

Protecting the value of
natural resources
for the local communities
—
“The Norwegian Model”

Caroline Lund
Supreme Court Attorney, Norway



lund § co



Background

- Legal Secretary of The Norwegian Association of hydropower municipalities (“LVK”) since 1987
- Legal Secretary of “Kommunekraft AS” – managing the municipalities concession power, since 1993
- Legal Secretary of The Norwegian Association of outlying municipalities (Mountain areas) (“USS”) since 1994
 - Member of the Government Committee: Energy Taxation - new legislation, NOU 1992:34
 - Member of the Government Committee: Reversion of concession of acquisition of waterfalls for energy production, new legislation - NOU 2004:26
 - (2003-2008) Member of the User Council of Statnett (the National grid)

The importance of benefit sharing

- The need of defending the local communities a fair part of the revenue
- Benefit sharing may be one of the answers to the challenges in the global climate debate
- Benefit sharing will help Developing countries to get out of poverty





Innbyggernavn	Islending, islandsk
Hovedstad	Reykjavík
Tidssone	UTC+0
Areal	Rangert som nr. 107
– Totalt:	103 000 ^[a] km ²
– Vann:	3,1 %
Befolkning	Rangert som nr. 178
– Totalt:	308 910 ^[b]
Bef.tetthet	3 innb./km ²
HDI	0,869 (rangert som nr. 17)
Styreform	Demokratisk republikk

Innbyggernavn	Nordmann, norsk
Hovedstad	Oslo
Tidssone	CET (UTC+1)
– Sommertid	CEST (UTC+2)
Areal	Rangert som nr. 67
– Totalt:	385 186 ^[a] km ²
– Vann:	6 %
Befolkning	Rangert som nr. 116
– Totalt:	5 017 518 ^[b]
Bef.tetthet	13,03 innb./km ²
HDI	0,938 (rangert som nr. 1)
Styreform	Konstitusjonelt monarki

Starting points – one hundred years ago

- Norway's politicians have agreed that wealth from natural resources like hydropower should benefit the Norwegian people.
- Natural resources of great value are owned by the Norwegian People as a whole.
- This idea forms the basis for Norwegian hydropower legislation beginning in the early 1900s.
- Norwegian prosperity can generally be attributed to **legislation** established before the great hydropower constructions began more than a hundred years ago.



GLOMFJORD 1912

The Norwegian model

- A land rich of natural resources will not necessarily lead to a prosperous society.
- The **institutional system** established **to protect the values** is of crucial importance:
 1. Ownership: Large-scale hydropower are public property in Norway (own mainly by the state, county or the big cities)
 2. Rural interest: In Norway the affected areas are secured a part of *financial benefits* from hydropower **in the legislation**
 3. Environment: The environmental impact **is regulated both in the legislation and in the concession**

The affected community has in fact veto ?

- *”If the people living in the affected area feels that the construction of such power plant is not wanted, then in practice the local community's decision on this is conclusive; state authorities and Parliament are very careful about deciding to develop a power plant if the local community or municipality is against the idea”*
- Falkanger mfl – Norsk Vassdrags- og energirett 2002 s 58

The need to organize

- Legislation alone is not sufficient to ensure that local communities affected areas get their share of profits.
- The affected areas must know a continuing battle must be fought to maintain rights and positions established.



Hydropower in Norway

- Norway is the **sixth largest** hydropower generator in the world – and the biggest in Europe.
- Almost **99 %** of the total electricity production in Norway is **hydropower**
- **124,4 TWh** a year, (potential for more 33 TWh)
- We also use electricity for heating, most of our oil and gas are exported
- The host-municipalities part of the revenue: **5-6 billion NOK** (approximately € 0,01/kWh)

De største vannkraftproduserende landene i 1990:^[2]

Land	Produksjon (TWh)	Installerte effekt (GW)
Canada	293	59
USA	256	87
Sovjet	233	64
Brasil	204	45
Kina	126	36
Norge	122	27
Japan	96	26
Sverige	73	16
India	66	19
Frankrike	52	20

Hydropower in Sweden

- Sweden is the **eight largest** hydropower generator in the world.
- Almost **45 %** of the total electricity production in Sweden is **hydropower**
- **65 TWh** a year
- The power municipalities in Sweden does only get a small part of the financial revenue



Hydropower in Iceland

- Almost **73 %** of the total electricity production in Island is **hydropower**
- Geothermal energy **27 %**
- Hydropower production: **12,6 TWh** a year

NORMALISERAD ELPRODUKTIONSMIX I NORDEN

Danmark



Finland



Norge



Sverige



- Vattenkraft
- Kärnkraft
- Kraftvärme
- Kondenskraft
- Vindkraft

Why the affected areas should have a share of the profit and added value

- Local communities contribute to necessary and valuable energy production with their local nature resources
- Hydropower causes interventions in nature, and local communities forever have to stand these disadvantages of energy production
- LVK has for 30 years worked to secure the *host municipalities* (the mountain areas) proper benefits from the local energy production



VEMORK 1911



VEMORK 2012



12.12.2012

lund & co



How to share?

- Local municipalities want to be **as self-financed as possible***.
- Benefit sharing **reflects where the value is created**.
- Benefit sharing is also **partly compensation, but not charity - or support measures**.
- Rights **confirmed in the legislation** are more robust.
- *European Charter of Local Self-Government, 15. Oct 1985, art 9

The Norwegian model

1. Concessionary legislation (two old acts from 1917)
 - **Ownership:** Licensing policy; terms and conditions:
 - Time/period, reversion of concession
 - From 2008 only public owned companies can hold a licence
 - **Rural interest:** Concession conditions:
 - Concession fees (license fees)
 - Concession power (up to 10 % of the production)
 - Business development fund
2. Energy taxation
 - **Rural interest:** Local taxes and charges
3. Compensation to private property owners (the land, not the water)

Five different sources of income (Benefit sharing)

1. Concession **fee** (license fee)
2. Concession **power** (up to 10 % of the production)
3. Business development **fund**
4. **Natural resource tax** (approximately € 0,01/kWh)
5. **Property tax** (maximum € 0,4/kWh)

Concession fees

- Hydro power producers are obliged to pay concession fees to the affected municipalities,
 - (see Act No.16 §2, No.13 and Act No.17 §11)
- The concession fees are based on production capacity of the power plants
- The concession fees are:
 - parts of the local value added
 - compensation for damages and disadvantages, a kind of local “environmental tax”

Concession fees

- The concession fees are placed in local business development funds, where the yield is used to development of local industry and commerce
- The municipalities receive approximately €60 million a year from concession fees

Concession power

- The energy producer is obliged to renounce electricity to the costs of production to the host municipality,
 - (See Act No.16 §2, No.12, and Act No.17 § 12, No.15)
- Approximately 8 % of the produced electricity is reserved for municipalities to cost price
- This is a kind of *co-ownership* for the local community to a part of the electricity produced on the basis of local resources



Concession power

- The municipality may use the power provided as it sees fit;
 - It can use the power in public buildings or
 - give it away to the inhabitants for private consumption, or
 - sell the power to local business to that extent it is within the competition laws, or
 - the municipality can profit by selling the electricity to full market price
- The value of concession power to the municipalities is estimated to be approximately €350 million a year (2012)
- This value is increasing with rising energy prices

Supreme Court 1984

- *“The municipalities shall have these advantages in order to get a part of the natural resources that through the hydropower production is used by others”*



Business development fund

- The Act No.16 §12, No.1 /Act No.17. §12:
- *”It is possible to set additional terms in the concession, including order to establish business development fund for the municipality, when it is necessary because of public interests or in attention to private interests which are affected.”*



Local Taxes

- An important part of the municipalities gain comes from local taxes:
 1. Natural resource tax
 - (see the Norwegian Tax Act, 26. March 1999 No. 26 §18-2)
 2. Property tax on hydropower plants
 - (see The Norwegian Property Tax Act, 6. June 1975 No.29 §8 and the Tax Act §18-5)



European Charter of Local Self-Government, 15. Oct 1985

- Art. 2:
- *The principle of local self-government shall be recognised in domestic legislation , and where practical in the constitution*
- Art 9:
- *Part at least of the financial resources of local authorities shall derive from local taxes and charges*



The Parliament 1996 – The hydropower tax reform

- *“Hydropower is a national resource **deeply rooted in the local communities**. The strong local foundation implies that the **host municipalities will have special tax income** from the hydropower production. There has been a broad consensus about that”*

Natural resource tax

- A tax which is, as far as I know, distinctively Norwegian
- A tax only for producers of hydropower.
- The tax is NOK 1,1 øre/kWh (approximately €0,015/kWh) to the municipality, and NOK 0,2 øre/kWh (approximately €0,003/kWh) to the county.
- All together the municipalities receive approximately €205 million a year from natural resource tax.

Natural resource tax

- Important: The natural resource tax is not an additional tax burden on the companies (producers), because it is deducted from ordinary income tax (which in Norway is a state tax, not a local tax).
- The natural resource tax was introduced in 1997. The Norwegian parliament argued:



The Parliament 1996 – The hydropower tax reform

“We point out the society’s historical obligations to the municipalities who have accepted huge interventions in their nature. In recognition that Norwegian hydroelectricity production is a national resource deeply rooted locally and regionally, the municipalities should be secured steady income from the local power production. It is a substantial part of our regional policy that municipalities can utilize their resources to local value creation, and as much as possible be independent of state transfers.”



Property tax

- In Norway, property tax is a local tax
- Each municipality decides whether they call in property tax
- Most of the *host* municipalities of hydropower plants (power municipalities) call in property tax
- The municipalities receive approximately €277 million a year from property taxes from owners of hydro power plants.

Benefit sharing new small scale hydropower

- In Norway there are no benefit sharing in form of concession fee, concession power or fund from “new hydropower” (without reservoir).
- No natural resource tax, only property tax
- LVKs members claims the same rights for all hydropower production, also small scale hydropower

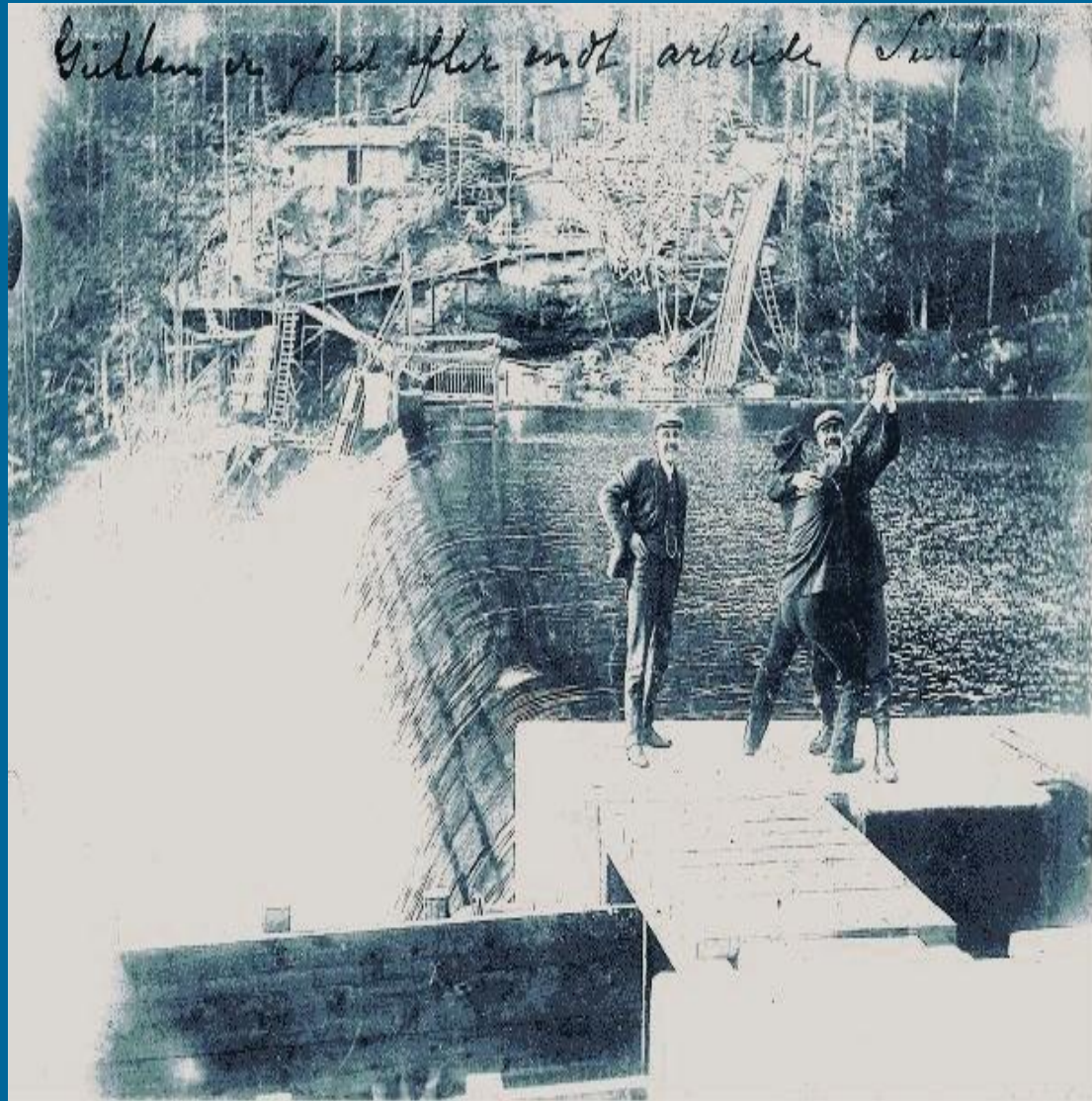
Conclusion

- The Norwegian legislation has from the beginning of the development of hydropower production *one hundred years ago* had legal provisions that **pay respect to the local communities right to take part** in the revenue from their own natural resources



Conclusion

- This legislation is based upon two principles:
- The local communities has a **strong belonging** to their natural resources
- All hydropower production implies destruction of nature and the communities are entitled to **compensation** for such destruction





Thank you for your attention!