

In the Name of God, the Merciful, the Compassionate

Water Law

Chapter One General Provisions

Preamble

Article One:

This law is to enforce the principles of Article Nine of The Constitution of Afghanistan for the purpose of conservation, equitable distribution, and the efficient and sustainable use of water resources, strengthen the national economy and secure the rights of the water users, in accordance with the principles of Islamic jurisprudence and the praiseworthy customs and traditions of the people.

Ownership and Management of Water

Article Two:

Water belongs to the public and the government is responsible for its protection and management.

Terminologies

Article Three:

The following terminologies used in this law have the following meanings:

1. **Water Resources:** include surface and ground water that flow in and out of, or are stored systematically or intermittently in rivers, streams, canals, wetlands, lakes, glaciers, reservoirs, springs, Karezes, and wells.
2. **Surface Waters:** are waters that exist on or near riverbeds, streams, canals, wetlands, drainages, glaciers and in any other surface storage.
3. **Ground Waters:** are waters that are underground at various depths (Aquifers) including springs, Karezes, deep wells, conventional dug wells, or are otherwise underground.
4. **Watershed:** is the upper Catchment Area.
5. **Activity Permit:** is an official written document issued to undertake activities related to storage and other associated uses according to the provisions of this law.
6. **Usage License:** is an official written document issued for usage of water resources according to the provisions of this law.
7. **Strategy:** is the method of implementing approved plans with regard to protection, usage, development, management and control of water resources within specific policy frameworks.

8. **Pollution:** direct and indirect changes in biological, chemical and physical properties of water which are harmful to the health of human beings and other aquatic and non-aquatic organisms including flora that are dependent on water; or that make water harmful for its common usage.
9. **Water User Association:** is a voluntary assembly of real and legal persons formed according to the provisions of this law with the objectives of meeting social, economic and vocational use of water.
10. **Ecosystem:** consists of all living organisms and plants in a region and their relationships with each other and their environment.
11. **River Basin:** is a Catchment area with water naturally flowing in a common course.
12. **River Sub-Basin:** is a division of a River Basin.
13. **Transboundary River:** is a river that flows on the common border with Afghanistan and one or more neighboring countries.
14. **River Basin Approach:** is integrated management to manage water resources and to establish River Basin Agencies within the natural boundaries of the river basin.
15. **Catchment Area:** is an area that captures precipitation and water flows naturally into storage, streams, rivers, and other water courses.
16. **Aquifer:** is a ground layer that absorbs, retains and conveys water.
17. **Water Service Providers:** are governmental and non-governmental organizations, companies and Water User Associations that are established to provide water supply, collection of wastewaters and other related services to water users.
18. **Irrigation Network:** is a group of canals and other delivery systems that convey water from the main canals to the farms.

Water Resources Management and Development

Article Four:

Integrated water resource management and development for the purpose of sustaining supply and conserving water resources and protecting the environment is carried out using a river basin approach in accordance with this law.

Water Resources Development and Conservation

Article Five:

Development, storage, use, control, and conservation of the water resources of the country will be guided by the national water policy and strategy and environmental protection with regard to the provisions of this law.

Public Use of Water Resources

Article Six:

Water resources may be used according to the provisions of this law with due consideration for the praiseworthy customs and traditions of the people to meet the needs for drinking water, livelihood, agriculture, industry, public services, energy production,

transportation, navigation, fisheries and the environment. Priority for use of water resources shall be given to drinking water and livelihood.

Fees for Water Services

Article Seven:

Water use is free. The water service providers may charge the users a fee for supplying, storage, transmission, diversion, treatment, and operation and maintenance of the water supply and irrigation systems and other related activities according to separate regulations.

Responsibilities of Government Institutions

Article Eight:

- (1) All the water of the country belongs to the people of Afghanistan and the government is responsible for its protection, control, management and effective use in accordance with law.
- (2) Planning, management and development of water resources is the responsibility of the Ministry of Energy and Water which is carried out in cooperation with other relevant line ministries and institutions.
- (3) Planning for and implementing activities to survey, explore, investigate, research and assess the groundwater reserves and their protection from pollution including identification of chemical and bacteriological contents of the groundwater, is the responsibility of the Ministry of Mines with cooperation from the Ministry of Public Health and the National Environmental Protection Agency.
- (4) Protection and control of surface water from pollution and monitoring of its quality is the responsibility of National Environmental Protection Agency with cooperation from the Ministry of Agriculture, Irrigation and Livestock, Ministry of Energy and Water, Ministry of Urban Development, Ministry of Rural Rehabilitation and Development, Ministry of Public Health and Ministry of Mines.
- (5) Determination of irrigation norms in different river basins, irrigation drainage systems and other related research for water use for agriculture and irrigation are the main responsibility of the Ministry of Agriculture, Irrigation and Livestock with the cooperation from Ministry of Energy and Water, Ministry of Transport and Aviation, Ministry of Public Health and National Environmental Protection Agency.
- (6) The provision of a water supply for drinking and livelihood, including construction of water treatment plants, water conveyance facilities, sewerage systems and sewage treatment plants in accordance with accepted standards in urban settings, is the responsibility of the Ministry of Urban Development Ministry of Urban Development with cooperation from Ministry of Energy and Water, Ministry of Mines, Ministry of Public Health, Ministry of Agriculture, Irrigation and Livestock, and National Environmental Protection Agency.
- (7) The provision of drinking water supplies and sewage treatment systems in the villages by governmental and non-governmental organizations and construction

of small water infrastructures for various uses in villages according to the accepted health standard practices in the country are the responsibility of the Ministry of Rural Rehabilitation and Development in cooperation with Ministry of Energy and Water, Ministry of Public Health, Ministry of Mines, Ministry of Agriculture, Irrigation and Livestock, Ministry of Urban Development and National Environmental Protection Agency.

- (8) Rights-of-way for water resources and water infrastructure, storage facilities, diversions, rivers, traditional and engineered canals, Karezes, springs, wells, and other related natural water courses such as washes are protected from encroachment. Rights-of-way for water resources will be determined in light of the principles of Islamic jurisprudence by the Ministry of Energy and Water in cooperation with Ministry of Agriculture, Irrigation and Livestock, Ministry of Mines, Ministry of Rural Rehabilitation and Development and related departments.
- (9) Management and planning for the transboundary waters between Afghanistan and its neighboring countries and changes of watercourses are the responsibility of the Ministry of Energy and Water with agreements from the Ministry of Foreign Affairs, Ministry of Interior and the Ministry of Border and Tribal Affairs.
- (10) Institutions providing water supply and wastewater disposal services shall maintain a balanced record of water consumption and wastewater disposal including a record of physical, chemical and bacteriological quality for water. Such information shall be submitted to the pertinent administrative authorities when required.

Supreme Council of Water Affairs Management

Article Nine:

- (1) The Supreme Council of Water Affairs Management is established for better coordination and revision of facilities in the implementation of water affairs programs, development and operation of water resources programs. The members of the Supreme Council of Water Affairs Management are appointed by the President.
- (2) The functions and scope of activities of the Supreme Council of Water Affairs Management shall be stipulated and approved by the Supreme Council of Water Affairs Management in separate terms of reference in accordance with this law.

Chapter Two

Management of the Use of Water Resources

Duties of the Ministry of Energy and Water

Article Ten:

The Ministry of Energy and Water has the following duties and responsibilities regarding the management of water resources:

- (1) Preparation and processing of water resources policies and strategies in accordance with the provisions of this law in collaboration with the line ministries and relevant agencies.

- (2) Preparation of utilization plans for water resources for different uses based on national priorities to propose to the Supreme Council of Water Affairs Management.
- (3) Collection, analysis and evaluation of hydrological data for surface water.
- (4) Forecasting and warning of floods and droughts.
- (5) Construction, supervision, control, operation and maintenance of hydro power stations, small and large.
- (6) Rehabilitation and construction of dams, headworks and main canals and oversees the safety and stability of such.
- (7) Construction, control and supervision of the structures for river bank protection.
- (8) Management and control of the structures along the rights-of-way of river banks and waterways.
- (9) Engineering to upgrade the traditional main irrigation canals.
- (10) Establishing River Basin Agencies including advisory boards consisting of relevant institutions; and monitoring their activities.
- (11) Facilitating financial and technical opportunities and capacity development for the river basins in cooperation with the Ministry of Agriculture, Irrigation and Livestock, Ministry of Urban Development, Ministry of Rural Rehabilitation and Development and National Environmental Protection Agency.
- (12) Establishing Water User Associations.
- (13) Issuing Water Usage Licenses in accordance with the provisions of this law.
- (14) Implementing other related duties in accordance with the provisions of this law.

Duties of the Ministry of Agriculture, Irrigation and Livestock (MAIL)

Article Eleven:

The Ministry of Agriculture, Irrigation and Livestock has the following duties with regard to use of water resources;

- (1) Construction, rehabilitation, development and protection of Irrigation Networks.
- (2) Oversees Irrigation Networks including equitable distribution of water within the Irrigation Networks with cooperation from Water User Associations.
- (3) Construction of diversion dams in the Irrigation Networks.
- (4) Rectify and improve the catchment areas through agricultural measures to mitigate flood risks, protect and maintain the environment.
- (5) Establishing irrigation associations to participate in decision making processes regarding planning and use of water resources and operation and maintenance of Irrigation Networks in the River Basins.
- (6) Conducting research to explore norms and economic effectiveness of irrigation.

- (7) Promoting appropriate irrigation technologies with the purpose of improving water quality and reducing water losses.
- (8) Safeguard and protect Irrigation Networks waterways as well as the washes crossing them.
- (9) Implementing other related duties in accordance with the provisions of this law.

Chapter Three

River Basin Agencies and Councils

River Basin Agencies

Article Twelve:

- (1) River Basin Agencies and Councils are formed with the purpose of integrated water resources planning and participation of the users and other social and cultural institutions in the decision making processes for management and development of water resources, protection of the environment, equitable distribution of water and other water related matters.
- (2) The River Basin agencies have the following duties and authorities:
 1. Develop plans and manage water in accordance with national water resources policies in line with the characteristics and needs of the relevant basin.
 2. Consultation with River Basin Council on related matters.
 3. Develop local programs for the development, utilization, conservation and management of water resources for water right allocation.
 4. Implement decisions of the River Basin Councils.
 5. Adopt short, mid and long-term measures to mitigate the effects of droughts, floods and other natural disasters.
 6. Coordinate with river sub-basin councils.
 7. Monitor the activities of the river sub-basin councils.
 8. Provide facilitation to the River Basin council on administrative affairs.

River Basin Councils

Article Thirteen:

- (1) The Ministry of Energy and Water establishes the River Basin Councils consisting of representatives of water users, relevant central and local departments of the line ministries, and other relevant stakeholders in the river basin.
- (2) The Ministry of Energy and Water may delegate, as required, some of its powers to the River Basin Councils in accordance with law after improving the required working capacity and capability through technical trainings.

Duties of the River Basin Councils

Article Fourteen:

- (1) The duties of the River Basin Councils are as follows;
 1. Prepare and develop the strategy for water resources management in accordance with the national water policy in consideration of the needs and requirements of the respective basin.
 2. Determine water allocations in accordance with national water policy in the respective basins.
 3. Manage and monitor the right to use water (water rights) in the respective basins.
 4. Establish the necessary conditions in order to evaluate, adjust and deny use permits in the respective basin.
 5. Issue, register, modify or cancel permits and archive related documents; and supervise the written terms of the permit.
 6. Resolve disputes that arise due to distribution and use of water in the respective basins.
 7. Decision making on imposing and collecting of penalties in accordance with this law.
 8. Supervise the performance of the activities of the river sub-basin councils in the respective basins.
 9. Modify or reject decisions of river sub-basin councils, urban (water) councils and water service providers.
 10. Requisition to acquire statistical and analyzed data from the river sub-basin councils to make decisions..
 11. Supervise compliance with the provisions of this law in daily activities.

- (2) In order to carry out their activities, River Basin Councils may delegate some of their duties and authorities to river sub-basin councils or water service providers except the issuance of permits.

Cancellation or Modification of Issued Permits

Article Fifteen:

A River Basin Council can cancel or modify an issued permit under the following conditions:

- (1) When the water user, without a justified reason, does not utilize or over utilizes his/her allocated water.
- (2) When adequate water is not available to use for various purposes.
- (3) When national interest requires.

Implementation of River Basin Council Decisions

Article Sixteen:

The decisions of the River Basin Council made to resolve disputes and differences on water issues and the payment of fines in cash are implementable. In case of dissatisfaction, the parties can appeal to the Ministry of Energy and Water. If the parties

are still not satisfied with the decision of the Ministry of Energy and Water, can appeal to the court.

River Sub-Basin Council

Article Seventeen:

- (1) Ministry of Energy and Water shall establish sub-basin councils composed of members representing water users, relevant governmental institutions and other relevant stakeholders.
- (2) River sub-basin councils have, in their respective sub-basins, the rights and authorities mentioned in Article Fourteen, item (1) of this law except sub-items 5, 8 and 9.
- (3) The number of members of a River Basin Council and a river sub-basin council and the method to elect the representatives of the users will be established by a charter.

Water User Association (WUA)

Article Eighteen:

- (1) Water User Associations and irrigation associations can be established in accordance with this law.
- (2) The manner of activities, extent of duties, authorities and other associated issues related to Associations will be established by their respective charter in accordance with this law.
- (3) Ministry of Energy and Water and Ministry of Agriculture, Irrigation and Livestock are appointed to cooperate and help the related Associations in registration, official recognition, and capacity building.

Chapter Four

Use of Water

Right of Use of Water

Article Nineteen:

The use of water resources without a permit is prohibited except for the following purposes:

- (1) Drinking water, livelihood and other needs, if the total daily consumption does not exceed 5 cubic meters per household.
- (2) Use for navigation provided no damage occurs to the banks and right-of-way area of the river and there is no adverse impact to the quality of water exceeding permissible norms.
- (3) For fire extinguishing.
- (4) Existing water rights until Article Twenty, item (1) is in effect and implemented.

Permit

Article Twenty:

- (1) Existing water rights will be gradually converted to permits in accordance with the policies of the relevant River Basin Agency.
- (2) Water User Associations obtain water use permits after proper registration and in accordance with the provisions of this law.

Application for Activity Permit and Usage License

Article Twenty One:

- (1) An Activity Permit and Usage License, including for government projects, will be issued at the request of the applicants and in accordance with the provisions of this law.
- (2) Application submission to obtain an Activity Permits or a Usage License is mandatory under the following circumstances:
 1. Surface and groundwater use for newly established development projects.
 2. Disposal of wastewater into water resources.
 3. Disposal of drainage water into water resources.
 4. Use of water for commercial and industrial purposes.
 5. Use of natural springs with mineral contents or hot springs for commercial purposes.
 6. Digging and installation of shallow and deep wells for the commercial, agricultural, industrial and urban water supply purposes.
 7. Construction of dams and any other structures for water impoundment, when the storage capacity exceeds 10,000 cubic meters.
 8. Construction of structures that encroach the banks, beds, courses or protected rights-of-way of streams, wetlands, Karezes, and springs.
- (3) The sale and purchase of an Activity Permit and a Usage License in terms of this law is prohibited.
- (4) The procedure to issue Activity Permits and Usage Licenses will be prepared and approved by the Ministry of Energy and Water with the cooperation of other relevant institutions and line Ministries.

Installation of Measuring Devices

Article Twenty Two:

Water extraction from a source and discharge of wastewater to water courses shall be measured with reliable and certified measuring devices by relevant institutions.

Use of Water for Agriculture

Article Twenty Three:

- (1) The Ministry of Agriculture, Irrigation and Livestock may delegate to registered Irrigation Associations the responsibility for the distribution of water within irrigation networks in designated areas.

- (2) Irrigation associations may delegate the responsibility for the management and distribution of water rights to a Head Water Master (*Mirab Bashi*) or Water Master (*Mirab*) who are designated by the irrigation associations.
- (3) The Ministry of Agriculture, Irrigation and Livestock, at the request of Irrigation Associations, will provide necessary advice and technical guidance for improving and upgrading irrigation networks and issues related to the distribution of water and increasing the level of agricultural production in subject areas.

Water Quality Standard

Article Twenty Four:

- (1) The water quality standard for drinking water and sanitation will be established by the Ministry of Public Health considering international norms.
- (2) The water quality standard for agriculture will be established by Ministry of Agriculture Irrigation and Livestock considering international norms.
- (3) The standard for industrial wastewater discharge that is recommended in line with accepted standards by the Ministry of Urban Development in close collaboration with Ministry of Mines, Ministry of Public Health, Ministry of Agriculture, Irrigation and Livestock and National Environmental Protection Agency shall be strictly observed.

Use of Water for Power Generation

Article Twenty Five:

Water usage for generating energy on micro and macro scales, based on feasibility study, shall be managed in accordance with this law. Installation of micro hydels on irrigation networks can be done with agreement from Ministry of Agriculture, Irrigation and Livestock, Ministry of Rural Rehabilitation and Development and irrigation associations.

Government Water Resources Projects

Article Twenty Six:

- (1) The Government may under required conditions, transfer the water resources projects that are established based on this law, together with the license to Water User Associations and irrigation associations.
- (2) Water User Associations and irrigation associations have the ownership of those projects mentioned in item (1) of this Article and are responsible for the operation and maintenance.

Transportation and Navigation

Article Twenty Seven:

Rivers, canals and other water resources may be used for transportation and navigation purposes provided that the request submitted by the River Basin Agency is cleared by the

Ministry of Energy and Water and endorsed by the Supreme Council of Water Affairs Management.

Suspension of the Right to Use Water

Article Twenty Eight:

The right to use water shall be suspended under the following circumstances:

- (1) When a water user does not pay the water fees to a service provider.
- (2) When a user uses the provided water services contrary to the provisions of this law.
- (3) When the user misuses the water services.

Chapter Five

Protecting Water Resources

Establishing Water Resources Quality Standards

Article Twenty Nine:

- (1) The National Environmental Protection Agency shall establish in a separate regulation, in cooperation with the Ministry of Public Health and other relevant institutions, the quality standard at the source for various uses.
- (2) The water services provider has the obligation to supply quality drinking and domestic water in accordance with the standards of the Ministry of Public Health.
- (3) National Environmental Protection Agency, in cooperation with the Ministry of Public Health and other relevant institutions, has the obligation to set, determine and maintain the pollution tolerance limits for water resources.

Water Resources Pollution Prevention

Article Thirty:

- (1) Real and legal persons cannot contaminate water resources by using or discharging garbage, waste water, industrial waste, chemicals and toxics beyond the limit.
- (2) A violator, based on this law, is required to compensate for losses and shall be punished depending on the circumstances.

Control and Monitoring of the Quality of Water

Article Thirty One:

- (1) MEW and the River Basin Agency in cooperation with the River Basin Council and other stakeholders shall control and monitor the quality based on the regulation mentioned in Item 1 of Article 29 of this law.
- (2) Persons in charge of industrial facilities have the responsibility to provide monthly written reports of treatment to the relevant authorities responsible for monitoring the water quality standards.

Negative Impacts on the Environment

Article Thirty Two:

- (1) Owners of large water resources developmental projects shall be responsible to conduct an assessment of the negative impacts on the environment at their expense, in accordance with the environmental law and policy.
- (2) Water users are responsible to use water in such a way that is not harmful to ecological systems and does not cause erosion and landslides and or other negative and adverse impacts to the environment.
- (3) Those owners of water resources developmental projects who cause diversions into the course of water are responsible to not damage and to meet the needs of water users and water related ecosystems in the downstream.

Maintenance of Dams

Article Thirty Three:

- (1) Ministry of Energy and Water is responsible for study, design, construction, utilization, safety, stability and maintenance of large water dams.
- (2) Ministry of Energy and Water in cooperation with other relevant institutions will prepare the guideline for differentiation of small and medium dams and the role of Ministries and relevant institutions and obtain the approval of the Supreme Council of Water Affairs Management.
- (3) Dam owners are responsible to employ experienced technical staff to fully ensure dam safety and maintenance in accordance with safety norms.
- (4) If ownership of the dams is unidentified, MEW has to take the responsibility.
- (5) If dam owners are negligent in the protection, maintenance and safety condition of the dams they will be subject to the approved laws.

Chapter Six

Dispute Resolution

Dispute Resolution Authority

Article Thirty Four:

- (1) Disputes regarding use of water resources among water users are resolved by Water User Associations with the help of a Head Water Master (*Mirab Bashi*) and a Water Master (*Mirab*) within a maximum of two days. In case lack of agreement of both parties, the case will be referred to the river sub-basin council.
- (2) If a dispute is not resolved by the river sub-basin council within three days, the case will be referred to the River Basin Council.
- (3) If the dispute is not resolved by the River Basin Council within 4 days, the case will be referred to the Ministry of Energy and Water.
- (4) Ministry of Energy and Water must resolve the dispute within a period of six days.

- (5) If disputes arise among farmers within the irrigation network, the dispute is resolved by the Irrigation Association with the help of the Head Water Master (*Mirab Bashi*) and Water Master (*Mirab*) within two days.
In case of lack of agreement of a party or parties, the case will be submitted to the river sub-basin council and item numbers (2) and (3) of this Article will be followed.
If the dispute is not resolved by the River Basin Council within four days, the case will be referred to Ministry of Agriculture, Irrigation and Livestock. Ministry of Agriculture, Irrigation and Livestock has to resolve the dispute within a period of six days.
- (6) If the parties do not accept resolution from Ministry of Energy and Water or Ministry of Agriculture, Irrigation and Livestock, they may present their objections to the court of law within one month after the decision is announced.
- (7) In areas where River Basin Councils and river sub-basin councils are not established, dispute resolution will be handled by the River Basin Authority or water management departments.

Penalties

Article Thirty Five:

Any person who commits one of the following acts is considered a violator and, depending on the circumstances, will be sentenced to up to two years of imprisonment and pay a fine equivalent to the damages in accordance with law.

- (1) Block, divert or destroy water resources.
- (2) Remove or destroy measurement devices and signs that are erected by the relevant authorities.
- (3) Re-route the direction of the flow of water resources or interfere with water distribution without legal authority.
- (4) Encroach into the right-of-way of the public waters, river banks, streambeds, canals, ditches, springs, Karezes and other sources of groundwater, swamps and wetlands that are considered public water resources.
- (5) Pollute water beyond the permissible limit.

Chapter Seven

Final Provisions

Failure to Comply with the Provisions of a Permit/License

Article Thirty Six:

If the holder of a permit/license is not fulfilling the obligations in accordance with the conditions of a permit/license the holder is liable to pay a fine equivalent to the damage caused.

Misuse of Water Rights

Article Thirty Seven:

- (1) Any individual, who, as a result of misuse of a water right, causes financial harm to another, will in addition to compensation be subject to a fine in accordance with the provisions of law.
- (2) In case water right violation threatens the life, health and the livelihood of the downstream community is considered an offense. The offender shall be punished based on the circumstances in accordance with law.

Construction of Deep Wells

Article thirty eight:

Deep wells for agriculture, commercial, industrial and urban water supply purposes may be constructed after obtaining agreement of line ministries and issuance of permit/license by the Ministry of Mines.

Construction of shallow wells to meet drinking and livelihood needs are exempt from this provision.

Proposal for Regulation

Article Thirty Nine:

- (1) The Ministry of Energy and Water, Ministry of Agriculture, Irrigation and Livestock, Ministry of Rural Rehabilitation and Development and Ministry of Mines in cooperation with each other, for better implementation of this law, may develop and propose regulations and establish procedures.
- (2) Ministry of Agriculture, Irrigation and Livestock and Ministry of Energy and Water when leasing barren and undeveloped lands, shall anticipate the source of the required water in such a way that the water right of the down stream communities is not harmed.

Enforcement Date

Article Forty:

This law shall be enforced after it is published in the Official Gazette, with its enforcement the previous law for water resource utilization published in Official Gazette No. 755 in 1370 is superseded.