Implications for Nations of the Commodification of Water

Sustainability Conference of American Legal Educators Sandra Day O'Connor College of Law, Arizona State University May 8, 2015

Gabriel Eckstein Professor of Law, Texas A&M University Director, International Water Law Project

Water as an Economic Good

The Global Debate Right to Water vs. Market Management

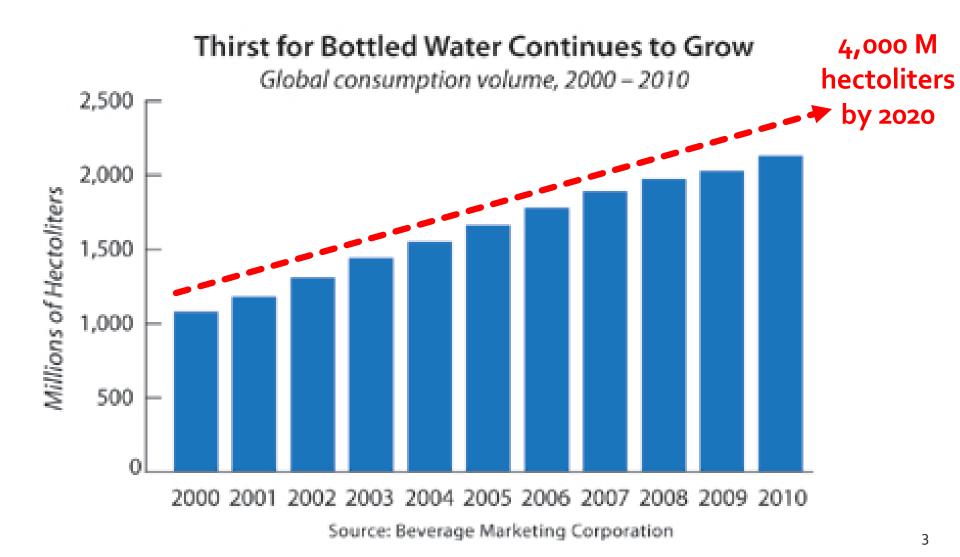


The Reality

- Bottled Water
- Bulk Water
- Virtual Water



Water as an Economic Good: Bottled Water

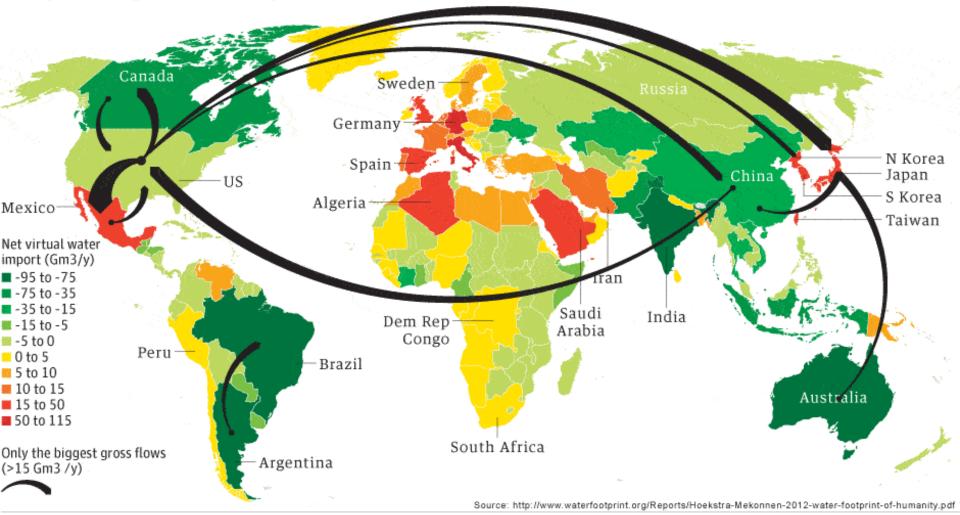


Water as an Economic Good: **International Bulk Water Transfers**

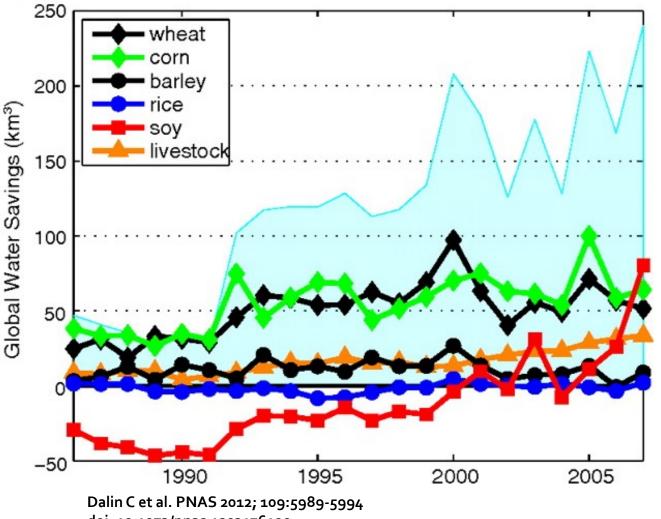


Water as an Economic Good: Virtual Water

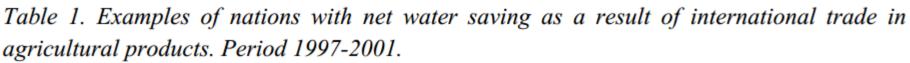
The exports and imports of water through food and commodities, 1996-2005



- Overall global water savings based on trade in virtual water
 - 4% in 2000
 - 9% in 2007



doi: 10.1073/pnas.1203176109



Country	Total use of	Water saving as	Water loss as a result of export of agricultural products ² (10 ⁹ m ³ /yr)	Net water	Ratio of net
	domestic water	a result of		saving due to	water
	resources in	import of		trade in	saving to
	the agricultural	agricultural		agricultural	use of
	sector ¹	products ²		products ²	domestic
	$(10^9 \text{ m}^3/\text{yr})$	$(10^9 \text{ m}^3/\text{yr})$		$(10^9 \text{ m}^3/\text{yr})$	water
China	733	79	23	56	8%
Mexico	94	83	18	65	69%
Morocco	37	29	1.6	27	73%
Italy	60	87	28	59	98%
Algeria	23	46	0.5	45	196%
Japan	21	96	1.9	94	448%

Hoekstra A. (2010). The relation between international trade and freshwater scarcity, World Trade Organization, Staff Working Paper ERSD-2010-05 http://www.wto.org/english/res_e/reser_e/ersd201005_e.pdf

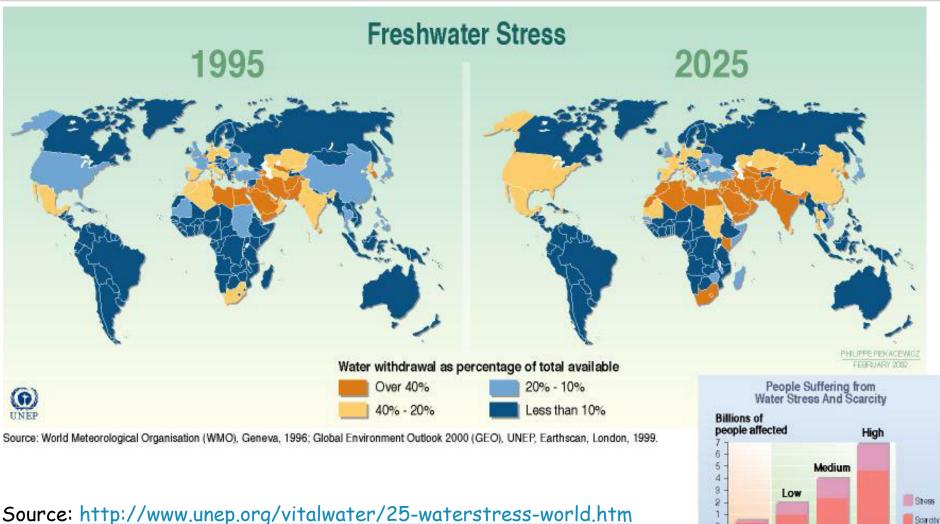
Importing Country

- Dependency
 - National security risk
 - Failure to develop backup in the event of market failure or drought in exporting country
- Effect on domestic agriculture
- Greater urbanization due to reduced agricultural activities
- Inability to afford imports

Exporting Country

- Increased water demand
- Decrease in water available for environmental and domestic purposes

Local/regional water stress



n

1995

2050 Population Projections

9

Source: http://www.unep.org/vitalwater/25-waterstress-world.htm

Exporting Country (cont.)

- GATT = International system for regulating trade in goods and products and maintaining fairness in trade
- Is water a good or product under GATT rules? If yes:
 - Art. XI (parag. 1)
 - Prohibits measures (s.a. export restrictions) other than "duties, taxes and other charges"
 - Prohibits discrimination among domestic and foreign products, investors, and trading partners
- Exception to the Rules
 - Art. XX(b) Exception = "necessary for the protection of human, animal or plant life or health"
 - Art. XX(g) Exception = "relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption"

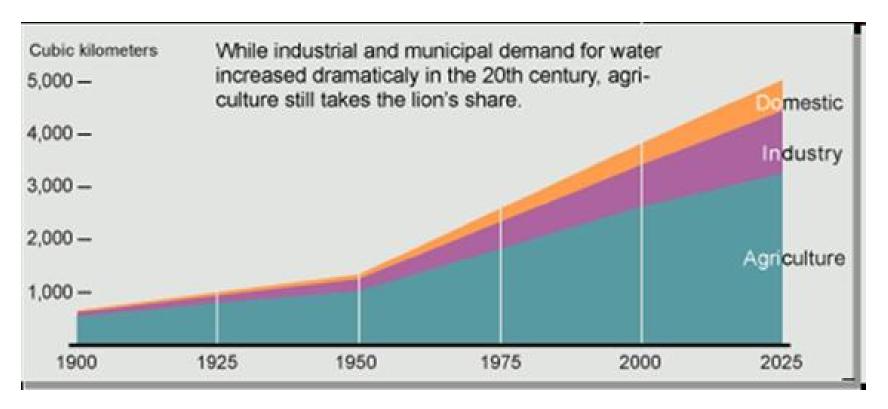
Exporting Country (cont.)

- GATT (and other trade agreements) = If water is treated as a commodity (cont.)
 - Art. XX Chapeau = exceptions must not be "applied in a manner which would constitute a means of *arbitrary or unjustifiable discrimination* between countries where the same conditions prevail, or a *disguised restriction on international trade*"

Water as an Economic Good: Way Forward

- Balanced approach that recognizes
 - Water does has an economic value
 - BUT, water is *unique* from other natural resources and has non economic values (social, cultural, religious) that must be taken into account
- Commodified when packaged as beverage or captured within other commodities (virtual water)
- Exclude bulk water from GATT (and other trade agreements) to allow domestic restrictions based on domestic criteria and values

Thank you!



Gabriel Eckstein Professor of Law, Texas A&M University Director, International Water Law Project

gabrieleckstein@law.tamu.edu www.InternationalWaterLaw.org