

# **Integrated Lake Basin Management and Problems in the Construction of the New Legal System**

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*"Rivers and lakes can be used as indices to understand the state of health of surface water. Moreover, the state of health of rivers and lakes appropriately illustrates the kind of philosophy and manner adopted by humans for preserving nature."*<sup>1</sup>

## **Introduction**

This report briefly reviews the strategy and laws adopted in Japan to preserve rivers and lakes. This report only elaborates on the findings of my exclusive study on the Constitution of Japan. The limitations are attributable to the limitations of my ability and because a clarification of the concept of integrated lake basin management (hereinafter referred to as basin management) requires a thorough analysis of the conventional study of the Constitution (law). The viewpoint of basin management may be incompatible with the fundamental philosophy that currently exists in the conventional study of the Constitution. If this is the case, basin management can be used as an index to express lawyers' standpoint correctively.

In this report, three water-related subjects were prepared for investigation based on the association between the concept of basin management and the study of the Constitution.

## **1. Water-related laws**

First, the water-related legal system in Japan has been reviewed. The Environmental Basic Law was established in 1993 as a fundamental law in the environmental field. This law regulates the basic policy and responsibility concerning environmental preservation, and it must be respected when an individual law is interpreted and applied.

### **(1) Water-related legal system**

No systematic water-related code exists in Japan. However, complicated and ramifying water-related laws do exist; these include laws, such as the River Law, Water Pollution Control Law, Sewage Water Law, Industrial Water Law, Forest Law, and Erosion Control Law. However, in other countries, a relatively congruous water-related code (water code) has been established. In Germany, extremely systematic and comprehensive mandatory control is performed concerning water<sup>2</sup> based on the

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<sup>1</sup> Y. Takahashi, *Water of the Earth is in Danger*, Iwanami Shoten, p. 30.

<sup>2</sup> M. Yoshikawa, 'Mandatory Control of Water Use in Germany', *Kinki University Jurisprudence* Volume 44, Issues 3 and 4 (1997), p. 71. For description of laws and translation of a part of regulations, refer to Water Law and Nature Conservation in Germany published by the Ecosystem Conservation

federal law on water resources, “Gesetz zur Ordnung des Wasserhaushalts, 1957,” and the water law of each state.

In Japan, the law to be applied differs according to the state of the water. In this study, the classifications<sup>3</sup> proposed by M. Suda are applied to the legal water-related system in Japan; this classification includes the following criteria: (a) laws related to flood control and land conservation, (b) laws related to water use and water resources development, and (c) laws related to water environment.

**(a) Laws related to flood control and land conservation**

The series of laws related to flood control and land conservation include the River Law, Erosion Control Law, Forest Law, Landslide Prevention Law, Seacoast Act, Social Capital Development Law, and the Disaster Measures Basic Law.

**(b) Laws related to water use and water resources development**

The series of laws related to water use and water resources development include the Water Resources Development Promotion Law, Specified Multi-Purpose Dams Law, River Law, Water Supply Law, Industrial Water Supply Business Act, Fisheries Act, Canal Act, and the Harbor Act.

**(c) Laws related to water environment**

The series of laws related to water environment, i.e., the circulation of water and water quality control, include the Water Pollution Control Law, Law Concerning Special Measures for Conservation of Lake Water Quality, Sea Pollution Prevention Act, Natural Parks Law, Landscape Act, and the River Law.

Presently, the River Law is particularly important. Although the River Law was basically established for flood control and water use, the idea of environmental conservation has recently become its most important element. Therefore, the revision of the River Law in 1997, which clearly stated the conservation of river environments, greatly changed the conventional idea of river administration. In other words, the idea of basin management was fairly adopted in this version.

**(2) Legal system concerning lakes**

Lakes also legally belong to “rivers.” That is, lakes are applicable to the “public water surface” regulated by the River Law. In the River Law, improvement and management of rivers are

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Society, Japan (1996).

<sup>3</sup> M. Suda, *Review of Laws Concerning Water and Land Conservation* (2006), Sankaido, p. 46.

considered important, and no special regulations exist for the water quality. However, it is the duty of those who intend to discharge sewage of 50 m<sup>3</sup> or more a day directly into rivers to notify the river administrator (the River Law Enforcement Ordinance, Article 16-5).

Regarding water quality, the environmental standard is established based on Article 16 of the Environmental Basic Law. The environmental standard provides the desirable standard that should be maintained for protecting health of living things and conserving the environment; however, this standard is only an administrative challenging value or a barometer of environmental consideration. Therefore, it is essential to actually establish the standard for waste water from factories and similar industries. In this case, the Water Pollution Control Law plays an important role. This law regulates the waste water quality standards and the countermeasures against domestic waste water (after the revision of this law in 1990).

Lakes are closed areas of water. Therefore, once a lake is polluted, it is very difficult to restore the environment to the original state. Therefore, the Law Concerning Special Measures for Conservation of Lake Water Quality was separately established in 1984. In this law, the area that is recognized to be related to the contamination of lake water is defined as the designated area (Article 3), and necessary measures are to be taken by central and local governments based on the Lake Water Preservation Program (Article 4), which is revised every five years. However, since this law was established to preserve water quality, it was said to be of no use for the development of housing lots and leisure facilities near lakes. In response to such criticism, an assignment of the Area of Taking Countermeasures against Outflow Water (Article 25) was added in the revision of the law in 2005 to counter non-specified pollution sources. Moreover, an addition to the Environmental Protection Lakeside Area (Article 29) is considered as a remarkable progress from the viewpoint of basin management.

Since regulation by laws is generally inefficient on its own, each local government has attempted to deal with water pollution in sensitive ways based on lake-related ordinances. In Shiga Prefecture, the Lake Biwa Comprehensive Preservation and Improvement Project (Mother Lake 21 Plan) has been efficiently pursued since 2000.

Regarding wetlands, the law needs to be reformed in consideration of the unique characteristics of the wetland and the roles in ecosystems. However, the narrow interpretation of the Ramsar Convention has been intentionally accepted<sup>4</sup>, and no laws to originally protect wetlands exist in

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<sup>4</sup> T. Hatakeyama, *Lecture on the Nature Protection Act (second edition)*, Hokkaido University Press (2006) p. 202. Therefore, realization of the convention is "only performed within the framework of conventional laws" in 'Laws and Problems Concerning Conservation of Seacoasts, Rivers, and

Japan. This is not the case in South Korea, which has ratified this convention and has already established the Wetland Protection Act.

### **(3) Enactment of basic water-related law based on integrated lake basin management**

The current River Law adopts the water system or basin system as a principle based on the integrated and systematic river management (integration of water system)<sup>5</sup>. However, natural protection of the basin is excluded from the management. The concept of “basin” is actually uncertain, because the idea of basin management is diversified according to the country, area, the scale of the basin, natural and social environments of the basin, and the socioeconomic impact applied to the basin.<sup>6</sup>

Although a word “basin” is currently used in several laws and cabinet orders (for example, the Government Ordinance for Structural Standard for River Administration Facilities, Article 2–3, and the Flood Control Law, Article 11), these laws do not clearly define the term.

In the River Law, the river area (Article 6) and the river conservation area (Article 54) are defined as the land concerning river, and land use in these areas is regulated. Moreover, forest zones (natural objects), such as riparian forest and dam lakeside forest, are assigned as river management facilities (Article 3, Clause 2). By using such area assignments effectively, rivers can be managed in the manner of slightly expanding the riverbed. This manner can be considered as a contrivance with the possibility of development, from the viewpoint of basin management<sup>7</sup>.

Because of the revision of the River Law in 1997<sup>8</sup>, the River Improvement Plan was institutionalized. When preparing the plan, the opinions of environmental law experts and concerned inhabitants were collected as necessary.

In order to realize the concepts of the integrated lake basin management, an attempt to amplify the concept of basin to the legal concept is required based on critical analysis of the related sciences. By conducting such analysis, the integrated water-related law will be legislated<sup>9</sup>.

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Wetlands' written by A. Ebara in *Whereabouts of Environmental Problems; extra issue of Jurist*, p. 212.

<sup>5</sup> T. Hatakeyama, *supra* note 4, p.212.

<sup>6</sup> Y. Takahashi, *River Engineering (new edition)*, the University of Tokyo Press (2008), p. 262.

<sup>7</sup> K. Sakurai, 'Present-day Problems of the Water Law', *Development and Reform of Administrative Law (second volume); Memorial Publishing for H. Shiono's Seventy Years of Age*, Yuhikaku Publishing (2001), p. 720.

<sup>8</sup> For the revision of the River Law in 1997, refer to *Interpretation of the Revised River Law and the Future River Administration* (edited by the River Law Study Group, the Ministry of Construction), Gyosei Corporation (1997).

<sup>9</sup> As one of such attempts, the article described from p. 75 in *Law and Policy of Basin Management*

In Japan, it is very difficult to find a general information document entitled “Water Law.” In the 1960s, Professor Yoshio Kanazawa wrote *Water Law*<sup>10</sup>, and it is still the fundamental literature in this field. However, this literature is already out of print. These facts suggest the jurist’s degree of interest and concerns regarding the Water Law. Recently, the previously-quoted *Review of Laws Concerning Water and Land Conservation* (written by M. Suda) was published. This book was written based on experiences obtained in law suits claiming compensation for water damage or the like as a layer. In the future, further academic development will be expected for Suda’s theories.

## **2. Is the environmental right an individual right?**

In the background of proposing the concept of integrated lake basin management, the sense of impending crisis exists that acceptable environmental conditions are going to be disrupted along with remarkable aggravation of water environment. This sense of impending crisis is in common with the recent insistence of the environmental right.

On the other hand, basin management often conflicts with the land ownership and water rights (property rights in the Constitution) and proprietors’ freedom of economic activities<sup>11</sup>. In such a conflict, the idea of overemphasis of property rights<sup>12</sup> in the conventional jurisprudence is prevalent.

As previously mentioned, the idea of basin management insists upon the amendment of conventional human rights and understanding of rights. “Environment” and “basin” do not belong to the interests of the individual, but to the interests of the general public; in other words, the right holder is not an individual but a group of inhabitants (a community in the area)<sup>13</sup>. Thus, a difficult problem exists that cannot be solved by the conventional way of understanding rights. The following is a brief discussion on the environmental right.

### **(1) Environmental right**

In Japan, the introduction of the environmental right into the Constitution is often discussed. The environmental right is generally understood as the right to enjoy and control an acceptable environment as the conditions required to maintain a healthy and a comfortable life.

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written by N. Miyoshi (Jigakusha Publishing Corporation, 2007) is worth notice.

<sup>10</sup> Y. Kanazawa, *Water Law*, Yuhikaku Publishing (1968) and on-demand edition (2006).

<sup>11</sup> N. Miyoshi, *supra* note 9, p.235.

<sup>12</sup> Y. Abe, ‘Possibility of Jurisprudence for Contribution to Enactment of Environmental Law’, *Generation and Future of Environmental Jurisprudence; Memorial Publishing for T. Yamamura’s Seventy Years of Age*, Shinzansha Publisher (1999), p. 26.

<sup>13</sup> For this matter, refer to ‘Maintenance of Natural Resources by an Intermediate Group of an Area’ written by Y. Kurumizawa, *Environment and Law*, written by T. Ushiyama et al.; Seibundoh (2004), p. 139 and below.

Although various human rights exist in the Constitution of Japan, the terms “environmental conservation” and “environmental right” are unexpectedly absent. Moreover, no regulations mentioning “environment” exist in the charter. Only a few regulations related to “environment” can be found. The latter half of Article 13 in the Constitution describes that the people’s right to life, liberty, and the pursuit of happiness shall be the supreme consideration. Considering that the enjoyment of an acceptable and healthful environment corresponds to the pursuit of happiness, this article can provide a basis of the environmental right. Moreover, Clause 1 of Article 23 in the Constitution states that all people have the right to maintain the minimum standards of wholesome and cultured living. With regard to the criteria of environmental rights, there exists a conflict of opinion among constitutionalists. However, the environmental right is generally accepted as one of the new human rights.

Nothing can be solved in cases of pollution and environmental disruption, even when sufferers ask the courts for relief after actually suffering damage. This fact exists in the social movement of proposing the environmental right; that is, it is important to ensure preventive measures in order to avoid damage. Therefore, people ask the courts for injunctions against suspect activities based on the environmental right that are not stipulated in the Constitution; however, no court has seriously recognized the environmental right in precedents.

The environmental right is primarily a public interest issue. Even if the environmental right is a constitutional right, it is nothing but an abstract right. Constitutionalists are generally of the opinion that the environmental right cannot be recognized as a concrete right that can be fought in a court. Therefore, in the future, we must ensure that the current concept of environmental rights is elevated to a concrete right.

## **(2) National environmental protection obligation**

Some countries have already established environmental conservation as a national target provision rather than as a right. The provision for the environmental right is contained in the charters of many countries, such as Greece, Georgia, South Korea, Norway, and Spain. It is also contained in some state constitutions of the United States. In Germany, which is often called an “environment advanced country,” the environmental protection obligation is stipulated in its constitution (Basic Law for the Federal Republic of Germany, Article 20a) instead of the right<sup>14</sup>. In Japan, the country’s obligation of environmental concern is established in the Environmental Basic Law.

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<sup>14</sup> For constitutional provisions of foreign countries concerning “environment,” refer to T. Nasu, ‘Arguments about the Environmental Right’ in *Search Documentation 2006-2-b*, Research and Legislative Reference Bureau, National Diet Library (2007). These provisions are listed in p. 11 and below.

### **(3) Lake Biwa environmental right lawsuit**

In the case of Lake Biwa, the environmental right was fought in the courts (it is called Lake Biwa environmental right lawsuit). In order to ensure effective utilization of water resources, the Special Measures Law for Lake Biwa Comprehensive Development was established in 1972. Based on this law, the Lake Biwa Comprehensive Development Project was carried out. This project included the following works: (a) construction of the lake shore embankment as well as the road used for management that surrounded Lake Biwa, (b) the dredging work for the Seta River, which flows out of Lake Biwa, and (c) construction of a sewage purification center. These works affected the water quality and ecosystem of Lake Biwa to some extent. Therefore, local residents who were gravely affected by the deterioration of Lake Biwa appealed to the national and local governments to stop these works. The plaintiffs claimed that the water resources were contaminated, and they said the environmental right and the right to safely drink clean water (the right to enjoy clean water) were infringed.

On March 8, 1989, the Otsu district court denied the plaintiffs' claim. It ruled that the so-called environmental right has no basis in the positive law, and that its contents and elements have many problems because of their abstractness and ambiguity. Therefore, the court refused to accept the plaintiffs' claim<sup>15</sup>.

### **3. Who manages water?**

In the case of basin management, somebody must manage the water; that is, the appointment of an administrative body (organization) in charge of basin management is important. As mentioned above, Japan has complicated water-related laws with extensive ramifications, and multiple administrative offices have jurisdiction over water-related laws. This makes the situation of water-related laws excessively complicated. To solve this, a centralized basin management system to oversee water issues is desirable. A basin management team would examine the functions and management of conventional administrative offices and the relationship between the central and local governments. Moreover, reform of bureaucracy-led legislative procedures would be sought.

#### **(1) Administrative organizations concerning water**

Who is the person in charge of basin management? The basic idea of the water management administration can be described thus: Both risk and water should be unitarily managed by the central government, according to the characteristics of

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<sup>15</sup> *Hanreijihou*, issue 1307, p. 24

matters.<sup>16</sup> Therefore, water-related matters are divided up to be managed by various administrative offices according to the concept of the water-related law. For example, rivers are managed by the Ministry of Land, Infrastructure, Transport and Tourism and the prefectural government concerned with each particular case. Water quality is managed by the Ministry of the Environment. Dams for agriculture and agricultural fields are managed by the Ministry of Agriculture, Forestry and Fisheries. Dams for power generation are managed by the Ministry of Economy, Trade and Industry.

The need for comprehensive water management has been urged for the structure of administrative organizations in Japan. Following the examples of foreign countries, it was required that a universal “water” administrative office be established. However, as pointed out by Mr. Toru Kondo, chief director of the Japan Water Resources Association (former director of the River Bureau, the Ministry of Construction), this office may never be established. Even if a matter is considered necessary in the future, high-ranking Japanese officials postpone it when they do not reach a mutual agreement.<sup>17</sup> Regarding such a problem, it is expected that the administrative organization legalism is reviewed, and the Diet rejects the administration-led organizational restructuring.<sup>18</sup>

The negative influence of the so-called vertical administration system may disturb a law’s expected effects. That is, when a law is actually interpreted and applied, a notification issued by some ministry or a memorandum between ministries takes priority over the law. Moreover, the provisions of laws are written in such a way that the people of Japan hardly understand their meanings. Consequently, a gap often arises between regulation and actual application of a law.

A legal system dealing with the environment and water has been gradually established on the basis of Environmental Basic Law, according to various related characteristics and fields. Whether this legal system is effective for environmental conservation will depend on adjustments made between concerned ministries.

In Shiga Prefecture, the environmental conservation of Lake Biwa has prompted an

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<sup>16</sup> K. Sakurai, ‘Flood Damage Countermeasures Based on Responsibility’, *How to Reduce Damage Caused by Disastrous Heavy Rainfalls and Floods*, edited by T. Tsujimoto; Gihodo Shuppan (2006), p. 125.

<sup>17</sup> ‘Evolving River Administration’, *Hogaku Kyoshitsu* No. 317 (2007), p. 50 (statement of Mr. Toru Kondo).

<sup>18</sup> For the significance of administrative organization legalism, refer to my article ‘Administrative Organization Legalism’, *Constitutional Contestation: extra issue of Jurist*, Yuhikaku Publishing (2008), p. 214.



exemplary success in this area. In order to remove the above-mentioned negative influence of the vertical administration system, the previous departments of environment, sewer, and forestry management were integrated, and the Department of Lake Biwa and the Environment was established.<sup>19</sup> This organizational restructuring is worthy of attention as a local accomplishment.

## **(2) Problems related to the right to enact ordinances**

The organizational problem of who is the managing body is closely related to the technical problem of how to exercise the body's authority and on what basis: by law or by ordinance.

Since environmental problems are closely connected with the actual conditions in a given area, the role of ordinances, which are laws created by a local government, is important. For example, in the case of water quality conservation of Lake Biwa, the Shiga Prefectural Ordinance Concerning the Prevention of the Eutrophication of Lake Biwa is well known. This ordinance regulated nitrogen and phosphorus contents in factory effluent before the whole country enacted a similar law.

Article 94 of the Constitution of Japan provides that "Local public entities shall have the right to manage their property, affairs and administration and to enact their own regulations within law." Therefore, the right to enact an ordinance is granted to a local government. However, there is a conflict among theories about in what cases and within what range an ordinance can be enacted. Although the Supreme Court expressed the general standard in the judgment of the Tokushima-City Public Safety Ordinance case,<sup>20</sup> conflict about the range of jurisdiction between law and ordinance remains unresolved even today.

In the case of the Air Pollution Control Law and the Water Pollution Control Law, more stringent and more extensive standards can be admitted by an ordinance. Therefore, for environmental conservation, it is understood that restriction by an ordinance in consideration of local distinctiveness has priority over these laws. Moreover, Professor Yasutaka Abe has explained that "Laws are usually imperfect, and filling of the imperfect portion of a law by an ordinance is allowed in principle. A special reason and a

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<sup>19</sup> Moreover, the Lake Biwa Restoration Division was established in that department because of organizational restructuring in April 2007.

<sup>20</sup> Grand Bench judgment on September 10, 1975, in the Supreme Court: *Supreme Court Reports (criminal cases)*, volume 29 no. 8, p. 489.

legislator's reasonable and evincive declaration are required in order to determine that a certain ordinance breaches a certain law."<sup>21</sup>

For instance, the system of public offering of information originally started from the engagement of an advanced municipality, and finally the law was enacted. Therefore, as regards basin management policy, it is also important for local governments to propose the system that is thought to be preferable based on law-enforcement officers' sense of the situation.<sup>22</sup>

#### **4. How to make a decision**

The problem of decision-making procedures for integrated basin management still remains. That is, we must still determine how to ask residents of an area (basin) for their substantial participation in a decision making and how to adjust the intentions of the various interested parties. In river management, the judgment of what is right and what is wrong and what should have priority cannot be given univocally.<sup>23</sup>

Article 92 of the Constitution of Japan provides that "Regulations concerning organization and operations of local public entities shall be fixed by law in accordance with the principle of local autonomy." Therefore, the request for resident autonomy—that is, local autonomy based on residents' intentions—is included in the constitution. However, actual attainment of resident autonomy is quite doubtful in the present situation. Basin management suggests the engagement of residents to realize resident autonomy. Since the advancement of decentralization reform, though, the existing decision-making system is led by local chiefs, lawmakers, and bureaucrats.

##### **(1) River improvement plan and resident participation**

The "eye-catcher" of the revised River Law of 1997 is the introduction of a resident-participation regulation for when a river improvement plan is developed (Clauses 3 and 4 of Article 16-2 in the River Law). As mentioned above, a system has been established to collect the opinions of people of learning and experience and the residents concerned with the plan.

Scholarly interest in resident participation is high, and there is too much literature on

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<sup>21</sup> Y. Abe, *Administrative Law Hermeneutics I*, Yuhikaku Publishing (2008), p. 295.

<sup>22</sup> N. Miyoshi, *supra* note 9, p.259.

<sup>23</sup> 'Evolving River Administration', *Hogaku Kyoshitsu* No. 317 (2007), p. 50 (statement of Professor Tsutomu Isobe).

this subject to count. Although various resident-participation procedures exist, their significance generally includes democratization, human rights protection, and the securing of administrative management rationality.<sup>24</sup> If residents participate in a river improvement plan, those who have previously been “wallflowers” will positively express their opinions and help secure administrative transparency and accountability by being involved in the administrative decision-making and policy-making processes.

However, as in the example of the Lake Biwa–Yodo River Basin Committee discussed below, many problems exist in the realization of resident participation. Recently, the governor has presented a written opinion against the Daido River Dam Project (Otsu City in Shiga Prefecture). This is evidence of the confused situation of resident participation. When the opinions of basin residents, governors, mayors, town managers, village headmen, and the central government are inconsistent, how to obtain a final consensus and how to judge the importance of the request for resident participation are still difficult problems indeed. Actually, an event that cannot be controlled by laws occurs day by day.<sup>25</sup>

## **(2) Lake Biwa–Yodo River Basin Committee**

The resident-participation regulation mentioned above was expected to be a kind of remedy, because basin residents’ opinions have not been easily reflected in administrative final decisions. Based on the regulation, the Lake Biwa–Yodo River Basin Committee was established in February 2001, and this committee operates dynamically even now.<sup>26</sup> The activities of the committee, including its organizational structure, management technique, and transparency of deliberation, are highly appreciated by administrative law scholars, as they have paved the way for administrative planning development procedure.<sup>27</sup>

A new technique of resident participation is required in the river improvement plan, because this plan manages a regional “water system” that exceeds the boundary of an individual local public entity, and it also seeks realize various flood control, water

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<sup>24</sup> Y. Tamura, ‘Local Government and Resident Participation’, *Legal Problems in Resident Participation*, Yuhikaku Publishing (2006), p. 2 and below.

<sup>25</sup> *Asahi Newspaper* morning edition on February 14, 2009.

<sup>26</sup> For the activities of this committee, refer to ‘Conservation of River and Life, Story of Lake Biwa–Yodo River Basin Committee’ written by K. Furuya in *monthly magazine Sekai* (January and March editions).

<sup>27</sup> Y. Tamura, ‘Integrated Administrative Planning and Resident Participation’ in the above book written by Y. Tamura, p. 210.

utilization, and environmental conservation purposes.<sup>28</sup> Various attempts of the Lake Biwa–Yodo River Basin Committee can be evaluated as the people’s inventive ideas constructing a new resident-participation model. However, resistance by the administration cannot be ignored. Even if a resident-participation system is prepared, people do not always participate, and a beneficial result is not always yielded.<sup>29</sup> Therefore, the future activities of this committee are attracting attention.

A means to prevent residents’ opinions from being ignored is indispensable. In the future, it will become more important than ever to examine how residents’ opinions are reflected in administrative decision making.

### **(3) Referendum**

From a viewpoint of residents’ direct decision making, the practical use of a referendum is worthy of examination. According to the common opinion of constitutionalists, the democracy of Japan has been established based on representative (parliamentary) democracy in principle, and the concept of direct democracy has been partially added. Actually, the people (residents) are not allowed to directly express their intentions on political matters, except for a small number of exceptions.

When the request for a referendum has spread all over the country, the subject matter was often related to environmental problems. Although many arguments, such as setting procedure for the subject matter and the relationship between the subject matter and the existing local assembly, remain to be explicated, a referendum is considered a reasonable device for regional residents to solve a regional problem.

### **(4) Information disclosure**

The significance of lawsuits concerning environmental conservation, including the above-mentioned Lake Biwa environmental rights lawsuit, lies in the opportunity they create for residents to express their views and extensively appeal to the public opinion; the fighting over victory and defeat is rather secondary. Moreover, necessary information on issues such as operational safety can be obtained.

Although the municipalities have had information-disclosure ordinances ready for a long time now, the central government has only recently applied the Information Disclosure Law. Constitutionalists have eagerly awaited the new system of information in the public domain, anticipating an increased

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<sup>28</sup> Ibid., p. 218.

<sup>29</sup> T. Ohno, ‘Investment in Social Capital Supporting Basin Governance’, *Environmental Governance*, edited by K. Matsushita, Kyoto University Press (2007), p. 175.

security of the people's right to know.

However, this law can only be applied to information held by the government and administrative agencies. Regarding environmental conservation, information pertaining to the enterprises concerned must be appropriately disclosed. Therefore, the central government is asked to appropriately supply the necessary information, taking into consideration the protection of rights and interests of the individuals and corporations involved, in accordance with the argument of Article 27 in the Environmental Basic Law. Moreover, enterprises are also requested to positively disclose information pertaining to them. Most importantly, a mechanism to provide the necessary information, at the planning stage, to residents who are affected by the behavior of organizations such as the central government, a municipality, or an enterprise is required.

#### **(5) Promotion of environmental education**

This paragraph is a brief description. For the benefit of the residents' decision making, environmental education and environmental study (Article 25 of the Environmental Basic Law), in addition to the declaration of necessary information, need to be made mandatory. In 2003, the Law Concerning the Encouragement of Willingness for Environmental Conservation and the Promotion of Environmental Education was enacted.

#### **Conclusion**

This report focuses on integrated lake basin management—a concept that is not familiar to the exponents of the constitution (law)—and examines several problems pertaining to this field. Through this examination, the issue of integrated lake basin management is confirmed to be closely related to important arguments connected with the interpretation of the constitution.

As Professor M. Nakamura proclaims, the importance of the environment cannot be evaluated correctly as long as environmental problems are treated within the frames of existing systems (legal, organizational, and social) and policies (political, operational, and technical)<sup>30</sup>. Moreover, in a lawyer's own words, the conventional idea of jurisprudence has another side that thwarts the solution of new problems such as an environmental problem<sup>31</sup>.

Laws (jurisprudence), by nature, lend themselves to gradual modification till they are in conformity with the actual circumstances of society. Therefore, laws have been able to stabilize and secure

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<sup>30</sup> M. Nakamura, 'Framework and problems of the Lake Biwa Comprehensive Preservation and Improvement Project' in *Environment and Laws Concerning Lakes* edited by Y. Abe and M. Nakamura; Shinzansha Publisher (1999), p. 289.

<sup>31</sup> Y. Abe, *supra* note 12, p. 17.

individuals' rights and interests in situations where rights, interests and values were initially inconsistent with each other. Jurisprudence, therefore, plays an invaluable role in modern society. However, when the laws are confronted with a new problem, ideas are required that will drastically change the old way of thinking. Since river administration is already acknowledged to be one of the most advanced administrative fields<sup>32</sup>, the foundation that will allow laws to be dynamically developed has been set.

Finally, to analyze the question of whether basin management is indispensable for effective river management, a mechanism to establish the legal concept of basin management is currently required<sup>33</sup>. This mechanism may even be employed to review the significance of the present study of the constitution (law).

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<sup>32</sup> 'Evolving River Administration', *Hogaku Kyoshitsu* No. 317 (2007), p. 37 (statement of Professor K. Sakurai).

<sup>33</sup> K. Sakurai, *supra* note 5, p. 725.

**References: Legislation chronology of the basin management-related events centering on Lake Biwa**

Year	Legislation	Remarks
1967	Environmental Pollution Prevention Act	
1979	Shiga Prefectural Ordinance Concerning the Prevention of the Eutrophication of Lake Biwa	
1981	Ordinance Concerning the Prevention of the Eutrophication of Lake Kasumigaura	
1984	Law Concerning Special Measures for Conservation of Lake Water Quality (law on lakes and marshes)	Lake Biwa was designated as one of the Designated Lakes and Marshes based on this law
1985	Ordinance to Protect and Nourish the Spiritual Home, Shiga	
1987	Water Quality Conservation Plan for Lake Biwa was enacted by Shiga Prefecture based on the Law Concerning Special Measures for Conservation of Lake Water Quality	
1992	<ul style="list-style-type: none"> <li>• Ordinance on Conservation of Reed Colonies around Lake Biwa in Shiga Prefecture</li> <li>• Ordinance on Prevention of Dust Scattering in Shiga Prefecture</li> </ul>	
1993	Enactment of the Environmental Basic Law	
1996	Ordinance Relating to Promotion of Domestic Effluent Measures in Shiga Prefecture (“Mizusumashi” Ordinance)	Establishment of the Lake Biwa Environment Division (Operation started in April, 1997)
1997	Revision of the River Law	
1999	Revision of the Water Pollution Control Law	
2000	Basic Law for Establishing the Recycling-based Society	Enactment of Mother Lake 21 Plan
2001		Establishment of the Lake Biwa-Yodo River Basin Committee
2002	Ordinance for Proper Leisure Activities in Lake Biwa	
2003	Law Concerning the Encouragement of Willingness for Environmental Conservation and the Promotion of Environmental Education	
2004	Landscape Act	
2007		Enactment of the 5th Water Quality Conservation Plan for Lake Biwa

