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The Water Act of Bhutan 2011

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Preamble

Recognizing that water is one of the most important natural resources of the Kingdom;

Acknowledging water resource as a State property and the State's rights over mineral resources, rivers, lakes and forests are enshrined in the Constitution of the Kingdom of Bhutan;

Recognizing the seasonal and local scarcity of water for drinking and agricultural purposes, despite the country being endowed with abundant water resources;

Being mindful that rapid socio-economic development results in increasing pressure on the environment including water resources;

Recognizing the threat from climate change in addition to increasing anthropogenic threats on water resources and watershed conservation even with the existing policy of sustainable management of natural resources;

Being determined to protect the environment and human health through integrated water resources management in pursuit of Gross National Happiness and the age old tradition of living in harmony with nature;

Bearing in mind that every Bhutanese have assured access to adequate, safe and affordable water to enhance the quality of lives;

And realizing the need for a comprehensive legislation, which shall also foster institutional linkages to guide various water user sectors in the best interest of the nation and the people.

Parliament of the Kingdom of Bhutan do hereby enact the Water Act of Bhutan, 2011 on 29th Day of the 3rd Month of Iron Female Rabbit Year of the Bhutanese calendar corresponding to the 31st Day of the May, 2011 at its 7th Session of the First Parliament as follows;

Chapter 1 Preliminary

Short Title, Commencement and Extent

1. This Act shall:
 - a) Be called THE WATER ACT OF BHUTAN, 2011;
 - b) Come into force on the 4th day of the 5th month of Iron Female Rabbit Year of the Bhutanese calendar, corresponding to the 5th day of the 7th month of the year 2011; and
 - c) Extend to the whole of Bhutan.

Application

2. This Act shall apply to all issues related to water resources of the Kingdom.

Repeal

3. This Act hereby repeals the provisions of any other Acts, regulations and administrative instruments which are inconsistent with this Act.

Chapter 2

Principles

Purpose

4. The purpose of this Act shall be:
 - a) To ensure that the water resources are protected, conserved and/or managed in an economically efficient, socially equitable and environmentally sustainable manner; and
 - b) To establish suitable institutions.

Water Resources Rights

5.
 - a) Water resources are the property of the State. The rights over water resources, including the bed and banks of watercourses shall vest in the State.
 - b) The Royal Government as the public trustee of the nation's water resources shall ensure that water is protected, conserved and/or managed in accordance with the principles set out in this Act.
 - c) Every individual shall have access to safe, affordable and sufficient water for basic human needs.

Integrated Water Resource Management

6. A National Integrated Water Resources Management plan shall be formulated for coordinated development, management, conservation and efficient use of water resources.

Community Based Water Resources Management

7. Communities shall participate in the integrated management of water resource pursuant to this Act, and beneficiaries and stakeholders shall be consulted in the manner set out in this Act.

Protection of Water Catchments

8. All persons shall cooperate in the conservation, protection and management of the water catchments areas. The right and responsibility to cooperate shall extend to all aspects of achieving the purpose of the Act.

Polluter Pays Principle

9. A person polluting water resources shall be responsible for the cost of containment, avoidance, abatement, mitigation, remediation, restoration and compensation for any loss, damage or injury.

User Pays Principle

10. A person abstracting or using water shall pay a charge as prescribed by this Act and its Regulations.

Right to Information

11.
 - a) All citizens shall have access to water related information.
 - b) The provisions of section 81 of the National Environment Protection Act shall apply to this Act.

Chapter 3

Functions and Powers of Authorities

National Environment Commission

12. The National Environment Commission shall be an independent authority established by an Act of Parliament and shall exercise the powers and discharge the functions conferred under this Act.

Powers and Functions of National Environment Commission

13. The National Environment Commission shall;
- a) Ensure implementation of this Act;
 - b) Co-ordinate national integrated water resources management;
 - c) Issue directives that are binding on all persons and Competent authorities for following purpose pertaining to water and water resources;
 - i. restorative, corrective or mitigating measures;
 - ii. planning, protection and management within certain areas, zones, regions or nationwide;
 - iii. promotion of water education, research or studies;
 - iv. promotion of water friendly and water efficient technologies;
 - v. mainstream water into the national Policy, Plan and Program; and

- vi. any other matter in specific or general deemed important for the betterment of water quality or sustainable management and use of water resources.
- d) Adopt Strategies, plans and programmes for achieving the purpose of this Act;
- e) Designate any Ministry, Organization, Agency or Committee as a Competent Authority to effectively enforce and implement the provisions under this act;
- f) Set water quality standards and guidelines;
- g) Set effluent discharge standards for discharge of certain substances into water resources;
- h) Set minimum environmental flows of watercourses;
- i) Establish procedures for monitoring of water quality standards and discharge standards;
- j) Without prejudice to charges and fees payable in respect of water supply and waste water disposal services provided by a service provider, develop criteria for waste water charges, abstraction charges and other fees;
- k) Review, revise and advice the government on water policy, regulations, standards, guidelines and other matters related to emerging water issues;

- l) Declare any lake, river or waterway or any part thereof for water abstraction and use in consultation with the relevant stakeholders. In making the declaration the commission may impose such conditions and restrictions as it deems fit;
- m) Monitor overall compliance by the competent authorities under this Act;
- n) Prepare and submit reports to the Cabinet and the Parliament periodically;
- o) Recommend ratification of bilateral and multilateral water related instrument to the Parliament; and
- p) May delegate its powers to such person or competent authorities as prescribed in the regulations under this Act.

Functions of the Secretariat of the National Environment Commission

14. The Secretariat shall:
- a) Conduct inventory on water resources;
 - b) Compile and prepare the National Integrated Water Resources Management Plan in consultation with the relevant stakeholders for approval by the Commission;
 - c) Monitor the state of water resources, and compile, analyze and disseminate information thereon;
 - d) Assist the Commission in administering the provisions of this Act;

- e) Monitor compliance with the provisions of this Act;
- f) Obtain any data on water volumes, flows and quality from the Competent Authorities;
- g) Encourage or conduct research activities on water conservation, management and development, including methods to reduce water consumption and wastage and to promote sustainable water use;
- h) Inform the public on sustainable use of water resources through education, training, awareness and other public outreach programs;
- i) Maintain National Registry on approval granted under the Section 31 and Environmental Clearances issued;
- j) Collect and maintain data and information on water resources, including record keeping of all administrative decisions taken by the Secretariat;
- k) Periodically report to the Commission on the implementation of this Act; and
- l) Carry out any other functions or responsibilities delegated by the Commission.

Powers and functions of the Competent Authorities

15. Specific responsibility for implementation including submission of the periodical report to the Secretariat shall vest with the following agencies or any others as may be determined by the Commission:
- a) The Ministry of Works and Human Settlement and municipal bodies for ensuring safe, adequate and potable water supply, and proper sewage management in Thromdes;
 - b) The Dzongkhag Tshogdu and Gewog Tshogde supported by the Dzongkhag, Dungkhag and Gewog Administration in collaboration with the Ministry of Health for ensuring safe, adequate and potable water supply at Dzongkhag, Dungkhag, Gewog and Chiwoog level not covered under (a);
 - c) The Ministry of Health for monitoring the quality of drinking water both in urban and rural areas;
 - d) The Ministry of Agriculture, for land-use and irrigation, watershed management, water resources in forests, wetlands and protection of catchment areas;
 - e) The Ministry of Economic Affairs for collection, analyses and dissemination of water resources data and monitoring of water flows including discharge level and sediment for the purposes of the National Integrated Water Resources Management Plan, planning and design of water resource infrastructure including dams and GLOF issues;

- f) Bhutan Electricity Authority for hydropower generation and other related activities as per the Electricity Act of Bhutan, unless otherwise specified in this Act;
 - g) The Ministry of Home and Cultural Affairs for coordination of disaster preparedness and mitigation related to water;
 - h) The Ministry of Education for including water resource issues in the schools and institutions through awareness creation;
 - i) The relevant local Governments in collaboration with religious bodies and Ministry of Home and Cultural Affairs for protection of therapeutical waters such as Menchhu, Drupchhu, Tshachhu and Neychhu; and
 - j) Civil society organizations and the media for assisting in prevention of water pollution and sustainable use of water resources through education, public awareness and promoting public-private partnership.
16. These responsibilities are additional to any powers, functions or duties that the Competent Authorities may have under other statutes. Any successor agencies assuming the same responsibilities as the Competent Authorities shall undertake the specified responsibilities.

Chapter 4

Mechanisms for Implementation by Competent Authorities

Implementation Mechanisms

17. a) Competent Authorities shall adopt mechanisms within the scope of their authority in support of the implementation of this Act, including but not limited to mechanisms in this chapter.
- b) The Competent Authorities shall liaise with the Commission in exercising their authority under this section.
- c) In order to ensure coherent and effective implementation according to the principles of this Act, the Competent Authorities may issue regulations relating to water resources upon consultation with the Commission.

Financial Mechanisms

18. The Competent Authorities in conformity with this Act and other relevant laws may:
 - a) Impose and collect water supply service charges, wastewater disposal service charges, and other service fees as prescribed; and
 - b) Provide incentives for exemplary initiatives leading to *inter alia* sustainable use of water resources, reduction of water wastage, innovative projects, technologies and processes that support the purpose of this Act.

Involvement of private sector and civil society organizations

19. The Competent Authorities may enter into contracts or other forms of arrangements with private parties, including and civil society organizations, to provide for water related infrastructure and services.

20. The Commission shall regulate the water pricing in keeping with section 5(c) of this Act in case of privatization of water related infrastructure and services.

Awareness and Outreach

21. The Competent Authorities shall inform the public on sustainable use of water resources through education, training, awareness and outreach advocacy programs.

Research Mechanisms

22. The Competent Authorities shall encourage or conduct research activities on water conservation, management and development, including methods to reduce water consumption and wastage and to promote sustainable water use.

Chapter 5

Planning and Management of Water Resources

National Integrated Water Resources Management Plan

23.
 - a) The Secretariat, with the assistance of the Competent Authorities, shall prepare and periodically update a National Integrated Water Resources Management Plan for the conservation, development and management of water resources.
 - b) The Secretariat shall consult the public, prior to submission of a plan to the Commission for its approval.
 - c) The Commission and the Competent Authorities shall take account of the Plan in all water related decisions.
 - d) The Plan shall be mainstreamed into National Policies, Plans and Programmes.

River Basin Management Plans

24.
 - a) The Secretariat with the assistance of River Basin Committee shall prepare, and periodically update, a River Basin Management Plan for each river basin pursuant to section 27 of this Act.
 - b) The National Integrated Water Resources Management Plan developed as per section 23 (a) shall serve as a binding guideline for the preparation of plans under this section.

Minimum environmental flow requirements of watercourses

25. a) The Commission shall in collaboration with the relevant Competent Authorities set the minimum environmental flow of watercourses required to support and conserve the riverine habitats and its flora and fauna.
- b) Determinations made under this section shall be notified by the Commission.
- c) The Secretariat shall reflect the notified minimum environmental flows in the environmental clearance.

Development upon bed and banks of watercourses

26. a) No person shall develop or otherwise encroach upon bed and banks of watercourses and a strip of land the width thereof as determined in Regulations under this Act except for operation and implementation of activities with an Environmental Clearance.
- b) Without prejudice to the sub section (a), any surface collection of sand and boulders shall be operated by a State Agency.
- c) Existing developments at the time of commencement of this Act shall be allowed to continue, subject to such reasonable terms and conditions as the Commission may impose to safeguard the integrity of the bed and banks of watercourses and the free flow of water therein.

Chapter 6

River Basin Committees

Establishment of River Basin Committees

27. a) The Commission shall establish river basin committees within a basin for the purpose of proper management of water resources.
- b) In determining the composition of a river basin committee, the Commission shall ensure adequate representation from among any or all but not limited to the following groups:
- i. Water User's Associations or Federation of water Users' Associations;
 - ii. Hydropower generation agency;
 - iii. Industries;
 - iv. drinking water supply and sanitation service providers;
 - v. recreation and tourism operators;
 - vi. registered environmental non-governmental organizations;
 - vii. traditional communities, with particular regard to those engaged in subsistence farming;
 - viii. Department of forest;
 - ix. Local governments; and
 - x. National Environment Commission.

- c) After having established a river basin committee, the Commission shall declare an area within which the committee will carry out its functions.

Functions of River Basin Committees

28. The functions of river basin committees are;
- a) To promote community participation in the protection, use, development, conservation, management and control of water resources in its area of operation through education and other appropriate activities;
 - b) To prepare a River Basin Management Plan for the basin;
 - c) To monitor and report to the Commission on the effectiveness of policies and action in achieving sustainable management of water resources in its area of operation;
 - d) To collect, manage and share such data as are necessary to properly manage the basin in coordination with the Commission;
 - e) To help resolve cross-sectoral and Dzongkhag trans-boundary issues relating to water resources in its area of operation; and
 - f) To perform any such additional functions as the Commission may direct.

Dissolution of River Basin Committees

29. The Commission, by notice may dissolve a river basin committee if it is necessary to do so:
- a) For purposes of re-organizing water management institutions in its area of jurisdiction in the interests of effective water resources management; or
 - b) If the circumstances which supported the establishment of the river basin committee no longer exist.

Dzongkhag Water Management Committee

30. For the purpose of proper and effective protection and management of water resources at Dzongkhag level, the existing Dzongkhag Environment Committee shall also function as the Dzongkhag Water Management Committee.

Chapter 7 Water Abstraction and Use

Approval for feasibility studies

31. A Person intending to abstract water shall seek an approval from the Commission prior to conducting feasibility studies. The approval shall contain terms and conditions including upstream and downstream water use issues.

Prohibition to abstract or use water without Environmental Clearance

32. Unless this Act provides otherwise,
- a) A person shall not abstract and use water, except in accordance with Environmental Clearance issued under this Act.
 - b) A person who violates the provision of sub-section (a) shall be guilty of an offence under this Act.

Exemptions from Environmental Clearance

33. a) Abstraction and use of water for the following purposes shall be exempted from the requirement to obtain an Environment Clearance:-
- i. domestic use;
 - ii. small scale drinking water supply and irrigation schemes as determined in regulation under this Act; and
 - iii. running small water mills, water grinders or prayer wheels as determined in the regulation under this Act.
- b) A person may abstract and use water for domestic use, subject only to such public health limitations and environmental limitations, and limitations imposed from time to time for purposes of good water management practices.

- c) Customary practices of water use acknowledged by a Water Users' Association or other local beneficiaries group in the area for:
 - i. household purposes on an individual or collective basis including the digging of wells and abstraction of ground water;
 - ii. agricultural purposes on an individual or collective basis; and
 - iii. running small water mills, water grinders or prayer wheels as determined in the regulations under this Act.

Application for an Environment Clearance

34. A person who wishes to abstract water shall apply to the Commission and/or Competent Authorities for an Environmental Clearance as per the Environmental Assessment Act.

Criteria for issuance of Environmental Clearance

35. Without prejudice to the Environment Assessment Act, the Commission shall consider the following criteria in granting Environmental Clearance to abstract and use water:
- a) Whether the proposed abstraction and use of water are consistent with:
 - i. the purpose and principles referred to in sections 4, 5a and 5c; and
 - ii. the National Integrated Water Resource Management and Plan;

- b) The likely effect of the proposed abstraction upon existing water users, water resources and the water reserved or allocated for environmental users;
 - c) Without prejudice to section 40, duly take into account the existence of any customary practices in the water resource to which an application for the clearance relates; and
 - d) Any other additional criteria the Commission may prescribe.
36. An Environmental Clearance issued and any administrative action taken thereon under this Chapter shall be recorded by the Secretariat of the Commission in a National Registry.
37. An Environmental Clearance shall not be construed as a guarantee, expressed or implied, of supply of water.

Water use priorities

38. a) In dealing with applications under preceding sections, the Commission shall observe the following order of priorities:
- i. water for drinking and sanitation;
 - ii. water for agriculture;
 - iii. water for energy;
 - iv. water for industry;
 - v. water for tourism and recreation; and
 - vi. water for other uses.

- b) Notwithstanding the provisions of sub-section (a), the Commission may depart from the prescribed statutory priority order in times of water related emergencies.

General

- 39. Allocation of water shall be done based on the principle that water is a resource owned by the State and that every citizen has an equal right to these resources.
- 40. Customary practices of water allocation may continue provided that these are fair and equitable and do not result in denial of water to any individual or community, including downstream and upstream needs, and are acknowledged by a Water Users' Association or other local beneficiaries' groups in the area.

Chapter 8 Prevention and Control of Water Pollution

Effluent Discharge

- 41.
 - a) Except as otherwise provided in this Act, a person may not discharge any effluent directly or indirectly to any water resource unless the discharge is in compliance with the Effluent Discharge Standard.
 - b) Effluents must be treated using best available technology before discharging into the environment.

- c) Notwithstanding any other provisions, it shall be unlawful to discharge any chemical, radiological, radioactive, medical or any other hazardous waste into water bodies.
- d) Any person discharging effluent shall be liable to pay a charge as prescribed in the regulations under this Act.
- e) Any person who acts in breach of the provisions of this section shall be guilty of an offence under this Act.

Water Quality Standards and Effluent Discharge

- 42. a) The Commission shall develop and, from time to time, review Water Quality Standards as well as Effluent Discharge Standards of certain substances into water resources.
- b) The Commission in consultation with the Ministry of Health and with the Ministry of Works and Human Settlement shall develop and, from time to time review Water Quality Standards for water resources used for or intended to be used for drinking purposes.
- c) All competent authorities under this Act are required to give effect to these standards in exercising their powers and duties under this Act.

Chapter 9

Specific Requirements and Procedures for Various Water Uses

Drinking Water

43. a) Notwithstanding the provisions of section 41 of this Act, no discharge of effluents of any kind shall be allowed into water resources used or allocated for drinking purposes.
- b) The best available water resources shall be allocated for drinking purposes and designated accordingly in the National Integrated Water Resources Management Plan.
- c) The Competent Authorities, in consultation with the Commission, and with the participation of River Basin Committees and water users' associations, shall adopt mechanisms to protect and conserve watersheds located above drinking water intakes. For the purpose of this requirement, acquisition may be resorted to, in accordance with the Land Act.
- d) If there is a risk of contamination and/or degradation of a water resource allocated for drinking purposes, the Commission may declare relevant area as Water Management Area.

Irrigation water

44. a) Water from an irrigation channel shall be allocated either through mutual understanding or in accordance with existing practices, depending on the size of land holdings and the quantity of water in the channel, and subject to the constitution and bye-laws of the relevant Water Users' Association.
- b) Labour contribution by the beneficiaries of an irrigation channel shall depend on the size of their land holding.
- c) Alignment of an irrigation channel for a newly terraced plot shall be made in such a manner as not to affect or harm other plots.
- d) Water shall flow in adjacent plots as per established practice. If a new plot is terraced nearer to the water source, water for the old plot shall flow through the new plot provided there is no other way of bringing water to the old plot. If the water is not sufficient, the new plot shall not get water.
- e) Blocking or otherwise altering an irrigation channel flowing through one's property shall not be allowed without the consent of the users of that channel, even where the channel is not required by the property owner.
- f) If there is sufficient water and capacity in the irrigation channels, the existing beneficiaries shall provide access to a new user or to an existing user that requires additional water, including a user who wants to convert kamzhing to chhuzhing.

- g) A new user of an irrigation channel shall enter into an agreement with the beneficiaries of the channel before taking water from the channel. In the absence of such an agreement, a new user cannot claim water from the channel.
- h) A new user shall compensate the former beneficiaries for the private investments made, if any, for water infrastructure and shall also contribute towards the maintenance costs of the infrastructure.
- i) If the water resource for irrigation is deemed insufficient, a water user shall not initiate any activities that would require additional water, including conversion of kamzhing to chhuzhing.
- j) A water user acting in contravention of sub section shall have no right to claim compensation for non-availability of water.
- k. For the benefit of landed property, renovation of existing irrigation channels and embankments can be done on existing alignment in consultation with Water Users Associations.
- l. Existing irrigation channels passing through ones landed property cannot be made small and blocked even if not required by the owner.
- m. If water has not flown through old irrigation channels and no repair has been done on the embankments for the last five years then renovation and repairs on the existing alignment will be treated as new construction.

Water Resources in Forests

45. Except in accordance with an Environmental Clearance issued by the Commission and/or Competent Authorities, the following water resource activities are prohibited in forests:
- a) blocking, storing or diverting any river, stream, irrigation channel, waterfall, underground water source or any other water resource or water course; and
 - b) discharging effluents or wastes into any water resource or water bodies.

Wetlands

46. Conservation and wise use of wetlands shall be ensured by the relevant Competent Authorities in line with the principles of the Forest and Nature Conservation Act, through:
- a) capacity-building and research on wetlands; and
 - b) designation of one or more wetlands of national and international importance for inclusion under the relevant multilateral environment agreements and to promote the conservation of wetlands.

Harvesting of Water Resources

47. The relevant Competent Authority shall facilitate harvesting of ground water, rain water, fog and any other sources to prevent local and seasonal water scarcity.

Chapter 10

Construction and Safety of Water Infrastructure

Construction of Water Infrastructures

48. a) Water related infrastructure may be constructed on or through others' property, in consultation with the affected parties, subject to approval from the Commission. In the event, where the affected parties do not allow the construction of water related infrastructure on or through their property on baseless ground, the Commission shall have the authority to approve the construction of water related infrastructure after investigating the matter thoroughly.
- b) Compensation shall be paid by the beneficiaries, for damages incurred on others' property as a result of construction or renovation activities. When land is acquired by the Government for activities pursuant to sub section (a), compensation shall be paid as per the Land Act.
- c) The water users shall ensure that their waste water does not cause inconvenience within the locality.
- d) For the purpose of preventing or minimizing the risk of flooding and flood damage, the Commission and/or Competent Authorities may:
- i. prohibit the construction of dykes, levees or other structures on submersible lands that may be likely to hinder the water runoff;

- ii. authorize the construction of such structures if they are necessary for the protection of residences or other structures;
- iii. alter or demolish dykes, embankments, levees, structures or other works, irrespective of their legal status, if they hinder water runoff or extend the flood plain with harmful results;
- iv. prohibit the growing of crops, the building of structures or the placing of deposits on land located between a watercourse and any protective dykes, embankments or levees; and
- v. prescribe measures for the control and management of storm water and flood risk.

Safety of Dams and other water infrastructures

- 49. a) The Competent Authorities in collaboration with the Commission and relevant Agencies shall set necessary criteria for the safety of dams or any other water infrastructures.
- b) The Competent Authorities shall in consultation with the Commission, monitor the safety of dams and other water infrastructures.

Chapter 11

Water Users' Associations

Formation of Water User Associations

50. Any group of beneficiaries using a particular water source for their water supply needs may form a Water Users' Association to maintain the water source and to manage water supply services.

Registration of water users' association

51. A Water Users' Association shall be registered with the Competent Authorities within six months from the date of its formation.

Functions of water users' association

52. The functions of a water users' association shall be :
- a) To maintain a water source and protect it against vandalism and other damages.
 - b) To coordinate and oversee the activities and management of water supply service by its members so as :
 - i. to foster a sense of ownership among the users; and
 - ii. to ensure sustainability of such service.

Federation of Water Users' Associations

53. a) A group of Water Users' Associations using a particular water supply scheme for their water supply needs may federate to coordinate the activities.
- b) The formation membership, powers, functions and dissolution of the Federation shall be set out in Regulations under this Act.
- c) The provisions of Sections 52 shall apply to the Federation of Water Users' Associations.

Chapter 12

Water Related Emergencies and Other Special Circumstances

Emergencies

54. a) In the event of risk of drought or serious water scarcity, or other threats relating to water resource, the Commission may revoke, suspend or amend the terms and conditions of the Environmental Clearance to eliminate or reduce such threats.
- b) The Competent Authorities shall take all necessary measures to deal with the emergency to eliminate or reduce such threats.

Declaration of water management area

55. a) The Commission may in consultation with the affected parties, declare any area as water management area for the purpose of protecting any water resource, riverine habitat, watershed, wetland, environment or ecosystem at risk of depletion, contamination, extinction or disturbance from any source through issuance of notification.
- b) If the declaration of a water management area results in or requires the acquisition of land, every such acquisition, including the award of compensation and appeals related thereto shall be conducted in accordance with the Land Act of Bhutan.
- c) The Commission may prescribe limitations to be observed within a water management area, which may include, among others, a prohibition or limitation:
- i. on the abstraction of water;
 - ii. on the erection of any structures;
 - iii. on the application or storage of any chemicals, including pesticides or fertilisers;
 - iv. on the alteration of existing land contours, including any grading or construction of roads or cultivation of crops;
 - v. including the felling of trees, the removal of riparian growth or the use of wetland resources;

- vi. on the discharge of effluent;
 - vii. on mining, dredging or the reclamation of land;
 - viii. livestock farming; and
 - ix. other necessary water protection measures.
- d) If a limitation under subsection (c) affects existing Environment Clearance, the Commission and/or Competent Authorities may appropriately amend the terms and conditions of the Environmental Clearance.

Amendment or withdrawal of water management area

56. The Commission may in consultation with the affected parties:
- a) Amend the geographic boundaries of a water management area, or any prohibition or limitation applicable to the area, if circumstances change; or
 - b) Withdraw a declaration of a water management area if the circumstances under which the declaration was made no longer exist.

Chapter 13

Financial Provisions

Financing by the Royal Government of Bhutan

57. The Royal Government shall allocate necessary funds to enable the Commission and Competent Authorities to exercise and discharge their powers, duties and functions effectively under this Act.

Fees and Other Sources of Funding

58. Charges and other fees collected pursuant to this Act and its regulations shall be ploughed back for establishment, operation and maintenance of water related activities and attainment of the relevant principles of Integrated Water Resources Management. This provision does not limit in any way the obligation pursuant to section 57 or additional funding from other sources.

Payment for Watershed Services

59. a) The Commission shall promote payment for the environmental services provided by water resources, such that the cost of conserving water resources in the upper watershed areas are shared by downstream users.
- b) Payment for environmental services shall be implemented through Regulation under this Act, which shall include appropriate institutional arrangements to administer the funds.

Chapter 14

Disputes Settlement and Appeals

Alternative Dispute Resolution

60. a) In case of disputes arising with regard to water use, the parties involved shall resort as a first step to alternative dispute resolution.
- b) The procedure for alternative dispute resolution shall be conducted by the Committee of the relevant Water User Association or the relevant local authority including the office of the Gup.
- c) Neutrality of the mediator shall be ensured.
- d) The settlement of the mediation process shall be reported to the relevant Competent Authority and shall be enforceable through the Court of law provided the relevant legal requirements are fulfilled.

Appeal

61. a) A person who is not satisfied with the decisions of the Competent Authorities may appeal to the Commission.
- b) A person who is not satisfied with a decision or order of the Commission under this Act may appeal to the Court of Jurisdiction within 10 working days from the date of decision or order.

- c) An appeal referred to in subsection (b) shall not stay the operation of the decision or order of Commission, if the decision or order relates to an emergency situation.

Registration Requirements

- 62. All approvals and permits under this Act for the abstraction of water and discharge of effluents shall be registered. It shall be the responsibility of the competent authority to record this information and report it to the Commission annually.

Chapter 15 Monitoring and Enforcement

Monitoring and Inspection

- 63.
 - a) Monitoring, inspection and verification under this Act shall be carried out by Commission through the Secretariat, or Competent Authorities or jointly.
 - b) The procedures for inspection and verification under Chapter VIII of National Environment Protection Act, 2007, shall apply to this Act.

Stop Order

- 64. If an activity relating to a water resource poses an imminent threat to human health or the environment, the activity shall be stopped with immediate effect by the Commission/ Competent Authority.

Reporting on Implementation

65. The Competent Authorities shall report at least annually to the Secretariat on the enforcement and implementation of the provisions of this Act.

Chapter 16 Offences and Penalties

Offences

66. A violation or infringement of any of the obligations set forth under this Act shall constitute an offence.

Administrative Sanctions

67. The Commission and the Competent Authorities may issue administrative orders to persons in violation of the provisions of this Act or its regulations.
68. The Commission and the Competent Authorities may also assess and determine administrative sanctions for any violation of the provisions of this Act or its regulations. The administrative sanction may comprise one or more of the following:
- a) Order specifying actions the violators must undertake to come into compliance;
 - b) Order to take mitigative, corrective or restorative measures as may be deemed necessary to prevent further damage being caused to human health and/or environment;

- c) Payment of a fine not exceeding twelve man-months of the National minimum wage;
- d) Reimbursement of any costs incurred by an Authority due to offenders' failure to take the notified measures in time;
- e) Payment of compensatory costs for rectifying any damage to the environment, persons or property caused by the offence;
- f) Suspension or revocation of an Environment Clearance under this Act;
- g) A fine equivalent to ten man-months as per the minimum wage per day in the event of the offence being continued after stop order till the day such offence is discontinued; and
- h) Failure to comply with the stop order, an activity shall be shut down without compensation.

Penalty Assessment

69. In setting administrative sanctions for violations, relevant authorities shall consider:
- a) The magnitude of the offence;
 - b) The frequency of the offence;

- c) Actual or potential impact on the environment and human health;
- d) The culpability of the offender;
- e) The extent of the achieved or intended economic advantage from the offence; and
- f) The need to deter future violations of the Act and regulations by the same or other persons.

General Liability

70. Offences and penalties not specifically covered under this Act shall be dealt in accordance to the Penal Code of Bhutan and any other applicable law in force.

Offence of felony

71. A person endangering a public water source resulting in an epidemic, death or serious public hazard shall be guilty of an offence of felony of first degree and shall be liable to be sentenced in accordance with Penal Code of Bhutan.
72. A person endangering a public water source resulting into injury to human health and damage to the environment shall be guilty of felony of second degree and shall be liable to be sentenced in accordance with Penal Code of Bhutan.

73. A person endangering a public water source creating substantial risk of serious physical injury to the public shall be guilty of an offence of felony of third degree and shall be liable to be sentenced in accordance with Penal Code of Bhutan.
74. A person committing any of the following acts shall be guilty of an offence of felony of fourth degree and shall be liable to be sentenced in accordance with Penal Code of Bhutan:
- a) Abstracts water resource without obtaining an Environmental Clearance as required under this Act;
 - b) Discharge effluents without obtaining an Environmental Clearance as required under this Act;
 - c) Activities in contravention with the provisions of Section 45(a) and (b) of this Act; and
 - d) Other activities leading to degradation of watershed and catchment areas.

Offence of Misdemeanor

75. A person committing any of the following acts shall be guilty of an offence of misdemeanor and shall be liable to be sentenced in accordance with Penal Code of Bhutan:
- a) Endangerment of public water source;
 - b) Failure to comply with the terms and conditions of an Environmental Clearance;
 - c) Failure to comply with administrative sanctions; and

- d) Vandalism and destruction of water supply infrastructure.

Offence of Petty Misdemeanor

76. A person committing any of the following acts shall be guilty of an offence of petty misdemeanor and shall be liable to be sentenced in accordance with Penal Code of Bhutan:
- a) Providing a false or misleading information;
 - b) Failure to extend the necessary cooperation to a person in execution of authorized duties or obstructs any person in the exercise of powers and authority conferred on him under this Act; and
 - c) Failure to maintain records and registers required by the provisions of this Act and Regulations issued pursuant to this Act.

Chapter 17 Miscellaneous

Reporting Requirements and Citizen Complaint Procedure

77. Persons shall have the right to complain in written form to the Commission and relevant Competent Authorities on violations of this Act and its regulations. The Commission and Competent Authorities shall have the responsibility to investigate these complaints to the extent feasible and take necessary action.

International Coordination and Agreements

78. a) The Competent Authority shall consult the Commission before entering into any international agreements, contracts, obligations or other arrangements relating to water resources.
- b) The Commission may enter into international agreements relating to water resources with the prior approval of the Royal Government.

Immunity from prosecution

79. The Commission and the Secretariat, Competent Authorities and any other official shall have immunity from prosecution for any lawful act arising from due discharge of their functions under this Act.

Jurisdiction

80. A Court of law or any specialized court or tribunal which may be established having jurisdiction shall hear cases arising under this Act and regulations.

Amendment

81. The amendment of this Act by way of addition, variation or repeal shall be effected by a simple majority of the respective Houses or vote of no less than two-thirds of the total members of Parliament present and voting on a motion submitted by one-third of the members of either House.

Authoritative Text

82. The Dzongkha text shall be the authoritative text, if there exists any difference in meaning between the Dzongkha and the English text.

Definitions

83. In this Act, unless the context otherwise requires
- a) **Abstract** means to divert, pump, extract or impound water from any source, and abstraction shall have an equivalent meaning.
 - b) **Basic Human Needs** means the needs for sustaining human life.
 - c) **Chhuzhing** means irrigated and/or bench terraced agricultural land for paddy based cropping systems.
 - d) **Commission** means the National Environment Commission established under the National Environment Protection Act of Bhutan.
 - e) **Competent Authorities** means the Ministries, Agencies, Local authorities, committees, CSOs or any other entity as may be determined by the Commission as the competent authority.
 - f) **Customary practices** mean and practices in relation to water resources management and utilization as have been exercised and practiced by communities or individual members thereof for more than twenty years
 - g) **Domestic use** means the household use of water for drinking, cooking, washing, watering of a household garden and animals.

- h) **Effluent** means wastewater or other liquid whether, raw, partially or completely treated that flows out of a treatment process or treatment plant, sewer, or industrial outfall, which directly or indirectly alters the quality of any segment or element of the receiving environment so as to effect any beneficial use adversely or is hazardous or potentially hazardous to health.
- i) **Environment** means the physical factors of the surroundings of human beings including the earth, soil, water, atmosphere, climate, sound, odors, tastes and the biological factors of animals and plants of every description including the complex web of interrelationships between the a biotic and biotic components which sustain life on earth.
- j) **GLOF means** Glacial Lake Outburst Flood.
- k) **Government Agency** means agency of Royal Government.
- l) **Holder** means the recipient of an environmental clearance.
- m) **Integrated Water Resource Management (IWRM)** means process that promotes coordinated development and management of water resources to maximise the economic and social welfare in an equitable manner without compromising the sustainability of the vital ecosystems.
- n) **Kamzhing** means agricultural land other than chhuzhing and orchards. Agricultural land shall mean kamzhing, chhuzhing and cash crops land.

- o) **Minimum Environmental flow** means the water regime provided within a river, wetland or other water bodies to maintain ecosystems and their benefits, where flows are regulated.
- p) **National Registry** means the registry maintained by the Secretariat of the National Environment Commission to record activities including all administrative decisions taken on the water related issues.
- q) **Person** means any individual or legal entity or agency whether registered or not registered under the Companies Act of Bhutan.
- r) **Pollution** means any direct or indirect alternation of the physical, thermal, chemical, biological, or radioactive properties of any part of the water resources by the discharge, emission, or the deposit of wastes so as to effect any beneficial use adversely or to cause a condition which is hazardous or potentially hazardous to public health, safety, or welfare, or to animals, birds, wildlife, aquatic life, or to plants of every description.
- s) **Payment for Watershed Services (PWS)** means a watershed management tool that is a subset of Payment for Environmental Services (PES) covering transactions that are:
 - i. voluntary
 - ii. between at least one service buyer
 - iii. at least one seller

- iv. focused on a well-defined service or a land use likely to provide that service and
- v. conditional upon contract compliance.

- t) **River Basin** refers to the land area which is drained by a river and its tributaries.
- u) **River Basin Committee** means a committee established under section 27 of this Act.
- v) **Secretariat** means the Secretariat of the National Environment Commission.
- w) **Sustainable Use** means the use of the water resources in a way and at a rate that does not lead to the long-term decline of the water resources, thereby maintaining its potential to meet the needs and aspirations of present and future generations.
- x) **Thromde** means a large urban area as defined in the Local Government Act.
- y) **Watercourse** means a river or stream or a natural channel in which water flows regularly or intermittently.
- z) **Water related infrastructure** includes any installation for storage, abstraction, treatment, protection, development, conveyance and control and measurements of water.
- aa) **Water resources** means all sources of water including snow, glacier, rivers, lakes, streams, springs, wetlands, rainwater, soil moisture or groundwater, including use of water for therapeutical and religious purposes.

- bb) **Watershed** refers to an area which is drained by a river or its tributaries, and which protects the supply of water for drinking, irrigation, flood control, hydroelectric projects and related purposes.
- cc) **Water User Association** means the Association formed as per the Section 50 of this Act. Water User Association is not to be governed by Civil Society Organization (CSO) Act of Bhutan.
- dd) **Water quality standards** means standards on biological, chemical and physical qualities of water bodies adopted by National Environment Commission or any other relevant authority under this Act to counteract environmental degradation of water resources and to secure human health standards.
- ee) **Wetlands** means areas of marsh, fen, bog, peat land or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh or brackish, including snow and glaciers.