



Water Law in Afghanistan

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Key Terminology from Ministry Document

- **Activity Permit:** Official written document issued to undertake activities related to water storage and other associated uses according to the provisions of this law.
- **Usage License:** Official written document issued for usage of water resources according to the provisions of this law.
- **Water User Association:** 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.
- **Water Service Providers:** 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.
- **Irrigation Network:** Group of canals and other delivery systems that convey water from the main canals to the farms.
- **Catchment Area:** Area that captures precipitation and water flows naturally into storage, streams, rivers, and other water courses.
- **River Basin:** Catchment area with water naturally flowing in a common course (river).
- **River Sub-Basin:** Division of a River Basin.

Key Points of Afghan Water Law

On ownership, fees, water rights, permits and use

- **Ownership and Management of Water, Article 2-** Water belongs to the public and the government is responsible for its protection and management.
- **Fees for Water Services, Article 7-** Water use is free. 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.
- **Right of Use of Water, Article 19-** 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 5m³ 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 20, item (1) is in effect and implemented.
- **Permit, Article 20-** 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 21-** 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 encroaching banks, beds, courses or protected rights-of-way of streams, wetlands, Karezes, and springs.
- 4) The sale and purchase of an Activity Permit and a Usage License in terms of this law is prohibited, 5) The procedure to issue Activity Permits and Usage Licenses will be prepared and approved by the Ministry of Energy and Water (MEW).

Prepared by Maria Paz Santibanez and Mark A Bell, 2012

Reference: Unofficial English Translation of 2009 Afghanistan Water Law

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- **Cancellation or Modification of Issued Permits, Article 15-** 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.
- **Suspension of the Right to Use Water, Article 28-** 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.
- **Use of Water for Agriculture, Article 23-** 1) The Ministry of Agriculture, Irrigation and Livestock (MAIL) 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 MAIL, 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.
- **Penalties, Article 35-** 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.

On institutions

- **River Basin Agencies, Article 12-** 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 13-** The MEW 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.
- **Duties of the River Basin Councils, Article 14-** 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.
- **River Sub-Basin Council, Article 17-** 1) MEW 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.

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