錢給付義務，其徵收行政作業關係人民之權益至鉅，且行政程序法自 90 年 1 月施行後，揭櫫行政機關訂定法規命令與行政規則，必須遵循公正、公開與民主之程序，以及行政法一般原理原則，因此水利主管機關為開徵水權費之行政作業所建立之法律架構，勢必受到各方對其合憲性及合法性之檢視與要求。為期該作業程序能有周詳之規劃，俾建立合憲、合法、合理且可行並具效率的水權費行政作業制度，同時對於開徵所得之收支管理亦能有完善之運作機制。

關鍵字：水利法、水權費、行政程序法、課徵、水資源

# **The Legislation Regarding the Administrative Procedure of Levying Water Right Fee**

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## **Abstract**

Since Water Act (WA) was brought into effect in April 1943, it was enacted the regulations about levying the water right fee. Government lightens the burden on every water rights owner of water usage and accelerates national society and whole economy development because of its policy consideration. It enables the water resource's supply to meet the demand in the early years in Taiwan. Although Article 84 of WA is explicitly to say that "For the purpose of protecting and maintaining water resources, the government may levy the fees of water rights," government still does not levy the water right fee when WA was begun to bring into effect until now. Therefore, some detail planning about the task of levying, including legal system and fees' storage and expenditure, is still wanting. The demands of water resource have increased continually in recent years, because social-economic develops rapidly, population grows endlessly, and country builds highly in Taiwan. However, exploiting new water resource not only the cost is extremely high, but also encounters a variety of difficulties, and then it gradually becomes tardy. The geographic environment in Taiwan is particular and the turbulent river flows its way through a short inclination. The rainfall flows into

ocean promptly after flowing to the ground, it cause difficulties to store water and even make use of it. Because the rainfall is quite uneven; moreover, it is also difficult to allocate the water resource. In addition, it is gratuitous for water rights owner to fetch water for along time. It is difficult to set up the idea that cherish the water resource and economize on water for water undertaking or individuals, and then unable to rationalize the water yield. Consequently, several difficulties, including the exploitation, storage, and allocation, make the water resource becomes more and more deficient.

With the water resource not only concerns the people's livelihood welfare but also involves several problems, such as country planning, soil and water conservation, and environment protection, etc. it actually plays an important role in whole economic development in a country. From ancient times till now, building water conservancy projects have been the administrative key point to persons who were in power through the ages. Therefore, the central authority-in-charge held the national water conservancy conference in 2003. And there are three topics were resulted in this conference. First, established firmly that our water conservancy projects will accelerate four core schemes of water policies regarding water regulation, water utilization, water revitalization, and water rapprochement. Second, found out partial reasons which are led to why the low efficiency to use water is the cheap chards for water and defective system to fetch water. Third, they got to a common view to levy the fees of water rights.

However, levying the fees of water rights which involves rendering duty and imposing money on people and how to levy will have great impacts on people's legal rights. Since the Administrative Procedure Act (APA) was brought into effect in January 2001, which stipulates the principles on how the administrative organ to make the statutes and administrative regulation: fair, open, democratic, and compliance with general rules and principles of administrative law. Therefore, the legal infrastructure and administrative procedure to levy the fees of water rights will be reviewed under both legal and constitutional requirements. In order to have an explicit plan in this work procedure, then build up a constitutional, legal, reasonable and efficient administrative process and system for levying the fees of water rights. There can also have a perfect operation mechanism in the management of revenue and expenditure about levying income at the same time.

Key words : Water Act , water right fee , the Administrative Procedure Act , levy , water resources