



Water commons as a socioenvironmental project for the 21st century in Chile

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ABSTRACT

We describe how the water commons agenda has been mobilized by different social groups of Chilean society, including water social movements and indigenous people, and the way it was included in the constitutional debate (2021–2022). Although the draft for the new Constitution was rejected in September 2022, we argue that the water commons agenda is still being mobilized as a socioenvironmental project for the 21st century. Simply put, the water commons agenda does not disappear with the defeat of the proposed new Constitution. It continues to challenge the neoliberalization of nature and water imposed during the Pinochet dictatorship, proposing to create new ways to sustain the territories of life.

Key words: Social and ancestral reappropriation of water, Transitions from markets to commons, Water social movements

HIGHLIGHTS

- Water and social crisis in Chile.
- Social movements and indigenous people mobilize both the water commons agenda and the constituent process.
- Constituent Convention declares water as a common good.
- Proposed Constitution is rejected by citizenship.
- Water commons agenda for the 21st century.

Growing water and social crises marked by a megadrought (2009–2022), the social uprising that began in October 2019 (*estallido social*), various forms of extractivism (Gudynas, 2015), and hydro-metabolic rifts in Chile (cf. Torres & Rojas, 2018; Foster & Clark, 2020) are all forcing the transition from neoliberalism to a reclaimed commons. This means the possibility of a major shift away from the current neoliberal water governance based on water markets and profits, toward another regime based on common human needs. This commons agenda also includes non-human actors such as ecosystems, rivers, lakes, aquifers, and the whole biodiversity of water bodies and associated ecological life. The hydro-metabolic rifts produced by neoliberal extractivist development have created the current configuration marked by growing socioenvironmental and water conflicts, but also new spaces of dialogue, debate, contestation, and eventually democratization among the state, communities, water movements, and extractivisms; the latter including mining, hydropower, agribusiness, and forestry. In this essay, we describe how the water commons agenda has been mobilized by different social groups of Chilean society, and the way it was included in the constitutional debate (2021–2022). Although the draft for the new

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Constitution was rejected in September 2022, we argue that the water commons agenda articulated in that document is still being mobilized as a socioenvironmental project for the 21st century.

Water social movements and the commons agenda

As a response to water markets imposed by the 1981 Water Code, a developing Chilean water movement began to emerge in the mid-2000s. From the beginning, this movement was articulated by opposition to private ownership of water, which has resulted in the hoarding of water rights, mainly by large extractivist corporations (Larraín, 2012, 2015; Mundaca, 2014; Bauer, 2015; Torres *et al.*, 2022). With emblematic cases such as the *Patagonia Without Dams* movement and the anti-mining movement *No a Pascua Lama*, social movements around water emerged with the agenda of de-privatizing water, declaring it a common good, and defending access to and control of local waters. With the appearance of the 2009 megadrought, which reduced precipitation by up to 35% (Garreaud *et al.*, 2019; Rojas *et al.*, 2019: 16), local hydrosocial cycles have been fractured due to the drying up and reduction of water supply sources for rural communities. Since 2015, it has been reported that between 400,000 and 500,000 people in rural areas live without water in the country and must be supplied by cistern trucks (Torres *et al.*, 2022). Recently, the crisis has also threatened to require the rationing of drinking water in Santiago, the capital city of almost seven million people (Gobierno Regional de Santiago, 2022).

In protest to this situation, seven ‘National Marches for Water’ were held in Chile between 2013 and 2019, beginning in Santiago city (2013, 2014) and continuing in Valparaíso city (2015), Temuco city (2016), Concepción city (2017), and other cities across the country in 2018 and 2019. Among the organizers of these marches are the *Movimiento por el Agua y los Territorios* (MAT, Movement for Water and Territories) and the *Movimiento por la Defensa del Agua, la Tierra y el Medioambiente* (MODATIMA, Movement for the Defense of Water, Land, and the Environment), which have deployed a socioenvironmental agenda to reclaim and redefine water as a common good. These national-scale groups are comprised of diverse local organizations and movements in which women, peasants, indigenous peoples, urban activists, and students, among other social groups affected by water dispossession, participate. In the first march of 2013, collectives from the country’s north, center, and south mobilized from their territories to meet and protest together in the center of Santiago, demanding the de-privatization of water and a new water policy for the country. This was the first nationwide protest for water, unprecedented in Chile’s history (Mundaca, 2014). In April 2014, the same organizations repeated the experience and embarked on the second national march for the defense and recovery of water, also in downtown Santiago.

In the following years, the marches moved to other regions to decentralize and highlight the water crisis affecting the country. Thus, the third national march for water was held in Valparaíso in April 2015, and the fourth in the city of Temuco in April 2016. The latter is significant historically because it was the first ‘Plurinational March for the Defense of Waters and Territories’. It was conceived and deployed as a solidary network of the nascent Chilean water movement toward the Mapuche movement, whose objective context is the region of Araucanía – where this indigenous group mostly lives. Nearly 100,000 people in Araucanía lack access to water and must be supplied with cistern trucks, making it the region of the country most affected by water scarcity (Torres *et al.*, 2022). It was in this context of the simultaneous emergence of both the water crisis and the water movements that the social uprising of October 2019 burst onto the scene. The strengthening Chilean water movement thus converged and joined with the national protests to overcome neoliberalism – in this case, transitioning from water as a commodity and private property to water as a common good.

The commons agenda as a central issue in the Constitutional debate

The ‘Agreement for Social Peace and a New Constitution’ signed on November 15, 2019 in the Parliament, established the constituent process. First, this agreement defined the holding of a plebiscite, which was held in October

2020. In this instance, Chilean citizens decided whether to write a new Constitution and specified the institution to be charged with steering the process. The overwhelming majority of citizens voted to replace the 1980 Constitution imposed by Pinochet's dictatorship (1973–1990) through a constitutional convention, whose members would be decided through the full vote of the citizen body. The results were as follows: the 'Approve' option won with 78.27% of the votes (5,886,421 votes), while 78.99% of voters (5,646,427 votes) opted for a constitutional convention ([Biblioteca del Congreso Nacional de Chile, 2020](#)). The 1980 Constitution was the basis for enacting the 1981 Water Code, which privatized water in the country, among other common goods.

With this first step settled, the second one was to choose the 155 members of the constitutional convention. To this end, two constitutional amendments were first introduced: one to establish gender parity (half of the members should be women, law 21.216 of 2020); and one to reserve 17 seats for indigenous peoples (law 21.298 of 2020). These constitutional amendments were significant because they reflected the influences of gender and indigenous peoples' agendas among the population and social movements, including the water movement, in defining the new rules of the game ([Bengoa, 2020](#); [Álvez *et al.*, 2021](#)). In May 2021, the 155 constituents were elected. They included lawyers, teachers, actors, professionals, researchers, militants from MAT and MODATIMA, and indigenous peoples, demonstrating that the agenda of de-privatization of water and its declaration as a common good were among the main demands of the social uprising for a new constitution. The Constitutional Convention began to work on July 4, 2021, and the institution had a year to deliver the constitutional proposal for the final vote.

The water debate in the proposed Constitution of 2022

The proposed draft of July 2022 contained a constitutional frame for water. Its article 134 establishes the 'natural commons', defining them as 'elements or components of nature over which the state has a special duty of stewardship to guarantee nature's rights and the interests of current and future generations. It comprises the territorial sea and seabed, beaches, waters, glaciers and wetlands, geothermal fields, the air and atmosphere, high mountains, protected areas and native forests, subsoil, and others declared by the Constitution and the law' ([Convención Constituyente, 2022: 46](#)).

In this respect, one of the hardest debates was around the possibility of appropriation through private property rights. This went to the core of the water market established on the foundation of the 1980 Constitution. The new model proposed that 'water in all its states, air, territorial sea and beaches, natural commons recognized by international law, and those declared as such by the Constitution or the law may not be appropriated' ([Acosta, 2022](#); [Convención Constituyente, 2022: 46](#)). This proposal was coherent with the socioenvironmental agenda that commons are 're-emerging' as an alternative to framing new modes of water governance that recognize the existence of other actors beyond the market and the state.

According to the 2022 proposed Constitution, the state is duty-bound to preserve, conserve, and (if necessary) restore those natural commons that may not be privately appropriated (such as water). It must also manage them in a democratic, solidarity-based, participatory, equitable manner. A major concern was how to reconcile currently existing private property rights over water with a new administrative scheme based on usage authorizations given by the state. This administrative authorization must have specific conservation obligations and be justified by the public interest, the protection of nature, and the collective benefit. Administrative authorization, whether individual or collective, does not grant property rights. In accordance with the law, the authorization is temporal and subject to grounds of expiry, termination, and recall. This point was fiercely rejected by current water rights holders.

In addition, a central objective that permeates the water statute proposed is to overcome commodification and declare that water is essential for life and for the exercise of human rights and nature's rights. The state must

protect waters in all states and phases, and safeguard the water cycle. The draft also proposed a hierarchy in which the human right to water, sanitation, and the balance of ecosystems shall always prevail. The law shall determine other uses (article 140). This was also much contested because in the current water market, the shareholder with the most economic power tends to monopolize the water rights. Therefore, the proposed change in the hierarchy brought concerns to mining companies and large-scale farmers.

These discussions demonstrate that a historical opportunity is emerging from this new transitional configuration. It is one that could potentially overcome private ownership over water as the main barrier to radical changes oriented to restoring the sustainability of the hydrosocial metabolism (Swyngedouw, 2015) by collectively and democratically managing river basins and water resources. Social movements, traditional communities, and indigenous people are pushing these new modes for governing water and territories, with different rationations within the river basin (Castro *et al.*, 2019), particularly environmental rationality (Leff, 2014), and hydrocosmologies (Boelens, 2015) from native people such as the Mapuche. In this respect, article 142 of the proposed new Constitution indicates that the state would guarantee a participatory and decentralized system of water governance through integrated watershed management. The river basin shall be the minimum management unit. In so doing, the water commons agenda deploys, as a politics of difference, an open space for constructing a political-ecological debate over water, territories, and nature in an egalitarian and more democratic way, in which the hierarchical, techno-managerial, and market-led approaches can participate; but wherein they cannot dominate the scenario of hydro-governance based on their economic power. Water governance democratization is not subordinated to markets.

Another key issue in the proposed new Constitution was the National Water Agency as an autonomous body – with its own legal identity and independent assets – which would have operated in a decentralized manner and would have been responsible for ensuring: sustainable water use for present and future generations; access to the human right to water and sanitation; and the conservation and preservation of associated ecosystems. To this end, the National Water Agency was going to be responsible for gathering information and coordinating, directing, and supervising the actions of both individuals and state bodies with competence in water management, as appropriate (article 144). The lack of reliable public information over water rights and water stock is a major difficulty in Chile nowadays. The National Water Agency would have been an important step toward ameliorating this problem.

The proposed constitutional draft was voted in a plebiscite by Chilean citizens on September 4, 2022. It was rejected by the 61.87% of the population (SERVEL, 2022), but the constitutional debate in Chile is ongoing. Water continues to be a key contentious issue, and the proposal of water commons as a culturally egalitarian, sustainable, and more democratic approach to water governance for the 21st century is still on the agenda of broad social groups in Chilean society. Simply put, the water commons agenda does not disappear with the defeat of the proposed new Constitution. It continues to challenge the neoliberalization of nature and water imposed during the Pinochet dictatorship, proposing to create new ways to sustain the territories of life. In a significant way, the water commons agenda can be explained by the socio-ancestral reappropriation of nature, which consists of reconstituting ancestral knowledge and memories based on an ecological-cultural episteme oriented toward the sustainability of life. It is a cultural resignification of nature and water that rebuilds native peoples' old imageries, hydrocosmologies, and ecological knowledge (Escobar, 2020). To the extent that cultural processes cannot be eliminated by a plebiscite, the ongoing process of socio-ancestral reappropriation of nature is proposing new life horizons for the sustainable re-existence of the Peoples of the Earth (Leff, 2014) in the 21st century, seeking to promote – and hopefully to implement – a broad notion of water sustainability that integrates the ecological and cultural, not just the economic.

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DATA AVAILABILITY STATEMENT

All relevant data are included in the paper or its Supplementary Information.

CONFLICT OF INTEREST

The authors declare there is no conflict.

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