

Regulatory Framework on Utilization and Conservation of Groundwater in Afghanistan (Draft)

In order to make necessary provisions for the rational development, operation, utilization, conservation and management of the groundwater available in the state of Afghanistan and making the groundwater pollution free by preventing from environmental and other hazardous effect, this regulatory framework has been drafted and presented for discussion. After in house finalization, it has to be circulated to all river basin agencies for comments and suggestions. This regulatory framework should be regarded as regulation under the water law of Afghanistan.

A. Definitions

- a. Groundwater means the water lying underground in the state of Afghanistan.
- b. Aquifer means the water bearing geological formation lying underground as groundwater reservoir.
- c. Beneficial use means the act of properly utilizing the available means and resources without grieving others.
- d. Conjunctive use means the development and management to be carried out by an integrated utilization of groundwater and surface water.
- e. Committee means the groundwater development and conservation committee.
- f. License means a license or permission to be issued under this act to develop, utilize and distribute the groundwater.
- g. Licensee means any person or corporate body having obtained the license to utilize groundwater.
- h. Development means the act of investigation, feasibility study, mode and type of utilization, detailed engineering design, prepared extensively by analyzing technical facts and data including the quantity of the groundwater that can be utilized and distributed, type of service that can be made available to the consumers, type and number of the consumers

benefiting from the service and impacts on the environment from its utilization.

- i. Structure means tube well, well, pump, pump house, electro-mechanical equipment, canal, water tank, pipe line outlet, tap, ditch, channel and other similar structures built to obtain, mix, store, purify, distribute and control the groundwater.
- j. Service means the service to be provided by the Government of Afghanistan or the licensee to the consumers.
- k. Service charge means any fee and charge payable by the consumer for utilizing the service.
- l. Consumer means any person or body availing the service provided by the Government of Afghanistan or the licensee.
- m. Consumer's association means the association formed under this act.
- n. Inspector means the authorized person appointed or designated by the Government of Afghanistan.

B. Ownership, Utilization and Conservation of Groundwater

B.1 Ownership of Groundwater: The ownership of groundwater in the country belongs to the people of Afghanistan and the government is responsible for their protection, control, management and effective use.

B.2 Power to Specify Groundwater Conservation Area: The Government of Afghanistan may specify any area of the state as the groundwater conservation area by fixing the boundaries in order to conserve the groundwater available in such area. The Government may lift the specification of any groundwater conservation area on the basis of the forecast of groundwater demand for present and future utilization by periodically surveying, observing and monitoring the groundwater stored in such area.

B.3 Prohibition and Control of Utilization of Groundwater: The Government may issue necessary orders to prohibit and control the utilization of the groundwater in any particular place of the state in the following circumstances.

- a. If the level of water in the aquifer decreases as a result of excessive use
- b. If the quality standards of groundwater get deteriorated

B.4 Power to Withdraw Orders: If it is not necessary to keep on any order issued to prohibit and control the utilization of groundwater, the Government may lift such prohibition or control on the basis of recommendation from the Water Management Department/River Basin Agency for following reasons.

- a. If the level of water in the aquifer increases to satisfactory level
- b. If the quality standard of the groundwater is enhanced

B.5 Power to Determine Groundwater Utilization Limit: The Government may for the purposes of utilization of the groundwater, determine the terms and limits of the utilization of the groundwater on the basis of such technical aspects as the mode of using groundwater, distance, depth, quantity, pollution tolerance limit, environmental protection, taking into account of geographical area.

No one shall utilize the groundwater on the contrary to the terms and limits determined by the Government.

B.6 Prohibition on Polluting Groundwater: The Government may determine necessary quality standards and pollution tolerance limit of groundwater in order to maintain quality standards of the groundwater and to prevent the aquifer from being significantly adversely affected from chemical wastes, insecticides, pesticides or similar other pollution.

B.7 Prohibition on Significant Adverse Impacts on Environment: Groundwater shall be utilized in a manner not to cause significant adverse impacts on environment. The Government or the licensee has to pursue necessary measures to prevent it from such incidents.

B.8 Requirement of Beneficial Utilization of Groundwater: The Licensee shall utilize groundwater beneficially. If any dispute arises in this regard, the Water Management Department/River Basin Agency shall hold necessary inquiry and take decision on whether to allow or not for the use.

B.9 Priority Order of Utilization of Groundwater: In general, the following priority shall be taken as a basis.

- a. Domestic uses
- b. Irrigation and agricultural uses
- c. Industrial uses
- d. Other uses

However the Government may set any necessary priority order to execute project in consonance with the approved national plan.

B.10 Extensive Public Utilization: Any groundwater utilization project developed and operated by obtaining license under this act shall not be nationalized. But for the purpose of extensive public use in order to benefit much more population without affecting the earlier ones, the Government may acquire and utilize such project by paying compensation to the licensee.

C. Provisions Relating to License

C.1 Prohibition on Utilization of Groundwater without License: No one shall be entitled to utilize groundwater available in the state of Afghanistan without obtaining the license under this act.

C.2 Utilization of Groundwater without License: No license shall be required to utilize groundwater in the following circumstances.

- a. In cases where the Government itself utilizes the groundwater
- b. In cases where the Government developed and handed over the project to the consumer association
- c. In cases where the groundwater is utilized for domestic and irrigation purpose on an individual or collective basis

C.3 Application for Groundwater Utilization License: Any person or corporate body willing to utilize the groundwater has to make an application in a prescribed format with prescribed fee to the Water Management Department/River Basin

Agency. The application has to be accompanied with technical, financial and environmental reports also.

C.4 Matter of Public Concern for Public Information (Public Hearing): Upon receipt of an application, the Water Management Department/River Basin Agency shall publish a notice setting out the details related with the matters of public concern for public information. Any one may give suggestions within 30 days setting out the pertinent details if any significant adverse impacts are likely to occur while utilizing groundwater. The suggestions received from the public shall be addressed by prescribing necessary terms in respect of minimizing significant impacts while issuing the license.

C.5 Issuance of License to Utilize Groundwater: If it appears appropriate to issue license the Water Management Department/River Basin Agency shall issue the license in a prescribed format within 30 days from the public opinion. The term of the license shall be of 25 years. The licensee has to commence the work within 90 days from the license issuing date. The licensee has to submit monthly and final report during and after completion of construction works respectively.

C.6 Sale or Transfer of License: The licensee may sale or transfer license to any other person or body subject to approval by the Water Management Department/River Basin Agency.

C.7 Royalty for Groundwater Utilization: The licensee has to pay the royalty to the Government of Afghanistan as prescribed.

C.8 Amendment to License: If any matter contained in the license has to be altered due to occurrence of any technical difficulty in the course of utilization and operation, the licensee has to make an application setting out the reasons. The Water Management Department/River Basin Agency may make necessary amendment to the license by considering the facts.

C.9 Renewal of License: The licensee may apply for the renewal of license prior to the expiration of its term. The Water Management Department/River Basin Agency may extend its term in a reasonable manner. The renew fee shall be as prescribed.

C.10 Cancellation of License: The Water Management Department/River Basin Agency may issue an order to cancel the license in the following circumstances.

- a. If an application for renewal of the license is not made before expiring the date of its term.
- b. If the licensee does not follow the terms and conditions according to this act.
- c. If the licensee fails to follow the instruction provided by the Water Management Department/River Basin Agency for the improvement.

The licensee shall be given full opportunity to defend him/herself.

C.11 Power to Enter into Contract for Utilization of Groundwater: The Government of Afghanistan may enter into a contract with anybody or company for the development, operation, utilization and management of its groundwater resources.

D. Consumer's Association

D.1 Formation of Consumer's Association: The persons in the community willing to utilize groundwater for collective benefits on an institutional basis may form a consumer's association. The statute, formation, registration and pertaining procedures shall be as prescribed.

D.2 Power to Handover Project to Consumer's Association: The Government may develop groundwater project and handover to consumer's association for the operation, protection and management by entering into an agreement specifying its terms for service utilization.

D.3 Prohibition on Issuance of License: Once a consumer's association is registered and come to an agreement with the Government to utilize groundwater in an area, no license shall be issued to others or no new consumer's association shall be involved, so that the quantity of water to be utilized will not be affected.

E. Provisions Relating to Security, Repair, Maintenance and Service

E.1 Security, Repair and Maintenance: The licensee shall be responsible for the security, repair and maintenance of the whole groundwater system which he/she has taken for utilization.

If the licensee seeks some security arrangement from the Government, the Government shall provide such security at licensee's cost.

If the licensee seeks some technical support from the Government, the Water Management Department/River Basin Agency may provide technical advice to the licensee.

E.2 Terms for Consumption of Service: The licensee may specify logical terms while providing services.

E.3 Service Charge: The licensee may collect the service charge from the consumers. If the consumers do not pay the service charge, the licensee may stop such service.

E.4 Petition against the Licensee: Any consumer not satisfied with service from the licensee may file a petition to the Water Management Department/River Basin Agency and necessary order or direction shall be issued.

F. Miscellaneous

F.1 Fine and Punishment: If anyone utilizes groundwater without obtaining license under this act shall be fined as prescribed.

If anyone maliciously destroys or demolishes the structure or causes any loss or damage to the structure, the amount of such loss shall be recovered from the doer with equal amount of fine and shall be punished with imprisonment of three years.

F.2 Authority to Hear Cases: The Water Management Department/River Basin Agency shall have the authority to hear and settle the cases.

F.3 Appeal: Anyone not satisfied with the decision of Water Management Department/River Basin Agency may make an appeal to The Ministry of Energy and Water.

F.3 Recovery as Government Dues: If anyone fails to pay any charge to be paid under this act shall be recovered as government dues from the doer.