



**NATIONAL POLICY DIALOGUE ON INTEGRATED WATER RESOURCES  
MANAGEMENT IN TAJIKISTAN UNDER THE EU WATER INITIATIVE**

*Draft*

**Report - II**

**On analysis of water legislation with a view to its improvement and implementation of the  
integrated water resources management principles in Tajikistan**

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## Introduction

The need to improve the water legislation of the Republic of Tajikistan, in particular, the Water Code of the Republic of Tajikistan, was emphasized by the decision of the Coordination Council of the National Policy Dialogue on Integrated Water Resources Management in the Republic of Tajikistan under the EU Water Initiative (NPD) of May 25, 2012 in Dushanbe.

It was proposed that in parallel with the work on the water sector reform strategy to begin working on the analysis of water legislation and to prepare proposals for its improvement. A working group out of representatives of various ministries and agencies made an analysis of the water legislation in accordance with stated objectives, stipulating how the Water Code of the Republic of Tajikistan and other normative-legal acts of the Republic of Tajikistan are in line with:

- a. IWRM principles;
- b. Water sector reform strategy.

The report on the analysis of water legislation was discussed at the stakeholder meeting on May 10, 2013 among representatives of various ministries and agencies and was presented at the next meeting of the NPD Coordination Council on May 23, 2013.

The NPD Coordination Council recommended continuing work to improve the water legislation, involving representatives of relevant ministries and agencies.

In accordance with the terms of reference, the following works were completed:

1. The analysis of the Water Code was made with due consideration of the requirements of the current state of water relations and obvious tendency of the development of water resources management system and water relations in the next 5-10 years;
2. A list of the articles of the Water Code was compiled, in which amendments are proposed, or, if necessary, removal of irrelevant articles of the Water Code;
3. A list of the proposed new parts, chapters and articles was compiled;
4. A list of the resolutions of the Government of the Republic of Tajikistan, guidelines and procedures necessary for the Water Code implementation mechanism was prepared.

The analysis of the Water Code shows that during previous years of its validity multiple amendments were made. It is necessary to emphasize that all amendments were made as needed and thus made the process of development of water legislation evolutionary. While such approach of the development of water legislation creates a smooth transition to the changes, on the other hand, a systematic approach in this process has been lost and that led to the creation of multi-vector and chaotic legal framework of water resources management. As a result, the Water Code evolved into almost inoperative act, which has brought to the water sector many economic and institutional problems.

One of the main reasons of the low efficiency of the Water Code is the deficiency of the implementation mechanisms of its provisions, as well as frequent use of reference to higher

authorities for solution of issues. The Annexes of the report contain proposals for improving the Water Code in connection with the above-mentioned problems.

## **1. Brief analysis of the Water Code given the current state of water relations.**

In accordance with the Law of the Republic of Tajikistan "On regulatory-legal acts" of March 26, 2009, there are the following regulatory-legal acts in the Republic of Tajikistan:

- The Constitution of the Republic of Tajikistan;
- The laws, adopted through a nationwide referendum;
- The constitutional laws;
- The Codes;
- The laws;
- The joint Resolution of the Majlisi Milli (upper chamber of the parliament) and the Majlisi Namoyandagon (lower chamber of the parliament) of the Majlisi Oli (Parliament) of the Republic of Tajikistan, a Resolution of the Majlisi Milli and the Majlisi Namoyandagon of the Majlisi Oli of the Republic of Tajikistan and the Majlisi Namoyandagon of the Majlisi Oli of the Republic of Tajikistan;
- Decrees and orders of the President of the Republic of Tajikistan;
- Resolutions and instructions of the Government of the Republic of Tajikistan;
- Regulatory-legal acts of ministries, State Committees and other state bodies;
- Regulatory-legal acts of the Majlises of people's deputies of the Gorno-Badakhshan Autonomous Region, regions, city of Dushanbe and chairmen of the Gorno-Badakhshan Autonomous Region, regions, and city of Dushanbe;
- Regulatory-legal acts of the Majlises of people's deputies of cities, districts and their chairmen;
- Regulatory-legal acts of self-governing bodies of small towns and villages;
- Regulations, statutes, charters;
- Rules, instructions and other regulatory-legal acts.

The concept of the Code in accordance with the specified Law (Article 17) is a uniform and streamlined Law through which a certain sphere of public relations is fully, directly and systematically regulated.

The Water Code of the Republic of Tajikistan was adopted on November 29, 2000 and consists of 5 sections, 24 chapters and 146 articles. The Water Code regulates water relations in order to ensure the rational use of water for the needs of population, economic sectors and the environment, protection of waters from pollution, infestation and depletion, prevention and elimination of harmful effects of water, improvement of a state and protection of water bodies, strengthening the legitimacy and protection of rights of physical and legal persons in the field of water relations. It describes the economic mechanisms of water use, including the systems of payment for special water use, free general water use, payment for use of water resources within the established limits (except for agricultural irrigation and forestry), payment for excess and irrational use of water resources, payment for services associated with the accumulation, transportation to the border of consumers.

In accordance with Article 3 of the Water Code of the Republic of Tajikistan, the water legislation of the Republic of Tajikistan is based on the Constitution of the Republic of Tajikistan and consists of the Water Code, laws, regulatory-legal acts of the Republic of Tajikistan and international law acts recognized by the Republic of Tajikistan.

Thus, the relations on utilization of water resources in the Republic of Tajikistan are based on the following regulatory-legal acts:

- **The Constitution of the Republic of Tajikistan** of November 6, 1994 (Article 13);
- **The Water Code of the Republic of Tajikistan** of November 29, 2000;
- The Law of the Republic of Tajikistan of November 21, 2006 №213 “On Water User Association”;
- The Law of the Republic of Tajikistan of December 29, 2010 №670 “On drinking water and drinking water supply”;
- The Law of the Republic of Tajikistan of August 2, 2011 №760 “**On Environment protection**”;
- The Law of the Republic of Tajikistan of August 2, 2012 №751 “**On licensing system**”;
- The Resolution of the Government of the Republic of Tajikistan of June 25, 1996 №281 “**On approval of the Regulation on procedure of charging fees for services of water delivery to consumers from state-owned irrigation and water supply systems**”;
- The Resolution of the Government of the Republic of Tajikistan of February 4, 2002 №39 “**The Regulation on delineation of powers of dedicated government agencies on regulation of utilization and protection of waters**”;
- The Resolution of the Government of the Republic of Tajikistan of April 30, 2002 №193 “**On procedure of maintaining the State water cadaster in the Republic of Tajikistan**”;
- The Resolution of the Government of the Republic of Tajikistan of August 31, 2002 №349 “**Reward procedure of water users who implement public-spirited activities on rational utilization and protection of waters**”;
- The Resolution of the Government of the Republic of Tajikistan of August 31, 2002 №350 “**Procedure of recognition of water bodies as natural or cultural monuments**”;
- The Resolution of the Government of the Republic of Tajikistan of September 5, 2002 № 361 “**On approval of the procedure of attribution of waterways to the navigable category and rules of their service and operation**”;
- The Resolution of the Government of the Republic of Tajikistan of November 4, 2002 №421 “**Procedure of utilization of underground water which is not attributed to drinking or medicinal waters**”;
- The Resolution of the Government of the Republic of Tajikistan of November 5, 2002 №437 “**Procedure of utilization of water bodies for fishery needs**”;
- The Resolution of the Government of the Republic of Tajikistan of November 5, 2002 № 439 “**On approval of the procedure of utilization of water bodies for parking, takeoff and landing as well as for other needs of air transport in the Republic of Tajikistan**”;
- The Resolution of the Government of the Republic of Tajikistan of December 3, 2002 №485 “**Procedure of processing, registration and licensing of special water use**”;
- The Resolution of the Government of the Republic of Tajikistan of March 4, 2003 №95 “**On approval of the rules for use of water bodies for hydropower needs**”;
- The normative act “**Instruction on procedure of coordinated approval and licensing for special water use**”, registered in the Ministry of Justice of the Republic of Tajikistan on February 10, 2005 under №128;
- The Resolution of the Government of the Republic of Tajikistan of December 2, 2006 №514 “**On approval of the Program of improvement of supply of population of the Republic of Tajikistan with pure drinking water for 2008 – 2020**”;
- The Resolution of the Government of the Republic of Tajikistan of May 28, 2009 №308 “**On approval of the state register of the water projects**”;

- The Resolution of the Government of the Republic of Tajikistan of April 30, 2011 №234 **“On approval of the rules of use of the public water supply and waste-water disposal systems in the Republic of Tajikistan»;**
- The Resolution of the Government of the Republic of Tajikistan of December 31, 2011 №679 **“On approval of the procedure of the state control and supervision of drinking water supply”;**
- The Resolution of the Government of the Republic of Tajikistan of December 31, 2011 №680 **“On approval of the procedure of metering in the field of drinking water supply”.**

According to paragraph 2 of article 1, the objectives of the Water Code of the Republic of Tajikistan are as follows:

- to regulate economic relations in the field of utilization and protection of water resources;
- to provide the legal framework for supporting and developing water use and protection of water resources;
- to define the basic principles, directions of utilization and protection of water resources. (The Law of the RT of March 20, 2008, №381).

In April 2012, the latest amendments were made to the Water Code of the Republic of Tajikistan, which cover issues of transition to the basin principle of water resources management. However, these amendments remained just another changes and additions, which did not have any effect on the process, and further degradation of the water sector continued. Experience in implementing the Water Code in the past years shows that Tajikistan needs a fundamentally new approach to the further development of its water legislation. The Water Code must solve substantial problems of water relations between the entities. Only then, it will be really effective and applicable by different water users and economic sectors.

The main issues of the development of water legislation in the near future are the following:

1. To adapt the Water Code structure to current and future requirements of the economy and the environment;
2. to improve economic fundamentals of water management at various hierarchical levels;
3. to improve the system of water metering: withdrawals of water from different sources; losses of water in transmission and distribution infrastructure; to improve the accountability and transparency of water metering at all levels of infrastructure;
4. to improve the economic responsibility of water users: additional articles on systematic awareness raising of water users on the relevant provisions of the Water Code, on penal sanctions with direct effect, on the termination of the water supply to the water user for the systematic violation of water legislation, on rules for renewal of water supply after elimination of specified violations;
5. to revise the Water Code with respect to revelation of the reference provisions and reduction of them to the extent possible;

Proposed items cover priority areas of water legislation development and aim to improve the water resources management in the coming years. To ensure long-term sustainability of the water resources management it is also necessary to develop the water legislation in the following areas:

1. Transition to the Integrated Water Resources Management in the river basins;

2. The gradual transition of the management structure to the IWRM and the basin principle to improve management efficiency, coverage of all the factors affecting the efficiency of use of natural resources;
3. Incorporation of all laws and by-laws regulating water relations in the Water Code, including the law on Water Users Associations.

It is necessary to emphasize that all amendments to the Water Code were made as needed and thus made the process of development of the water legislation evolutionary. However, in this process a systematic approach was overlooked. As a result, the Water Code turned into almost no longer functioning act in the midst of many problems of economic and institutional nature.

One of the main reasons for the low efficiency of the Water Code is the lack of mechanisms for the implementation of its provisions, as well as frequent use of reference in solution of problems to higher authorities. In Annexes, the proposals are described to improve the Water Code in connection with the above-mentioned problems.

Initiated reform of the water resources management system anticipates a fundamental change of its structure, creating new economic foundations of water management, separation of administrative, political and regulatory functions from the water delivery services function and division and redistribution of managerial functions between the newly created/reformed institutions of management. All this requires legislative support and development of the water legislation.

In the coming years it will be necessary to determine the main directions of development of the water legislation to ensure the successful implementation of the water sector reform, and to develop and adopt the necessary amendments, primarily to the Water Code.

Implementation of the Water Code without the necessary by-laws will mean that the law will not work and the development of such documents will be no less important than the development of the law.

## **6. Proposals and amendments to the articles of the Water Code of the Republic of Tajikistan**

Article 4 defines the State Water Fund, which includes the whole of all water bodies and water resources concentrated in them, the land, which they occupy with the water protection zones and strips. The water bodies of the Republic of Tajikistan include rivers, lakes, glaciers, snow patches, and other surface water sources located on its territory, as well as zones of concentration of groundwater, including medicinal mineral and thermal waters. The water resources of the Republic of Tajikistan represent the whole of all kinds of underground and surface waters.

In accordance with Article 13 of the Constitution of the Republic of Tajikistan and Article 5 of the Water Code, the water is an exclusive property of the state and the state guarantees its effective use and protection in the best interests of the people.

It is stated in the second paragraph of this article: actions of physical and legal persons, directly or indirectly violating the right of state ownership of water and contradicting the public interest of the Republic of Tajikistan are prohibited and entail liability in accordance with the legislation of the Republic of Tajikistan. It should be noted that the second paragraph of Article 5 requires revision in accordance with other legislative acts of the Republic of Tajikistan.

Article 5.<sup>1</sup> Water facilities of particular strategic importance are the property of state, and their lease or private management is strictly prohibited.

Articles 6 and 7 determine the competence of the Government of the Republic of Tajikistan and local administrations in the field of regulation of water relations, as well as the competence of the Government of the Republic of Tajikistan in the field of the drinking water supply and the competence of the authorized body in the field of the drinking water supply, as reflected in Article 5 and 6 of the Law of the Republic of Tajikistan "On drinking water and drinking water supply".

In this regard, it is proposed to adjust paragraphs 1, 5, 9, 12 and 13 of Article 6 of the Water Code in accordance with Articles 6 and 7 of the Law of the Republic of Tajikistan "On drinking water and drinking water supply". It is also proposed to bring the content of the text in accordance with Article 7 of the Water Code and Article 6 of this Law.

According to the last paragraph of Article 8 of the Water Code: "The state support in the field of the drinking water supply includes the adoption and implementation of the national and local programs to provide the owners of the centralized systems, organizations operating these systems, as well as organizations producing equipment, tools, materials, and reagents to meet the needs in drinking water, with grants, subsidies, concessional loans, budgetary and customs privileges". Some of these listed standards are also reflected in Article 14 of the Law of the Republic of Tajikistan "On drinking water and drinking water supply", including: "taxation, concessional lending, and other benefits to organizations in the field of drinking water supply, regardless of the form of ownership, producers of equipment, materials, reagents and investors are determined in accordance with the legislation of the Republic of Tajikistan". In this regard, it is proposed to adjust the requirement of Article 8 of the Water Code with this Law.

In accordance with Article 10 "The Government of the Republic of Tajikistan by tender while maintaining the target function, can provide the right of management of the state-owned water bodies within a limited area, to the specialized local and foreign legal persons on a contractual basis, taking into account the requirements of the water legislation of the Republic of Tajikistan". It is proposed to replace the phrase "specialized local" by "specialized national" ("shakhsoni huquqii vatani"), because in other existing legislative regulations in cases of use of the terms "local" and "foreign", the terms "national" and "foreign" are used.

Article 11. "The state control over the utilization and protection of water resources is to ensure compliance with the water legislation requirements by all legal and physical persons for the purpose of the efficient utilization and protection of water resources". In the Water Code in the Tajik language the translation of this article sounds like "The state control over the utilization and protection of water resources", in this regard, it is necessary to pay attention to the Tajik translation of this article. In this respect, it is proposed to replace the words "davlati az boloi" with "davlatii", i.e. it is necessary to provide the adequate translation, since the Tajik text is original, and all translations are being compared to it.

Article 21, paragraph 2. "Water protection strips and sanitary protection zones of the water bodies within the competence of local hukumats are set in kind, in the same procedure at the appropriate level, and projects are approved by the local executive authorities or on their behalf by the authorized governmental bodies regulating the utilization and protection of water resources. (Law of the RT of April 16, 2012, № 821)". This article requires revision in accordance with the existing legislation, i.e. the words "local hukumats" should be replaced with "executive state government bodies". Subsequently after the comma, "projects are approved by the local executive state government bodies or on their behalf by the authorized governmental

bodies regulating the utilization and protection of water resources”. It is necessary to revise the article, since it is unclear what the words “...authorized governmental bodies” mean? Maybe, it means those authorized bodies, which are located directly at the local level?

Chapter 4. Types of water use. In order to adjust the title of the chapter with its content, it is proposed to include an additional article related to types of water use that differ in basic designated purpose. **It is necessary to add to the text with information on the water use associated with moisture supply of land and leaching of saline lands.**

Article 29. “The use of water bodies of special state significance or special scientific and cultural value can be partially or completely prohibited according to the procedure established by the Government of the Republic of Tajikistan”. However, since the adoption of the Water Code (2000) and up to now, the regulatory-legal act regulating this issue has not been adopted.

The concept of “irrational use of water resources” as stated in Article 31 should be reflected in the basic concepts, since it is not clear under what conditions of water use it is considered as “irrational use of water resources”.

In accordance with the second paragraph of Article 31, “Special water use in the Republic of Tajikistan is carried out on a fee paid basis”. The paying procedure for a special water use should be determined by the regulatory-legal acts of the Republic of Tajikistan, that is, may be reflected in a law and a by-law. It should be noted that all regulatory standards in a particular sector should be reflected in a single law (the Code).

In the second paragraph of Article 23, it is cited that “a list of special water use types and limits of withdrawal of water from water sources are established by the authorized governmental bodies regulating the utilization and protection of water resources. (Law of the RT of April 16, 2012, № 821)” and in Articles 32 and 33 the issues of issuance of a permit for a special water use are provided. It is proposed to cite the issue of issuance of a permit in Article 23 during its revising.

According to Article 34, “No permission is needed for the general water use. Under the general water use it is mandatory to observe the requirements of the bodies in charge of the state sanitary control, the people live protection rules on water, and the authorized governmental bodies regulating the utilization and protection of water resources”. It should be noted that in the Tajik edition of this article the “body on thrifty (translation of the words “thrifty” and “sarfakorona” is provided in the first paragraph of Article 45) use and protection of water” (.....maqomot doir ba istifodai sarfakorona va hifzi obho) is cited. When reviewing the Tajik edition of the regulatory-legal acts of the Republic of Tajikistan we noted that there is no such body in it. Therefore, it is necessary to adjust the Russian and Tajik editions of the article with each other. In other words, in the Tajik language it will be “maqomoti vakolatdori davlati oid ba tanzimi istifoda va hifzi zahirahoi ob”.

The first part of Article 34. “No permission is needed for the general water use. Under the general water use it is mandatory to observe the requirements of the bodies in charge of the state sanitary control, the people live protection rules on water, and the authorized governmental bodies regulating the utilization and protection of water resources”.

The second part of this article. “In order to protect the life and health of citizens, as well as due to production and other reasons, local executive state government bodies, as advised by the authorized governmental bodies regulating the utilization and protection of water resources, the bodies in charge of state sanitary control, and other bodies concerned, set the places where

swimming, boating, livestock watering are prohibited, and also determine other conditions of general water use on water bodies. (Law of the RT of April 16, 2012, № 821)".

The title of the article is "Procedure for general water use". The first part provides "under the general water use it is mandatory to observe the requirements of bodies ...", and the second part provides "water use conditions". It would be appropriate to reflect either requirements or terms and conditions, or the procedure for general water use. It is proposed to edit the article and bring it in accordance with the title and paragraphs of the article.

In the second paragraph of Article 35 there is the term a "primary water user", in the Tajik language it is given as a "main water user" (Istifodabarandai asosii). Firstly, it is proposed to adjust the Russian and Tajik editions of this article with each other. Secondly, this term is used only once in this article of the Water Code. Therefore, it is necessary to give a definition of this term in the second article.

It is proposed to bring into compliance Articles 36 and 37. Article 36 determines making the water bodies available for a solitary use. This is also repeated in Article 37, which according to Article 36 does not define any rule.

In the first part of Article 38, it is quoted that "the right of water users for a solitary use of a water body shall be approved by the official acts for the right of water use, which are issued by the executive authorities of regions, districts and cities". In the third part of Article 37, it is quoted that "the Government of the Republic of Tajikistan or the authorized governmental bodies regulating the utilization and protection of water resources make the water bodies or their parts available for a solitary use in cases specified by this Code. (Law of the RT of April 16, 2012, № 821)". Thus, Article 38 does not specify what documents are needed, if the "Government of the Republic of Tajikistan ... make the water bodies or their parts available for a solitary use".

Article 39 contains a concept of making the water bodies available for unlimited or temporary use and consists of two paragraphs. In the Tajik version, this article consists of three paragraphs. Therefore, it is proposed to edit both versions in order to bring them into accordance semantically. Besides, the third paragraph of the Tajik edition refers to the general water use, which is missing in the Russian edition of this article.

Article 42. Use of water bodies for its intended purpose. "Water users have the right to use water bodies for the purposes for which they are granted permission for a special water use". It is proposed to use this wording in the article "On the issuance of a permit for a special use".

Article 43 describes the rights of the water users. It should be noted that the first paragraph of the first part of this article, which is "to produce water for its later use", in the Tajik version of this article and paragraph it is quoted as "to find water ..." or "to discover or search" ("paydo kardani ob jihati istifodai minba'dai on"), which leads to a contradiction between these versions and the objectives of the first part of this article. Moreover, in the last paragraph of the first part, which states "to unite into the water user associations", it is proposed to add "... and into the water user federation" after the words "...water users". Next, the third paragraph of this article should be quoted as follows: "3. Water user federations (the term "federation" is used in the Law on WUAs) are created with the purpose of ... (specify the purpose)".

Article 48. Obligations of the water supply organizations. We propose to edit the first part of this article: "Water management organizations carry out their activities in accordance with this Code, the legislation of the Republic of Tajikistan and agreements of the parties on providing water

users with water. In order to comply with the terms and conditions provided for in the agreements on water supply, the water management organizations are obligated to: ...” and bring in line with the title of the article **“Obligations of the water supply organizations on water supply”**.

Chapter 8. Termination of water use rights. This chapter defines the termination of water use rights, and includes Articles 49-52. The analysis of Articles 49 and 50 showed that the meaning of the standards in Article 49 and in Article 50 is identical. For example, the second paragraph of the first part of Article 49 “the expiration date specified in the permit for a special water use” and the first paragraph of first part of Article 50 “canceling or suspension of the permit for a special water use”. Therefore, it is proposed to combine these articles into one article.

Losses caused by the water management activities, termination or change in the water use terms and conditions, indicated in Article 52, shall be compensated in cases and in accordance with the procedure established by the Government of the Republic of Tajikistan. However, such procedure has never been established.

Chapter 9. Use of water bodies for drinking, domestic and other needs of the population. It should be noted that some standards quoted in the articles of Chapter 9 are duplicated in the Law of the Republic of Tajikistan “On drinking water and drinking water supply” and vice versa. Therefore, it is proposed in terms of codification of articles to bring them in line with each other.

Chapter 10. Use of water bodies for medical, resort and recreational purposes. This chapter provides for the use of water bodies for medical, resort and recreational purposes. The meaning of the definition of Article 61 is considered incomplete, and therefore, it is proposed to edit this article.

The title of Article 62 “Prohibition of the waste water disposal into water bodies, which are classified as medicinal” does not correspond to the content of this article. The title of the article talks about implementation of certain activities (“prohibition”). However, in the content of the article from the viewpoint of the rulemaking the certain activities, i.e. “prohibitions” are not given. In other words, it is not clear how “prohibition” will be carried out and which agency will be responsible for this.

Article 63 has a blanket rule and confirms that the procedure for the use of water bodies for recreation and sport shall be established by the Government of the Republic of Tajikistan. However, the procedure has never been established.

The regulatory act should be developed on the basis of the first part of Article 64 “Use of water bodies for boating (row-boats, motor boats, powerboats, sailing boats, etc.), as it is permitted in compliance with the rules for use of small crafts, established by the Government of the Republic of Tajikistan”. However, they are developed on the basis of Article 86 “Procedure for classifying waterways as a navigable and establishment of the operating rules” although Article 86 does not provide for the adoption of a regulatory-legal act.

Chapter 11. Use of water bodies for agricultural needs. This chapter covers the issues of use of water bodies for agriculture (Articles 66-79).

The second sentence of Article 66 “Under the special water use the water supply, irrigation, drainage, and collector-drainage systems and agricultural water supply systems can be used, as well as separate water facilities and devices belonging to physical and legal persons” is not adequately covered in terms of designated use of the legislation and requires revision, such as

**the introduction of information on the watershed-water disposal, flood protection and erosional-preventive systems, etc.**

Article 67 also requires revision, as it does not sufficiently cover the adoption of the regulatory-legal acts and is rather general. **It has to be amended by the fact that the agricultural water use should include not only the planned irrigation, but also water-charging and washing irrigation, water conservation measures (chisel plowing, harrowing, mulching, etc.).**

This chapter also recommends reflecting separately the procedures for general and special water use **as there are certain types of general water use, which require a special permit, but they are not established by a specially authorized governmental body regulating the utilization and protection of water resources (Article 23 of the Water Code). Currently it is the Committee for Environmental Protection under the Government of the Republic of Tajikistan.**

In the Article 69 "intrafarm water use plans in coordination with the water supply organization, the relevant local executive authorities, to which the respective territory is administratively subordinated", it is proposed to delete the phrase "...to which the respective territory is administratively subordinated" after the words "local executive authorities", as semantically there is no need to reflect these words. **However, since the reform is going on and the basin water organizations (BWOs) will be created, and the district water management departments (rayvodkhoz) will be closed down in the short term, then the approval of water use plans should be withdrawn from the right of local executive authorities and handed over to the BWOs.**

Article 70. **It is necessary to edit it in connection with the division of economic and political functions in the irrigation sector and water resource management. Changes in the amount and timing of water supply should be made by a request of a water user on a contractual basis with the use of multiplying co-efficient to the schedule rate as prescribed by the Government of the Republic of Tajikistan.**

It is proposed to add a concept of "water supply of agriculture" as a first paragraph of Article 79 and then divide the water supply system into centralized and decentralized.

Chapter 12. Use of water bodies for industrial purposes and hydropower. This chapter covers the use of water bodies for industrial purposes and hydropower and begins with Article 80 "Responsibilities of water users who use water bodies for industrial purposes", where it is proposed to foresee the legal provision.

It is quoted in Article 85 that "In addition to the requirements of Article 4 of the this Code, rivers, lakes, water reservoirs of the Republic of Tajikistan are the public waterways, except for cases when their use for this purpose wholly or partly is prohibited, or they are given for a solitary use", i.e. there is a reference to Article 4 of this Code. However, the titles of Article 85 and Article 4 are not compatible and it is not possible to refer to, for example, the mentioned in Article 4 "zones of concentration of underground water, including medicinal-mineral and thermal waters" and additionally to these types of waters and also to Article 85 "rivers, lakes, water reservoirs of the Republic of Tajikistan are the public waterways". Therefore, it is proposed to edit this article.

In the Tajik version of Article 88 "Limitation of water use on fishery water bodies in the interest of fish industry" does not correspond to the content of the first part of this article.

The contents of Article 89 and Article 90 should be governed by the Law of the Republic of Tajikistan of December 22, 2006, № 220 “On fish farming”.

It is quoted in Article 92 that “The authorized governmental bodies regulating the utilization and protection of water resources can give preferential rights of water use to the hunting industry organizations on the rivers, lakes and other sites that are the habitat area for wild swimming birds and valuable fur-bearing animals taking into account the requirements of the integrated utilization and protection of waters. (Law of the RT of April 16, 2012, № 821)”. However, it is not defined what kind of preferential rights will be given. For example, analyzing the tax or customs legislation we can see that the certain preferential rights or privileges are reflected in the legislation.

Article 93. Procedure for use of water bodies for hunting industry needs. However, the procedure has not yet been established by the Government of the Republic of Tajikistan. It is proposed to bring in line Article 4. “State water fund” and Article 94. “Protected water bodies”. In other words, the rules on protected water bodies should be reflected in Article 4.

Article 97. Withdrawal of water bodies from reserved area use. “Withdrawal of water bodies from reserved area use is allowed only in cases of special need based on the decision of the Government of the Republic of Tajikistan”. It is proposed to edit the Tajik version of this article, since in the Tajik version the word “withdrawal” is reflected as “kashida giriftan”, i.e. “take”. It is also necessary to develop in which cases based on the decision of the Government of the Republic of Tajikistan a withdrawal of water bodies from reserved area use will be carried out.

Article 98. Permit for use of water bodies for discharge of sewage waters. “Water bodies for discharge of industrial, domestic, drainage, stormwater and other wastewater can be used only with the permission of the authorized governmental bodies regulating the utilization and protection of water resources by agreement with the bodies responsible for the sanitary control, fish stocks protection, and other bodies concerned. The permit is issued based on the documents justifying the necessity and possibility of use of water bodies for discharge of sewage waters. (Law of the RT of April 16, 2012, № 821)”. To bring into compliance the chapter title with the title of Article 98 “Permit for use of water bodies for discharge of sewage waters” it is proposed to remove the words “Permit for” from the title of the article.

Article 99. Prohibition of the discharge of sewage waters into water bodies classified as a drinking water. It should be noted that the content of this article is a regulation of the Law of the Republic of Tajikistan on the drinking water supply. However, the Law on this issue does not provide the necessary rules.

**Article 101. Procedure and terms and conditions for the use of water bodies for the discharge of sewage waters. This procedure is established by the Government of the Republic of Tajikistan. It should be noted that there is a legislation concerning these issues remained behind from the Soviet era, which should be revised based on the new realias.**

Article 103. “Procedure for the use of water bodies for fire-prevention needs, emergency recovery and other state and public needs shall be established by the Government of the Republic of Tajikistan”. **There is a legislation concerning these issues remained behind from the Soviet era, which should be revised based on the new realias.**

Article 105. “Procedure for water reservoir operation shall be determined by the rules approved by authorized governmental bodies regulating the utilization and protection of water resources for each water reservoir, cascade or a system of water reservoirs in consultation with the bodies

responsible for the state sanitary control, and other bodies concerned. (Law of the RT of April 16, 2012, № 821)”. Unfortunately, the procedure and rules by the authorized governmental body for each water reservoir, cascade or the system of water reservoirs at this stage has not yet been developed, and everything is based on the old Soviet acts, which should be revised.

According to Article 106 “Organization and coordination of activities ensuring proper technical condition and improvement of the water reservoirs, as well as monitoring of compliance with the rules of their operation, are carried out by authorized governmental bodies regulating the utilization and protection of water resources in accordance with the procedure established by the Government of the Republic of Tajikistan. (Law of the RT of April 16, 2012, № 821)”. However, such procedure has not been adopted yet. **At the moment, the Resolution № 293 of the Council of Ministers of the Tajik SSR of November 3, 1978 “The Resolution № 815 of the Council of Ministers of the USSR of October 2, 1978 “On the procedure of organization and coordination of activities ensuring the proper technical condition and improvement of the water reservoirs and on the implementation of these activities” is still valid. It is completely inappropriate to the modern realities. It is necessary to adopt a new act of the Government of the Republic of Tajikistan.**

Chapter 20. Resolution of disputes related to water use. This chapter consists of ten articles and reflects the procedure for dispute resolution related to water use. It is proposed generally as in other sectors within the current legislation, to entrust the judicial bodies with the dispute resolution, and to refer to the procedural legislation of the Republic of Tajikistan in the procedure for dispute resolution. **Since the reform providing for a transition to the basin principle of water resources management is going on, it is necessary along with the court proceedings also to consider issues of dispute resolution within the basin organizations, where all concerned parties will be represented.**

Article 109. “Disputes on water use between the water users of the Republic of Tajikistan and the water users of other states shall be resolved by the governments of these states”. It is proposed to amend the wording with “on the basis of concluded international agreements”.

Article 118. Property and other disputes related to water relations shall be also settled by the courts. It is proposed to remove the word “also” as in other articles the property disputes are not mentioned.

The title of Article 119 does not correspond to the content of the article. Therefore, it is proposed to rename the title of article 119 “Water protection objective” into “Water protection”.

Contents of Article 119 and Article 124 have the same meaning. Therefore, it is proposed to combine these two articles by **making the necessary cuts and editing.**

The contents of the first sentence of Article 121 and the title do not adequately correspond with the contents of Article 126 because the rules listed in these articles have a single meaning – “activities for water resources conservation from depletion”. **It is necessary to combine them and edit.**

The wording of Article 128 “If during drilling and other mining works associated with search, exploration, and exploitation of gas and oil fields, as well as deposits of other mineral resources, the underground water level were uncovered, the physical and legal persons shall immediately report this to authorized governmental bodies regulating the utilization and protection of water resources, and assume appropriate measures for the protection of the underground waters from pollution and depletion, equip the self-pumping boreholes with controlling devices (Law of the

RT of April 16, 2012, № 821)” is not consistent with the title of this article “The measures on underground water protection from depletion”, as in the text content it is semantically provided for “underground water use” and then taking measures “to protect the underground water from pollution and depletion...”

**Article 129 in the title provides for “responsibilities of the water users to prevent and eliminate harmful effects of water, the consequences of water body pollution as a result of accidents and natural disasters”. It should be noted that the content of the article is not consistent with the title of the article, and even the meaning is somewhat broader and provides for the responsibilities for the water body users and users of water facilities. Therefore, the whole article from the title and up to the text has to be clarified and amended.**

Article 130. “Taking urgent measures for disaster prevention and recovery caused by the harmful effects of water, water bodies pollution resulting from accidents and natural disasters”. It is proposed to remove the first part of the article since this article does not propose any rules and has a referential nature.

The third part of the article 132<sup>1</sup>. “3. Local executive governmental bodies should ensure the implementation of all flood control measures. Control and monitoring of the floods in the administrative centers are funded by the local executive governmental bodies from the local budget”. It should be noted that in this article the legal rule and the concept of the “flood control rules” are not fully explained and not covered properly. **It is required to make appropriate revision.**

Article 132<sup>2</sup>. Governmental and local flood control programs. In this article, governmental and local flood control programs are covered. The wording of the third part of this article is “The local flood control programs for other water bodies and river basins are developed, approved and implemented by the executive governmental bodies of the respective regions, cities and districts in coordination with the authorized governmental body regulating the utilization and protection of water resources”. It is proposed to replace the word “local” with “governmental programs on the local level”. The wording of the fifth part of this article is “Governmental and local flood control programs are developed on the basis of available and expected to be attracted financial and material and technical resources”. In other words, it does not specify a source of funding for the implementation of the flood control program. **It is necessary to adjust accordingly.**

The second part of Article 132<sup>3</sup> “During the development and implementation of preventive flood control measures, the special attention is paid to the protection of the water distribution facilities of settlements, radioactive and chemical waste storages, other environmentally hazardous substances, as well as other major economic facilities located in the places of high flood risk”. In the Tajik version of the text, the second part of the Article 132<sup>3</sup> is provided as giving a specific instruction to any entity. In other words, the phrase “the special attention is paid to” is translated as “to pay special attention to” (diqqati makhsus doda shavad). **Therefore, it is necessary to ensure adequate translation and equivalence of both texts.**

The wording of the third part of this article is “Territories, where the most important industrial and other objects for this region (city, district) are located, shall be provided with systems of engineering protection from floods and other harmful effects of waters. (Law of the RT of December 3, 2009, № 572)”. It is proposed to edit the text, that is instead the words “for this region (city, district)” to use the words “(regions, districts and cities)”.

Article 132<sup>4</sup>. Temporary utilization of material and technical resources. It is proposed to add the words “during the emergency caused by the flood” after the word “resources” in the title of the article. Then the wording of the first part is: “During the emergency caused by the flood, the Republican flood control commission in order to take operational measures can provide relevant bodies the right to temporary utilization of any necessary stocks of raw materials, fuel, supplies, transportation, machinery and equipment”. It is not specifically indicated from where the necessary stocks of raw materials, fuel, supplies, transportation, machinery and equipment can be temporarily utilized. Only the second part provides for a legal rule: “Temporarily attracted supplies, equipment and transportation shall be returned to their owners after the completion of emergency works. If they were used, damaged or broken, their cost should be fully compensated from the national budget. (Law of the RT of December 3, 2009, № 572)”. However, the second part does not correspond to the first. **On the other hand, this article reflects the old command-and-control approach, relying on a single public ownership. It is not consistent with the current market economy. Therefore, it is proposed to make the new edition, providing for the establishment and development of material and technical, and financial reserves, etc. In this regard, it is proposed to edit this article in this aspect.**

Article 132<sup>6</sup>. Sarez Lake monitoring. It is proposed to remove this article. We propose to bring “Sarez Lake monitoring” in a by-law, since the Code contains general relations and does not envisage specifying particular entities.

It is proposed to remove or edit the first and second part of Article 140<sup>2</sup> and the first, second and third part of Article 140<sup>3</sup> since these issues should be defined in a by-law to this Code. **Therefore, in order to reflect these issues in by-laws it is practical to provide for common approaches to monitoring of all breakthrough-prone lakes in this article.**

Article 141: “The invalidity of legal transactions, which violate the right of state ownership on water. Assignment of water use rights and other transactions, which directly or indirectly violate the right of state ownership on water, shall be deemed invalid”. It is proposed to exclude the words “directly or indirectly” from the content of this article.

Article 142. “Responsibility for violation of water legislation”. The first part of Article 142 provides “The persons guilty of acts specified in Article 124 of this Code, as well as the persons guilty of: ...” and here law violations consisting of twelve items are listed. Chapter 11 of the Code of administrative violations of the Republic of Tajikistan “Administrative violations in the use of water resources” (Articles 173-179) also contains violations consisting of seven items. In this regard, it is proposed to exclude from the article a list of violations and give a reference to the Code of administrative violations or other legislation.

Article 143. Return of wilfully misappropriated water bodies. “Wilfully misappropriated water bodies shall be returned to their owners without compensation for expenses incurred during their unauthorized use in accordance with the procedure established by the legislation of the Republic of Tajikistan”. It is proposed to exclude this article as the content of Article 143 has a reference to “procedure established by the legislation of the Republic of Tajikistan”. In the case of an actual dispute associated with unauthorized misappropriation, a different sectoral legislation can be applied.

Wording of Article 144. “Physical and legal persons are obligated to indemnify for losses caused in violation of water legislation by them in the amount and in accordance with the procedure established by the legislation of the Republic of Tajikistan”. The content of this article shows that the violation is committed already and losses will be reflected in the initiated criminal or

administrative case related to the law violations. In other words, the estimation of losses can be based on the procedural legislation. **This should be reflected in the new wording of the article.**

Article 145. “Principles of international cooperation in the field of water relations” and Article 146. “Economic fundamentals of water relations with other countries”. It is proposed to reflect these issues in a separate chapter, since they are not relevant to Chapter 24.

### **The Water Code has also the following gaps:**

- The Water Code needs a section with relevant chapters describing all kinds of water resources (surface water such as rivers, lakes, glaciers, snowfields, swamps, etc., underground water with its division into fresh, mineral, medicinal, thermal, and industrial). There is no information on the permafrost zone located in the eastern part of the Pamirs. This is a very fragile element both as part of water resources and an area of economic activity, and the ecosystem as a whole. The same applies to the wetlands, the remains of which in Tajikistan have a biospheric value;
  - in general, there is no section on recreation on the waters;
  - it is necessary to characterize the issues of the procedure for the use and protection of fresh, mineral, medicinal, thermal, industrial underground water, and the reflection of these types of water as the natural resources;
  - it is necessary to add a section on standardization in the area of monitoring and utilization of water resources, including underground waters;
  - the section on water bodies use for fishing industry does not cover the issues of creation and functioning of the artificial reservoirs for fish farming and tradable fish production;
  - the issue of management in the area of utilization and protection of all types of water with the division on the local, national and transboundary aspects is subject to a fundamental revision. This issue is subject to strict regulation by: a) natural water bodies management and protection; b) site management of the water resources utilization system; c) integrated water resources management with hydrographic, organizational, and institutional features on the interfarm and intrafarm, national and transboundary levels;
  - it is necessary to add a section on water strategies of Tajikistan (general and sectoral strategies adjusted for climate change);
  - it is proposed to reflect the status of water users and water user groups;
  - it is proposed to describe the procedure for interaction of mutually established inter-state organizations between themselves and organizations of Tajikistan;
  - it is required to include an article on the environmental aspects of the utilization of the underground water;
  - there is no clear description of the procedure for public participation in the water resources utilization and protection, it is necessary to fill this gap adjusted for the views on the basis of essence of the water reform. Therefore, it is necessary to have a separate chapter or a section titled “Water users associations”. It is necessary to describe the possibility of the establishment and functioning of the water user associations for irrigation, drinking water supply and sanitation with their rights and responsibilities;
  - The Water Code totally inadequately addresses issues of stockwater development and does not cover aspects of regrassing of pastures;
  - It is necessary to amend the chapter on the use of water bodies for industrial purposes and hydropower with articles on small hydropower on natural water bodies and irrigation facilities. It is also needed to amend with articles on the role of hydropower in the development of the “green economy” taking into account the rights and responsibilities for development of this direction;
  - it is necessary to have a special chapter on the safety of hydrotechnical constructions with division into national and transboundary aspects;

- it is proposed to include separate articles on staff training and mandatory system of personnel development for the water sector at different levels, on cooperation of efforts in this direction at the national and regional levels;
- it is required to include an article on obligatory support for development of scientific - research institutions and their respective activities in the sectors of water resources utilization system taking into account natural-climatic and economic conditions;
- it is necessary to reflect the mathematical and other models of water resources utilization and protection;
- The Water Code does not expand the role of the private sector and civil society and gender problems. It is necessary to express the position towards these issues in relevant articles;
- it is necessary to add the information on establishment of the organizational structure out of the concerned ministries and agencies on development of the relevant regulatory-legal acts.

**In article on special terminology, it is necessary to consider the following:**

- a clear definition of the Integrated water resources management with its specific organizational structure and approaches;
- it is necessary to provide a clear definition of transboundariness: either it will be transboundary water resources, or water of interstate sources, or water resources of international rivers, etc. The same applies to the transboundary basins. There is a need to come to a consensus;
- to give a definition to: underground water bodies; underground water basin, underground water-bearing level; wellspring; underground water deposits; thermal and mineral waters, medicinal mineral waters; and industrial underground waters;
- to give a definition of recreation on waters ;
- to give a definition of stockwater development and regrassing of pastures;
- to give a definition of hydrotechnical constructions of interstate significance;
- to give a definition of small hydropower;
- to give a definition of standardization in water resources use;
- to give a clear definition of gender and its role in water issues;
- transfer of water bodies for solitary use;
- the water resources utilization system;
- the water management system ;
- standardization in the area of water resources use;
- adaptation to climate change.

With regard to fundamental issues that need a special attention, it is necessary to obtain approval of the Government of the Republic of Tajikistan and the concerned ministries and agencies because the structure of new edition of the Water Code of the Republic of Tajikistan will largely depend on that. The complete set of draft articles and the text of the Code come to the following:

1. The body regulating the utilization and protection of water resources. Will it remain in the previous wording of the Water Code, or will it be one body? From the point of view of simplification of procedures for obtaining permits for special water use and passing various approval procedures, it should be one body with appropriate powers and should act based on the “single window” principle and do everything itself, organize all the approvals with other bodies, rather than sending applicants to different agencies to collect all the documents, sometimes two or more times in order to present them for consideration.
2. Transfer of water bodies for solitary use. At present it is great uncertainty in the Water Code which water bodies can be provided by the Government of Tajikistan, which ones - by specially authorized bodies regulating the utilization and protection of water

resources, and which ones – by local executive governmental bodies. This situation contravenes to the Constitution of the Republic of Tajikistan, where Article 13 states that “ ... the water and the land ... are the exclusive property of the state ...”. In this important issue, the following seems practical. Since this is an exclusive property of the state and water bodies are of vital importance not only for Tajikistan, but also for the Central Asian region, there should be one body which is the Government of Tajikistan, and the specially authorized governmental body regulating the utilization and protection of water resources jointly and with the approval of the relevant local executive governmental bodies, beginning with Jamoats, districts and regions, where water bodies are located in, should submit proposals in response to requests of concerned organizations to the Government in the form of the draft resolution which can contain both a positively founded and a negatively reasoned decision.

3. Should the division into interfarm and intrafarm irrigation systems be preserved in the new edition of the Water Code of the Republic of Tajikistan? The concept of rational utilization and protection of water resources in the Republic of Tajikistan approved by the Resolution № 551 of the Government of the Republic of Tajikistan of December 1, 2001, provides for not to divide them, and consider as a single integral subject to management, but with keeping division on the basis of purely technological aspects.
4. The current Water Code does not address the procedure of funding of water user sectors development (except for drinking water supply). In this connection, it seems possible private water engineering and public-private water engineering and operation involving foreign investments. It is also possible all public funding of construction and operation of water bodies.
5. Under the private construction or privatization of state projects what has to be done with projects occupied by them? It is practical to leave the land they occupy in the Water Fund with guaranteed tax benefits foreseen for the land of the State Water Fund. Most of the land of the Water Fund after the transfer on balance or for management will be under the control of farmers, water users associations. With the possible development of new lands for irrigation by big businesses, the land will also be leased by farmers. If the land of Water Fund of private companies will not be taxed, this will be an additional incentive for its development (there are about 830 thousand hectares of such land in Tajikistan), and the lease payment relief, which will be important for strengthening food security in Tajikistan.
6. If in the new version the private and public funds involvement in construction and operation of private water bodies of strategic importance will be provided for, then the relevant provisions in terms of their protection, inclusion into the Register, and the corresponding rules and responsibilities should be foreseen. This should not be only with regard to the public projects.
7. It is necessary to reduce responsibilities of local executive governmental bodies in connection with the reform of the water sector.
8. It is necessary to review the development and approval of the operating rules for water facilities. This should be done not by the bodies regulating the utilization and protection of water resources, but by those ministries and agencies that own facilities. However, the rules should be approved in coordination with the body regulating the utilization and protection of water and other concerned bodies.
9. It is necessary to clearly distinguish what the right to use water and the right to use a water body is. A clear description of the rights and responsibilities of water users and users of water bodies will depend on clarification of these issues. The current Water Code does not contain the description of the rights and responsibilities of the users of water bodies. In addition to this, a draft resolution of the Government of the Republic of

Tajikistan on the procedure of partial or complete prohibition of the use of water bodies of special national significance or special scientific value has never been developed. It is also necessary to develop a resolution of the Government of the Republic of Tajikistan on the procedure and conditions of payment collection for use of water bodies and water resources. There is only a procedure for payment collection for water supply services to consumers.

10. It is crucial to decide with the state support of non-governmental organizations of joint water supply and its assistance in their establishment. So far, it is a common note in Article 60 of the Water Code, but it is not clear what specifically does it mean.
11. Resolution of disputes on water use. This is a very wide issue and it should be divided into two parts: the disputes concerning the cubature of water use between sectors of the economy and the disputes concerning permits for special water use. The participation of the body regulating the utilization and protection of water resources in this issue, is reasonable. However, if the disputes on water use are purely economic, then it is not the competence of the body regulating the utilization and protection of water resources, as it neither set limits on water use to business entities nor distributed water resources among the work teams, WUAs and dehqan farms and other water users. Therefore, it is not up to it to solve the economic disputes. In the future, the basin organizations will be established, where all concerned parties will be represented, including environment protection organizations, the Water user federations and others. Hence, it is advisable to solve jointly economic disputes on water use at these levels.
12. It is necessary to determine, in principle, the approaches to prevent and eliminate harmful effects of water, especially on temporary utilization of material and technical resources (Article 132<sup>4</sup>). In this issues the administrative and bureaucratic approach should be present but not dominate, there should be a system of formation of the respective funds and material and technical resources, such as establishment of certain fixed tax on prevention and control of natural disasters in Tajikistan, or certain annual allocations from the budget revenues (in %).
13. On the issue of the special protection of water facilities located on the territory of the Republic of Tajikistan, which are private property, but are of strategic importance, it is also necessary to decide on the type of protective service: either private or governmental.
14. In 2009, the Water and Energy Council was established in Tajikistan. The current Water Code prescribes the establishment of the National Water Council. It should be advisable to expand the title of Water and Energy Council and its competence taking into account the competence defined by the Water Code and the regulation on the Water and Energy Council, approved by the Resolution № 660 of the Government of the Republic of Tajikistan of December 2, 2009. Ultimately, this Council should deal not only with national but also international issues. After taking the critical decision on this issue, it would be possible to begin the development of the Regulation on the Council, approved by the Government of the Republic of Tajikistan.

According to paragraph 15 of the Concept of legislation development of the Republic of Tajikistan, which was adopted by the Order №1021 of the President of the Republic of Tajikistan of February 19, 2011, one of the ways to improve legislation is the codification of the legislation of the Republic of Tajikistan. Therefore, during the developing or editing articles of the Water Code it is necessary to codify them.

The analysis of the Water Code showed that at this stage some of the articles, parts of the articles, and paragraphs do not comply with the rulemaking technique according to the Law of the Republic of Tajikistan “On regulatory-legal acts” of March 26, 2009. In this regard, during the development of the new Water Code or its editing, it is necessary to bring it into conformity with the requirements of the Law of the Republic of Tajikistan “On regulatory-legal acts”.

In accordance with Article 31 of this Law “General requirements for the law-making technique”, it is required to observe the conditions given below:

1. The regulatory-legal acts shall be internally consistent, logically adjusted and correspond to the law-making technique.
2. The text of regulatory-legal acts shall contain general provisions first and then the special provisions.
3. The concepts and terms used in the text of regulatory-legal acts shall be clear and simple.
4. The content of the text of the article, part or paragraph shall not be repeated in other articles, parts, or paragraphs.
5. The titles of regulatory-legal acts and their structural elements shall be concise, clearly-worded and reflect their basic content.
6. The norms of regulatory-legal acts shall be stated concisely, in the present time and preferably be confirmatory.
7. The procedure of introduction into effect and entry of the regulatory-legal acts into legal force shall be stated in a regulatory-legal act itself in the form of the final provisions or a separate regulatory-legal act of similar kind on its enforcement. Invalidation of the regulatory-legal act in the case of adoption of a new regulatory-legal act shall be specified in the legislative provisions of this new regulatory-legal act or in a separate regulatory-legal act of a similar kind.

During the development of the new Code, it is also required to comply with the requirements of Article 35. “Special aspects of the Code structure”:

1. The Code shall contain a title and may have a preamble, general and specific parts.
2. The General part of the Code contains:
  - general terms (principles, definition of concepts, the basic institutions);
  - special regulations;
  - other initial regulations, characterized by a high level of generalization and stability, laying down the legal basis for application of the laws of the special part.
3. The Special part of the Code may contain the following norms:
  - type and norm (rules) of possible and appropriate behavior (legal rights and obligations);
  - type and norm of the possible consequences of infringement of rule of law (legal responsibility).

### **3. Proposals on amendments to the chapters, sections and articles of the Water Code**

Amendments to the Water Code should be made based on the current and future priorities. The priorities of improving the water legislation are currently as follows:

- Proposals for improving the structure of the Water Code based on the division of system functions of water resources management by (1) water policy, management and regulation of water relations and (2) the provision of water supply services, maintenance and operation of water infrastructure;
- Development and approval of the by-laws - Regulations of the newly created Ministry of Energy and Water Resources and Agency for Melioration and Irrigation under the Government of the Republic of Tajikistan;
- Consideration of international experience of improving water legislation, especially in the countries of the region with similar to Tajikistan natural and socio-economic conditions.

The study of the current Water Code shows that it is necessary to change the structure, the content of several articles, make new chapters, articles and others in accordance with existing conditions. It is proposed to make amendments to the following chapters, sections and articles of the Water Code, which are filled in yellow:

## SECTION I. GENERAL PROVISIONS

### CHAPTER 1. PRINCIPAL PROVISIONS

Article 1. Goals and objectives of the Water Code of the Republic of Tajikistan

Article 2. Basic Concepts

Article 3. Water legislation

Article 4. State Water Fund

Article 41. Lands of the State Water Fund

Article 5. State ownership of the water

Article 51. Water facilities of particular strategic importance

Article 6. Competence of the Government of the Republic of Tajikistan in the area of water relations regulation

Article 7. Competence of local executive governmental bodies in the area of water relations regulation

Article 8. State regulation and support in the area of water relations

Article 9. State management in the water utilization and protection

Article 10. Accordance of a right to manage the state-owned waterworks facilities to specialized legal persons

Article 11. State control over the water utilization and protection

Article 12. Body exercising state control over the water utilization and protection of water resources

Article 13. Participation of legal and physical persons in the rational utilization and protection of water resources

### CHAPTER 2. LOCATION, DESIGN, CONSTRUCTION AND COMMISSIONING OF ENTERPRISES, BUILDINGS AND OTHER FACILITIES AFFECTING THE WATER RESOURCES CONDITION

Article 14. Terms of location, design, construction and commissioning of enterprises, buildings and other facilities affecting the water resources condition

Article 15. Determination of sites for construction of enterprises, buildings and other facilities affecting the water resources condition

Article 16. Mutual approval of the projects for construction of enterprises, buildings and other facilities affecting the water resources condition

Article 17. Terms and conditions of prohibition of commissioning enterprises, buildings and other facilities affecting the water resources condition

Article 18. Design of construction of bridges, passages and other transport communications through water bodies

### CHAPTER 3. WORKS ON WATER BODIES AND WATER PROTECTION STRIPS (ZONES)

Article 19. Procedure for works on water bodies and in coastal water protection strips (zones)

Article 20. Water protection strips (zones) of water bodies

Article 21. Establishment of coastal water protection strips and sanitary protection zones

Article 22. Maintenance of water protection zones

## SECTION II. WATER USE

### CHAPTER 4. TYPES OF WATER USE

Article 23. General and special water use

Article 24. Joint and solitary water use

Article 25. Primary and secondary water use

Article 26. Types of water use that differ by basic special designation

### CHAPTER 5. WATER USERS AND WATER USE BODIES

Article 27. Water users

Article 28. Water use bodies

Article 29. Partial and total prohibition of water body use

### CHAPTER 6. PROCEDURE AND CONDITIONS FOR PROVISION OF WATER BODIES FOR USE

Article 30. Priority provision of water bodies for drinking and domestic needs of population

Article 31. Economic terms and conditions of provision of water bodies for use

Article 32. Permit for special water use

Article 33. Permit for special water use issued by local executive bodies

Article 34. Procedure for general water use

Article 35. General water use on water bodies provided for solitary use

Article 36. Provision of water bodies for solitary use

Article 37. Bodies providing the water bodies for solitary use

Article 38. Documents certifying the right for solitary use of water bodies

Article 39. Term of water use

Article 40. Calculation of a term of temporary water use

Article 41. Procedure for extension of a term of temporary water use

### CHAPTER 7. RIGHTS AND RESPONSIBILITIES OF WATER USERS AND WATER SUPPLY ORGANIZATIONS

Article 42. Use of water bodies for their intended purpose

Article 43. Rights of water users

Article 44. Restriction of the water users' rights

Article 45. Responsibilities of water users

Article 46. Stimulation of water users who take measures on the rational water use and protection

Article 47. Rights of water supply organizations on water resources use

Article 48. Responsibilities of water supply organizations on water supply

## CHAPTER 8. TERMINATION OF WATER USE RIGHTS

Article 49. Grounds for termination of water use rights

Article 50. Procedure for termination of water use rights

Article 51. Removal of water bodies from solitary use

Article 52. Compensation for losses caused by implementation of water-related activities, termination or change in the terms and conditions of water use

## CHAPTER 9. WATER BODY USE FOR DRINKING, DOMESTIC AND OTHER NEEDS OF POPULATION

Article 53. Water and water bodies provided for drinking, domestic and other needs of the population

Article 54. Centralized water supply of the population

Article 55. Decentralized water supply of the population

Article 56. Use of underground drinking quality water for purposes not related to drinking and domestic water supply

Article 57. Right of ownership of the drinking water supply systems

Article 58. Sources of funding in the area of the drinking water supply

Article 59. Certification in the area of the drinking water supply

Article 60. Guarantee of drinking water supply in case of malfunction of the centralized and decentralized systems of drinking water supply

## CHAPTER 10. USE OF WATER BODIES FOR MEDICAL, RESORT AND RECREATIONAL PURPOSES

Article 61. Primary use for medical and resort purposes of water bodies classified as medicinal (mineral)

Article 62. Prohibition of the sewage disposal into water bodies classified as medicinal

Article 63. Procedure for use of water bodies for recreation and sport

Article 64. Use of water bodies for boating

Article 65. Use of water bodies for sporting and amateur fishing

## CHAPTER 11. USE OF WATER BODIES FOR AGRICULTURAL NEEDS

Article 66. Agricultural water use **(it is required to amend it with moisture supply and leaching of saline lands)**

Article 67. Purpose of agricultural water use in irrigated agriculture

Article 68. Implementation of agricultural water use

Article 69. Approval of water use plans

Article 70. Change in amount and timing of water supply

Article 71. Responsibilities of water users using water bodies for agricultural needs

Article 72. Wastewater irrigation

Article 73. Use of water for irrigation of lands occupied by forests, forest belts and nursery forest gardens

Article 74. Use of water bodies for the needs of water user associations and other public associations

Article 75. Water supply of household and other farms

Article 76. Prohibition of water users to regulate the water supply from interfarm water bodies

Article 77. Prohibition of driving tractors, transport vehicles, watering and driving cattle through canals and other hydraulic facilities

Article 78. Participation of water users in irrigation - reclamation works

Article 79. Water supply of agriculture

## CHAPTER 12. USE OF WATER BODIES FOR INDUSTRIAL PURPOSES AND HYDROPOWER NEEDS

Article 80. Responsibilities of water users using water bodies for industrial purposes

Article 81. Restriction of use of drinking water for industrial purposes

Article 82. Use of underground water for technological water supply and other industrial needs

Article 83. Use of prominent bodies for hydropower needs

Article 84. Rights and responsibilities of hydropower plants on water use

## CHAPTER 13. USE WATER BODIES FOR WATER AND AIR TRANSPORT NEEDS

Article 85. Public waterways

Article 86. Procedure for classifying waterways as navigable and setting rules for their operation

Article 87. Use of water bodies for the air transport needs

## CHAPTER 14. USE OF WATER BODIES FOR THE NEEDS OF FISHERY

Article 88. Restriction on water use in fishery reservoirs in the interest of fishery

Article 89. Activities on protection and reproduction of fish stocks

Article 90. Responsibilities of organizations using the fishery reservoirs

Article 91. Procedure for use of water bodies for the needs of fishery

## CHAPTER 15. USE OF WATER BODIES FOR THE NEEDS OF HUNTING INDUSTRY

Article 92. Rights of priority of hunting industry organizations on water use

Article 93. Procedure for use of water bodies for the needs of hunting industry

## CHAPTER 16. USE OF WATER BODIES FOR THE NEEDS OF NATURE RESERVES

Article 94. Preserved water bodies

Article 95. Recognition of water bodies as nature or culture monuments

Article 96. Procedure for use of water bodies of nature reserves and measures for their protection

Article 97. Removal of water bodies from nature reserves use

## CHAPTER 17. USE OF WATER BODIES FOR WASTEWATER DISPOSAL

Article 98. Permit for use of water bodies for wastewater disposal

Article 99. Prohibition of wastewater disposal into water bodies classified as bodies for drinking needs

Article 100. Permissibility conditions of wastewater disposal into water bodies

Article 101. Procedure and conditions for use of water bodies for the wastewater disposal

## CHAPTER 18. USE OF WATER BODIES FOR FIRE-PREVENTION NEEDS, LIQUIDATION OF EMERGENCIES AND OTHER SIMILAR SITUATIONS

Article 102. Use of water bodies for fire-prevention needs

Article 103. Procedure of use of water bodies for fire-prevention needs, liquidation of emergencies and other state and public needs

## CHAPTER 19. WATER RESERVOIR OPERATION

Article 104. Mode of filling-up and drawdown of reservoirs

Article 105. Procedure for water reservoir operation

Article 106. Organization and coordination of activities to ensure the proper technical condition and improvement of water reservoirs

Article 107. Lakes and other water body used as water reservoirs

## CHAPTER 20. SETTLEMENT OF DISPUTES ON WATER USE

Article 108. Bodies settling disputes on water use

Article 109. Settlement of disputes on water use between the water users of the Republic of Tajikistan and the water users of other states

Article 110. Settlement of disputes on the right for a special water use

Article 111. Competence of the Government of the Republic of Tajikistan to settle disputes between water users

Article 112. Competence of the executive bodies of the regions and the city of Dushanbe to settle disputes on water use

Article 113. Competence of the executive bodies of the districts and cities to settle disputes on water use

Article 114. Competence of the autonomous bodies of the towns and villages to settle disputes on water use

Article 115. Competence of the body regulating the utilization and protection of waters to settle disputes on water use

Article 116. Settlement of disputes on water use between primary and secondary water users, as well as between the secondary water users

Article 117. Procedure for consideration of disputes on water use

Article 118. Settlement of property and other disputes related to water relations

## SECTION III. WATER PROTECTION AND PREVENTION OF ITS NEGATIVE IMPACT

### CHAPTER 21. WATER PROTECTION

Article 119. Purpose of water protection

Article 120. Implementation of activities to ensure the water protection and improvement of water condition and regime

Article 121. Activities to ensure the protection, improvement and regime of waters

Article 122. Planning of water protection activities

Article 123. Prohibition of waste discharge into water bodies

Article 124. Protection of waters, riverbeds, ice sheet of water bodies, surface of catchment areas, glaciers and snowfields

Article 125. Basins, strips and zones of sanitary protection of waters

Article 126. Activities for protection of waters from depletion

Article 127. Necessity to take into account the interests of the water users when placing construction of enterprises, buildings and other facilities that may affect the water condition

Article 128. Measures of the underground water protection from depletion

### CHAPTER 22. PREVENTION AND LIQUIDATION OF NEGATIVE IMPACT OF WATER

Article 130. Implementation of urgent measures on prevention and control of natural disasters caused by a negative impact of waters, pollution of water bodies as a result of accidents and natural disasters

Article 131. Planning of activities on prevention and control of a negative impact of waters, the consequences of pollution of water bodies as a result of accidents and natural disasters  
Article 132. Special protection of large strategic water facilities of the Republic of Tajikistan  
Article 1321. General rules for flood control  
Article 1322. State and local flood control programs  
Article 1323. Flood control in high-risk areas  
Article 1324. Temporary utilization of material and technical resources  
Article 1325. Mitigation of the consequences of floods  
Article 1326. Monitoring of Sarez Lake

#### SECTION IV. STATE CONTROL, ACCOUNTING AND PLANNING OF WATER USE CHAPTER 23. STATE CONTROL, ACCOUNTING AND PLANNING OF WATER USE

Article 133. Purposes of state control in the area of accounting, utilization and protection of water resources  
Article 134. Water use planning  
Article 135. State water cadaster  
Article 136. State register of water facilities  
Article 137. Database, information system of water resources and their use  
Article 138. Water balances  
Article 139. Schemes of integrated utilization and protection of water resources  
Article 140. Procedure for state control, accounting of waters and their use, maintenance of the state water cadaster, monitoring, preparation of water balances, development of arrangements of integrated utilization and conservation of water resources

#### CHAPTER 231. BASIN MANAGEMENT OF UTILIZATION AND PROTECTION OF WATER RESOURCES

Article 1401. Basin water resources management  
Article 1402. National Water Council and its competence  
Article 1403. Basin Water Council and its powers  
Article 1404. National Water Strategy  
Article 1405. Basin plans for the utilization and protection of water resources

#### SECTION V. RESPONSIBILITY FOR VIOLATION OF WATER LEGISLATION CHAPTER 24. RESPONSIBILITY FOR VIOLATION OF WATER LEGISLATION

Article 141. Invalidity of transactions that violate the right of state ownership of water  
Article 142. Responsibility for violation of the water legislation  
Article 143. Return of wilfully misappropriated water bodies  
Article 144. Compensation of losses caused by violation of the water legislation  
Article 145. Principles of international cooperation in the water relations  
Article 146. Economic foundations of water relations with other states

Obviously, this is a very extensive work and requires sufficient time for highly qualified experts. At this stage, it is more appropriate and possible to agree upon the **structural** content of the Water Code.

### **3.1. List of proposed new sections, chapters and articles of the Water Code**

Rationally composed structure of the Water Code has a great influence on apprehensibility, flexibility, and its practical implementation. The present-day structure (content) of the Water

Code should cover all aspects of water relations. The structure given below is the collective work of the Working Group. The materials on improvement of water legislation in the neighboring countries, particularly in Kazakhstan, are also used in the proposed structure. Numbering of the articles has been changed in the proposed structure. Bringing in order the numbering does not make sense until the completion of the process of formulating the final version of the structure of the Water Code. This will be done after approval of the final version by all members of the Working Group.

## **SECTION I. GENERAL PROVISIONS**

### **CHAPTER 1. PRINCIPAL PROVISIONS**

- Article 1. Purposes of the Water Code of the Republic of Tajikistan
- Article 2. Objectives of the Water Code of the Republic of Tajikistan
- Article 3. Concepts and specific terminology
- Article 5. State ownership of the water
- Article 6. State Water Fund
- Article 7. Water facilities
- Article 8. Water Fund lands
- Article 9. Competence of the Government of the Republic of Tajikistan in the area of regulation of water relations
- Article 10. Competence of local executive state bodies
- Article 11. Competence of bodies of local self-government
- Article 12. State regulation and support in the area of water relations
- Article 13. Management in the area of utilization and protection of water resources
- Article 14. Accordance of a right to manage the state-owned water projects to non-governmental specialized legal persons
- Article 15. Control over the utilization and protection of water resources
- Article 16. State control body over the utilization and protection of water resources

### **Chapter 2. Location, design, construction and commissioning of enterprises, buildings and other facilities affecting the water resources condition**

- Article 17.** Terms and conditions of location, design, construction and commissioning of enterprises, buildings and other facilities affecting the water resources condition
- Article 18.** Determination of sites for construction of enterprises, buildings and other facilities affecting the water resources condition
- Article 19.** Mutual approval of the projects for construction of enterprises, buildings and other facilities affecting the water resources condition
- Article 20.** Terms and conditions of prohibition of commissioning enterprises, buildings and other facilities affecting the water resources condition
- Article 21.** Design of construction of bridges, passages and other transport communications through water bodies

### **Chapter 3. Works on water bodies and water protection strips (zones)**

- Article 22.** Procedure for works on water bodies and in coastal water protection strips (zones)
- Article 23.** Water protection strips (zones) of water bodies
- Article 24.** Establishment of coastal water protection strips and sanitary protection zones
- Article 25.** Maintenance of water protection strips and zones

## **Section II. Water use**

## **Chapter 4. Types of water use**

**Article 27.** General and special water use

**Article 28.** Joint and solitary water use

**Article 29.** Primary and secondary water use

**Article 30.** Types of water use that differ by main target purpose

## **Chapter 5. Water users and water use bodies**

**Article 32.** Water users

**Article 33.** Water use bodies

**Article 34.** Partial and total prohibition of use of water bodies

## **Chapter 6. Procedure and conditions for provision of water bodies in use**

**Article 35.** Priority provision of water bodies for drinking and domestic needs

**Article 37.** Permit for special water use issued by basin water resources management bodies

**Article 38.** Permit for special water use issued by local executive state government bodies

**Article 39.** Procedure for general water use

**Article 40.** General water use on water bodies provided for solitary water use

**Article 41.** Provision of water bodies for solitary use

**Article 42.** Bodies providing the water bodies for solitary use

**Article 43.** Documents certifying the right for solitary use of water bodies

**Article 44.** Term of water use

**Article 45.** Calculation of a term of water use

**Article 46.** Procedure for extension of a term of temporary water use

## **Chapter XX Economic conditions of water use and the provision of water bodies in use**

**Article 47.** Economic conditions of water use and the provision of water bodies in use

**Article 48.** Principle of complete coverage of costs of organizations providing water supply services

**Article 49.** State support of water organizations to cover maintenance and operation costs of water systems

**Article 50.** Participation of water users in determination of water supply tariffs through river basin councils

## **Chapter 7. Rights and responsibilities of water users and water supply organizations**

**Article 47.** Use of water bodies for their intended purpose

**Article 48.** Rights of water users

**Article 49.** Restriction of the water users' rights

**Article 50.** Responsibilities of water users

**Article 51.** Stimulation of water users who implement the measures for the rational water use and protection

**Article 52.** Rights of water organizations in the water supply

## **Chapter 8. Termination of water use rights**

**Article 53.** Grounds for termination of water use rights

**Article 54.** Procedure for termination of water use rights

**Article 55.** Removal of water bodies from solitary use

**Article 56.** Compensation for losses caused by termination or change in the conditions of water use

## **Chapter 9. Use of water bodies for drinking, domestic and other needs of population**

**Article 57.** Water and water bodies provided for drinking, domestic and other needs of the population

**Article 58.** Centralized water supply of the population

**Article 59.** Decentralized water supply of the population

**Article 60.** Use of underground water of drinking quality for purposes not related to drinking water supply

**Article 61.** Right of ownership on the drinking water supply systems

**Article 62.** Sources of funding in the drinking water supply

**Article 63. Certification and standardization in the drinking water supply**

**Article 64.** Guarantee of drinking water supply in case of malfunction of the centralized and decentralized systems of drinking water supply

## **Chapter 10. Use of water bodies for medical, resort and recreational purposes**

**Article 65.** Primary use for medical and resort purposes of water bodies classified as medicinal mineral bodies

**Article 67.** Prohibition of the sewage disposal into water bodies classified as medicinal

**Article 68.** Procedure for use of water bodies for recreation and sport

**Article 69.** Use of water bodies for boating

**Article 70.** Use of water bodies for sporting and amateur fishing

## **Chapter 11. Use of water bodies for agricultural needs**

**Article 71.** Agricultural water use

**Article 72.** Purpose of agricultural water use in irrigated agriculture (it is proposed to combine with Article 71)

**Article 73.** Implementation of agricultural water use

**Article 74.** Approval of water use plans

**Article 75.** Change in amount and timing of water supply

**Article 76.** Responsibilities of water users using water bodies for agricultural needs (it is proposed to explain the payment procedure for services – if they are provided by other organization, if it is a well then a water user pays; if drainage waste waters are used, then it is free, find a place in the text)

**Article 77.** Irrigation by drainage, waste waters and sewage disposal (with adherence to all special conditions and MPC)

**Article 78.** Use of water for irrigation of lands occupied by forests, forest belts and nursery forest gardens

**Article 79.** Use of water bodies and water resources for the needs of water user associations

**Article 80.** Water supply of household and other farms

**Article 81.** Prohibition of water users to regulate the water supply from interfarm water systems

**Article 82.** Prohibition of driving tractors, transport vehicles, watering and driving cattle through canals and other hydraulic facilities

**Article 83.** Participation of water users in irrigation and land reclamation works

**Article 84.** Water supply of non-irrigational agriculture

## **Chapter 12. Use of water bodies for industrial purposes**

**Article 85.** Responsibilities of water users using water bodies for industrial purposes

**Article 86.** Restriction of use of drinking water for industrial purposes

**Article 87.** Use of underground water for technological water supply and other industrial needs

**Article 66. Commercial bottling of fresh, table and medicinal mineral waters, treatment of industrial underground waters**

### **Chapter 13. Use of water bodies for water and air transport needs**

**Article 90.** Public waterways

**Article 91.** Procedure for classifying waterways as navigable and establishment of rules for their operation

**Article 92.** Use of water bodies for the needs of air transport

### **Chapter 13. Use of water bodies for the needs of fishery**

**Article 93.** Restriction on water use in fishery reservoirs in the interest of fishery

**Article 94.** Activities on protection and reproduction of fish stocks **(To amend this article with information on development of fishery, artificial fish farming and stocking of reservoirs, fish pond farming and fish breeding, ichthyological support)**

**Article 95.** Responsibilities of organizations using fishery reservoirs **(their responsibilities are not only to maintain, but also if necessary to stock reservoirs)**

**Article 96. Responsibilities of fish breeding companies**

**Article 97.** Procedure for use of water bodies and water resources for the needs of fishery

### **Chapter 15. Use of water bodies for the needs of hunting industry**

**Article 98.** Rights of priority of hunting industry organizations on water use

**Article 99.** Procedure for use of water bodies for the needs of hunting industry

### **Chapter 16. Use of water bodies for the needs of nature reserves**

**Article 100.** Preserved water bodies

**Article 101.** Recognition of water bodies as nature or culture monuments

**Article 102.** Procedure for use of water bodies of nature reserves and measures for their protection

**Article 103.** Removal of water bodies from nature reserves use

**Chapter 17. Use of water bodies for wastewater disposal** (it is proposed to think about the possible new developments such as the green economy)

**Article 104.** Permit for use of water bodies for wastewater disposal

**Article 105.** Prohibition of wastewater disposal into water bodies classified as bodies for drinking needs

**Article 106.** Permissibility conditions of wastewater disposal into water bodies

**Article 107. Procedure and conditions for use of water bodies for the wastewater disposal**

### **Chapter 18. Use of water bodies for fire-prevention needs, liquidation of emergencies and other similar situations**

**Article 108.** Use of water bodies and water systems for fire-prevention needs

**Article 109.** Procedure of use of water bodies for fire-prevention needs, liquidation of emergencies and other state and public needs (to clarify)

**Article 110.** Obligations and responsibilities of the owner in unauthorized waste water discharge into water bodies as a result of emergencies and accidents

### **Chapter 19. Use of water bodies for hydropower needs**

**Article 111.** Use of water bodies for hydropower needs

**Article 116 (89).** Rights and responsibilities of hydropower enterprises on water use

**Article 112.** Terms of use of water bodies for the needs of thermal power stations

**Article 113 (88).** Use of water resources utilization system facilities for hydropower needs

**Article 114.** Terms and conditions of integrated use of water resources accumulated in the water reservoirs of hydropower stations

**Article 115.** River runoff control by water reservoirs of hydropower stations for the needs of sectors of economy.

### **Chapter 20. Water reservoir operation**

**Article 110.** Mode of filling-up and drawdown of water reservoirs

**Article 111.** Procedure for water reservoirs operation

**Article 112.** Organization and coordination of activities to ensure the proper technical condition and improvement of reservoirs

**Article 113.** Lakes and other bodies used as water reservoirs

**Article XXX.** Procedure for debris basins operation

**Article XXX.** Procedure for tailings pond operation

### **Chapter 20. Settlement of disputes on water use**

**Article 114.** Bodies settling disputes on water use

**Article 115.** Settlement of disputes on water use between the water users of the Republic of Tajikistan and the water users of other states

**Article 116.** Settlement of disputes on the right to special water use

**Article 117.** Competence of the Government of the Republic of Tajikistan to settle disputes between water users

**Article 118.** Participation of consultative bodies in settlement of disputes on water use

**Article 119.** Competence of executive state government bodies of regions, districts, and cities to settle disputes on water use

**Article 120.** Competence of autonomous bodies of towns and villages to settle disputes on water use

**Article 121.** Competence of the body regulating the utilization and protection of water resources to settle disputes on water use

**Article 122.** Settlement of disputes on water use between the primary and secondary water users, as well as between the secondary water users

**Article 123.** Procedure for consideration of disputes on water use

**Article 124.** Settlement of property and other disputes related to water relations

## **Section III. Water protection and prevention of its negative impact**

### **Chapter 21. Water protection**

**Article 125.** Purpose of water protection

**Article 126.** Implementation of activities to ensure the water protection, as well as improvement of its condition and regime

**Article 127.** State control in the area of utilization and protection of the Water Fund  
**Article 53.** Operational control in the area of utilization and protection of the Water Fund and water resources

**Article 127.** Planning of activities on water protection  
**Article 128.** Prohibition of waste discharge into water bodies  
**Article 129.** Protection of waters, riverbeds, ice sheet of water reservoirs, surface of catchment areas, glaciers and snowfields  
**Article 130.** Basins, strips and zones of sanitary protection of waters  
**Article 131.** Activities for protection of waters from depletion  
**Article 132.** Measures of the underground water protection from depletion  
**Article 133.** Bodies monitoring the underground water use  
**Article 134.** Procedure for replenishment (induced recharge) of depletable underground water resources

## **Chapter 22. Prevention and liquidation of negative impact of waters**

**Article 133.** Responsibilities of water users and water supply organizations on prevention and liquidation of negative impact of waters, the consequences of water body pollution caused by accidents and natural disasters  
**Article 134.** Implementation of urgent measures on prevention and control of natural disasters caused by a negative impact of waters, pollution of water bodies as a result of accidents and natural disasters  
**Article 135.** Planning of activities on prevention and liquidation of negative impact of waters, the consequences of water body pollution caused by accidents and natural disasters  
**Article 136.** Special protection of large strategic water facilities  
**Article 137.** Rules related to risks of the negative impact of floods  
**Article 138.** National sectoral and local programs of reduction of the risk of negative impact of floods  
**Article 139.** Creation of financial, material and technical reserves for the prevention and control of floods  
**Article 140.** Control of floods  
**Article 141.** Monitoring of the outbreak-prone landslide and glacial lakes  
**Article 142.** Prohibition of construction of permanent residential and other projects in high-risk areas of negative impact of waters  
**Article 143.** Bodies monitoring the preparedness of organizations for natural disasters

## **Section IV. State control, accounting and planning of water use**

### **Chapter 23. State control, accounting and planning of water use**

**Article 142.** Purposes of state control in the area of accounting, utilization and protection of surface and underground water resources  
**Article 143.** Water use planning  
**Article 144.** Forecast of utilization and protection of water resources as part of schemes of development and siting of labor forces and economic sectors  
**Article 144.** State water cadaster  
**Article 145.** State register of water facilities  
**Article 146.** Database, information system of water resources and their use  
**Article 147.** State support for scientific and research activities in the area of the utilization and protection of water resources.  
**Article 147.** Water balances  
**Article 148.** Schemes of integrated utilization and protection of water resources

**Article 149 (82K). Water use limits**

**Article 150 (81K). Rationing in the area of utilization and protection of the Water Fund, water supply and sanitation**

**Article 151 (83K). Regulatory and technical, sanitary and epidemiological, and metrological support of the control and accounting of water**

**Article 152 (84K). Standards for maximum permissible values of negative impacts on water bodies**

**Article 149.** Procedure for state control, accounting of waters and their use, maintenance of the state water cadaster, monitoring, preparation of water balances, development of schemes of integrated utilization and protection of water resources

#### **Chapter 24. Basin management of water use and protection**

**Article 150.** Basin water resources management (principles)

**Article 151.** Consultative bodies on the basin management

**Article 152.** Basin Council and its powers

**Article 153.** Basin plans for the utilization and protection of water resources

#### **Section V. Responsibility for violation of water legislation**

##### **Chapter 25. Responsibility for violation of water legislation**

**Article 154.** Invalidity of transactions that violate the right of state ownership of water

**Article 155.** Responsibility for violation of water legislation

**Article 156.** Mechanism of mandatory adherence to water legislation

**Article 156.** Return of wilfully misappropriated water bodies and water facilities

**Article 157.** Compensation for damages caused in violation of water legislation

**Article 158.** Principles of international cooperation in the water relations

**Article 159.** Economic fundamentals of water relations with other states

#### **4. List of necessary regulatory-legal acts**

In the course of this work, the current Water Code of the Republic of Tajikistan was analyzed in order to identify missing acts of Government of the Republic of Tajikistan, through which a procedure of implementation of a number of provisions of this Code could be certainly provided, regardless of the forthcoming drafting of its new version, i.e. it will continue in the new edition of the Water Code. It is necessary to develop and adopt the following draft resolutions of the Government of the Republic of Tajikistan:

1. Procedure for establishment and use of the State Water Fund, setting standards and limits of water use;
2. procedure of maintenance of the State register of water facilities;
3. procedure of involvement of water users to implement irrigation and drainage works in irrigation systems;
4. procedure of development and approval of schemes of integrated utilization and protection of water resources in the Republic of Tajikistan;
5. procedure of granting the right of management of the state-owned water projects to specialized local and foreign legal persons;

6. procedure of changing forms of ownership of water projects in the Republic of Tajikistan;
7. procedure for compensation of losses inflicted to natural and legal persons by water-related activities;
8. on conducting a general inventory of fixed assets of irrigation systems;
9. procedure of changing forms of ownership of water projects in the Republic of Tajikistan;
10. procedure for compensation of losses inflicted to natural and legal persons by water-related activities;
11. procedure of organizing and coordinating activities to ensure proper technical condition and improvement of water reservoirs, lakes and other water bodies used as water reservoirs, as well as monitoring compliance with rules of their operation.

These regulatory-legal acts were developed by the experts of the working group in the framework of this project.

**In addition, it is necessary to develop the following regulatory-legal acts:**

- Procedure of partial or complete prohibition of the use of water bodies of special state or special scientific and cultural value;
- Procedure and conditions for charging a fee for use of water bodies and water resources. It should be noted that so far we have a procedure of charging fees for water supply to consumers from state-owned irrigation and water-supply systems, as well as in drinking water supply and sanitation (sewerage). Previously we had a Committee on development of the procedure of charging fees for use of water bodies and water resources, but the work was not finished;
- Procedure of use of underground waters (fresh, mineral and thermal), which are not classified as drinking or medicinal) for process water supply, for recovery of chemical elements they contain, for generation of thermal power and other production needs;
- Procedure of carrying out forest improvement erosional-preventive, hydrotechnical and other activities to maintain favorable water regime of rivers, lakes, underground waters and other water bodies in the water protection zones of forests by physical and legal persons, irrespective of the form of ownership;
- Procedure of termination of a right of water use for the systematic violation of provisions of an agreement on water use, concluded with the authorized state bodies regulating the utilization and protection of water resources;
- Procedure of assignment of lands of the State Water Fund for use - jointly with the specially authorized state agency of the Republic of Tajikistan on land resources management;
- Procedure of regulation of economic relations between organizations - suppliers of water and water users , as well as between different levels of water resources management institutions;
- Model Regulations on the River Basin Council;
- Procedure of funding the water facilities of special strategic importance;
- Specification of the distribution of powers of the central and executive government bodies involved in the water resources management;
- Rules for accounting and reporting on water intakes , transportation and water supply by state and private bodies of water resources management;
- Procedure carrying out works on water bodies and in coastal water protection strips (zones);
- Procedure of charging a fee for water supply services by state and private bodies of water resources management;

- Procedure and funding sources of operation and maintenance of drainage infrastructure, the work on collection and removal of drainage waters;
- Procedure of use of the drainage waters for irrigation and other needs;
- Procedure of partial subsidy assistance by the state for maintenance and operation of pumping irrigation infrastructure;
- Methodology of calculation and approval of tariffs for water delivery services in irrigated agriculture;
- Improving the Regulation on the National Water and Energy Council, rules and procedures of its work Regulation of his work, partial assignment of its functions on the Ministry of Energy and Water Resources;
- Procedure of compensation of losses caused by the change in conditions of water use;
- Procedure for use of water bodies for recreation and sports;
- Procedure for use of water bodies for the hunting industry needs;
- It is necessary to review and adapt to modern conditions a procedure and conditions of use of water bodies for the discharge of sewage, which is in force since the Soviet era.
- Procedure of the operation of the water reservoirs is in force since the Soviet era. It is necessary to revise it and adapt to modern conditions.

This list is not exhaustive and covers issues that should be addressed in the next 3-5 years. They are connected with the implementation of the water sector reform started by the Government of the Republic of Tajikistan.

In the Annex, the drafts of the regulatory-legal acts are brought which were developed by the Working Group.

## 5. Annex

### 5.1. On the procedure of involvement of water users in implementation of irrigation and reclamation works in irrigation systems

**Draft**

Resolution  
of the Government of the Republic of Tajikistan

№ \_\_\_\_\_ of \_\_\_\_\_ 2014

Dushanbe

On the procedure of involvement of water users in implementation of irrigation and reclamation works in irrigation systems

In accordance with Article 78 of the Water Code of the Republic of Tajikistan, the Government of the Republic of Tajikistan *d e c i d e s*:  
to approve the attached procedure of involvement of water users in implementation of irrigation and reclamation works in irrigation systems.

Chairman  
of the Government of the Republic of Tajikistan

**Draft**

Approved  
by the Resolution of the Government  
of the Republic of Tajikistan  
№ \_\_\_\_\_ of \_\_\_\_\_ 2014

#### **PROCEDURE**

of involvement of water users in implementation of irrigation and reclamation works

1. This procedure was developed in accordance with Article 78 of the Water Code of the Republic of Tajikistan.

2. To maintain and improve the existing water-supply, irrigation and water-supply and irrigation systems, the water users, who receive the water from these systems, can be involved in implementation of irrigation and reclamation works.

3. The involvement of water users in implementation of the irrigation and reclamation works is carried out:

- on water-supply, irrigation and water-supply and irrigation systems of inter-farm significance by joint decisions of the relevant local executive state government bodies and the national government body in the area of land reclamation, water industry, agricultural water supply and stockwater development;

- on water-supply, irrigation and water-supply and irrigation systems of intra-farm significance by decision of the corresponding associations of water users, dehqan (farmer)

households, agricultural organizations, enterprises, as well as local autonomous bodies of townships and villages.

4. The decisions on the involvement of water users in implementation of the irrigation and reclamation works mandatorily provide for the measures on payment for labor (it can also be labor participation to repay debts for water supply of water users), social security, labor protection and safety of the individuals and entities involved in these works.

## **1.2 On the Procedure of development and approval of schemes of integrated utilization and protection of water resources in the Republic of Tajikistan**

**Draft**

### **Resolution of the Government of the Republic of Tajikistan № \_\_\_\_\_ of \_\_\_\_\_ 2014**

Dushanbe

**On the Procedure of development and approval of schemes of integrated utilization and protection of water resources in the Republic of Tajikistan**

In accordance with Articles 139 and 140 of the Water Code of the Republic of Tajikistan the Government of the Republic of Tajikistan *d e c i d e s*:

In order to determine the basic water and other activities to be undertaken to meet the future needs in water of the population and the economy, as well as for the water protection and prevention of its negative impact, the general, basin and territorial schemes of integrated utilization and protection of waters are developed.

The general schemes of integrated utilization and protection of waters are developed in order to identify the principal directions of water industry development of the Republic of Tajikistan.

The basin schemes of integrated utilization and protection of waters are developed for basins of rivers and other water bodies based on the Master plan.

The territorial schemes of integrated utilization and protection of waters are developed for economic areas, regions, and districts based on the Master plan and basin schemes.

1. Schemes of integrated utilization and protection of waters are divided into schemes of national and local importance.

The schemes of national importance are as follows:

The Master plan integrated utilization and protection of waters;

The basin schemes of integrated utilization and protection of water bodies, the use regulation of which is within the competence of the Government of the Republic of Tajikistan;

The basin schemes of integrated utilization and protection of waters, in cases when a basin is located on the territory of two or more states, and in the case when the basin is located on the territory of the Republic of Tajikistan, but the activities planned in the schemes change the conditions of water supply and water status in other states;

The territorial schemes of integrated utilization and protection of waters in cases when the activities planned in the schemes change the conditions of water supply and water status of two or more states.

The rest of the basin and territorial schemes of integrated utilization and protection of waters relate to the schemes of local importance.

2. The activities planned in the schemes of integrated utilization and protection of waters should ensure the most effective use of the waters for the economy (taking into account the priority satisfaction of the needs of population in the water) by regulating the water flow, taking measures for economical use of water and stopping the uncontrolled waste disposal through improvement of production technologies and water supply schemes (use of waste-free technological processes, air cooling, recirculated water supply, and other technological methods).
3. Development of general, basin and territorial schemes of integrated utilization and protection of waters is carried out by the Ministry of Land Reclamation and Water Resources of the Republic of Tajikistan with the involvement of the Ministry of Energy and Industry of the Republic of Tajikistan, other concerned ministries and agencies and with account of the data provided by the ministries and agencies, local administrations of regions, cities and districts in the production and distribution of water-intensive types of products, the volume of water consumption, water use and sanitation.
4. The Master plans of integrated utilization and protection of waters are developed with account of the program of works addressing critical scientific and technical problems in the integrated utilization and protection of waters.
5. The perspective and annual forecasts of the development of schemes of integrated utilization and protection of waters are made up by the Ministry of Land Reclamation and Water Resources of the Republic of Tajikistan taking into account the suggestions of concerned ministries, agencies and organizations, as well as local executive state government bodies, and are approved by it in consultation with the Ministry of Economic Development and Trade of the Republic of Tajikistan.
6. Schemes of integrated utilization and protection of waters of national importance are approved by the Ministry of Economic Development and Trade of the Republic of Tajikistan in consultation with the Committee on Environmental Protection under the Government of the Republic of Tajikistan, Agency for Architecture and Construction under the Government of the Republic of Tajikistan, and local executive state government bodies, and the schemes of local importance are approved by the local executive state government bodies on submission to the Ministry of Land Reclamation and Water Resources of the Republic of Tajikistan.
7. The schemes of integrated utilization and protection of waters are developed at the expense of the state budget based on a single system for the Republic of Tajikistan.
8. To direct the Ministry of Land Reclamation and Water Resources of the Republic of Tajikistan to bring scientific and methodological instructions for the preparation of schemes of integrated utilization and protection of waters in accordance with this Resolution and approve them in coordination with the Ministry of Economic Development and Trade of the Republic of Tajikistan, the Academy of Sciences of the Republic of Tajikistan, and the Committee on Environmental Protection under the Government of the Republic of Tajikistan.

Chairman of the Government  
of the Republic of Tajikistan

## 5.2. Procedure for the formation and use of the State Water Fund, the establishment of norms and limits of water use

Draft

Resolution  
Government Republic of Tajikistan  
№ \_\_\_\_\_ of \_\_\_\_\_ 2014

Dushanbe

Procedure for the formation and use of the State Water Fund, the establishment of norms and limits of water use

In accordance with the Water Code of the Republic of Tajikistan the Government of the Republic of Tajikistan d e c i d e s:

1. To approve the attached procedure for the formation and use of the State Water Fund, the establishment of norms and limits of water use.
2. To instruct ministries and agencies of the Republic of Tajikistan to bring departmental regulatory acts in compliance with this resolution.

Chairman  
of the Government of the Republic of Tajikistan

Draft

Approved  
by the Resolution of the Government  
of the Republic of Tajikistan  
№ \_\_\_\_\_ of \_\_\_\_\_ 2014

### **PROCEDURE**

for the formation and use of the State Water Fund,  
the establishment of norms and limits of water use

1. This procedure was developed and approved in accordance with Article 6 of the Water Code of the Republic of Tajikistan.
2. The State Water Fund of the Republic of Tajikistan includes the rivers, lakes, glaciers, snowfields, and other surface water sources, zones of concentration of underground waters, including medicinal-mineral and thermal waters with their available water resources, located on its territory, as well as lands with water protection zones and strips occupied by them.
3. Attribution of lands to the State Water Fund of the Republic of Tajikistan is carried out in accordance with the Land Code of the Republic of Tajikistan, the Water Code of the Republic of Tajikistan, and other regulatory acts of the Republic of Tajikistan.
4. The normative standards for dimensions of the water protection zones and strips of the water bodies is approved by the Government of the Republic of Tajikistan, in accordance with the joint proposals of the Committee on Environment Protection of

the Republic of Tajikistan, the Ministry of Land Reclamation and Water Resources of the Republic of Tajikistan, the Chief Directorate of Geology under the Government of the Republic of Tajikistan, the Ministry of Health of the Republic of Tajikistan, the Committee for State supervision of the safe conduct of work in industry and mining supervision under the Government of the Republic of Tajikistan, and other concerned ministries and agencies and relevant local executive state government bodies.

5. The use of the State Water Fund of the Republic of Tajikistan is carried out in accordance with the Water Code of the Republic of Tajikistan, the Land Code of the Republic of Tajikistan, and other regulatory acts of the Republic of Tajikistan, interstate agreements, international and legal acts recognized by the Republic of Tajikistan.
6. Execution of works on water bodies and their coastal water protection strips and zones should be agreed with the Committee on Environment Protection under the Government of the Republic of Tajikistan, the Ministry of Health of the Republic of Tajikistan, the Ministry of Land Reclamation and Water Resources of the Republic of Tajikistan, the Chief Directorate of Geology under the Government of the Republic of Tajikistan, the relevant local executive state government bodies based on their competence.
7. The use of water resources is carried out on the basis of normative standards and limits of water use established for various customers and industries.
8. The water use in irrigated agriculture is carried out on the basis of irrigation norms in accordance with the irrigation regimes.

The off-season irrigation associated with leaching of saline lands and moisture supply is carried out in accordance with the leaching and moisture supply (reserve) norms of irrigation. These norms and irrigation regimes are developed by the specialized scientific-research and design organizations of the Ministry of Agriculture of the Republic of Tajikistan (directing agency) and the Ministry of Land Reclamation and Water Resources of the Republic of Tajikistan, the State Committee on Land Management and Geodesy of the Republic of Tajikistan with the involvement of higher education institutions specialized in agriculture and water industry and are enforced by the joint order of the Ministry of Agriculture of the Republic of Tajikistan and the Ministry of Land Reclamation and Water resources of the Republic of Tajikistan.

9. The water use in the industry is implemented on the basis of technological norms and rules of the water use developed by the specialized scientific-research and design organizations, agreed with the Committee on Environment Protection under the Government of the Republic of Tajikistan, the Agency for Construction and Architecture under the Government of the Republic of Tajikistan, and approved by the Ministry of Energy and Industry of the Republic of Tajikistan.
10. The water use in hydropower industry is based on the interests of other water users, except for the cases determined by the Government of the Republic of Tajikistan. Filling and drawdown of water reservoirs are annually done strictly by agreement with the Ministry of Land Reclamation and Water Resources of the Republic of Tajikistan.
11. The water use for domestic and drinking water supply needs, firefighting, emergencies and civil defense is carried out in accordance with the water consumption norms for these needs, which are developed by the specialized scientific - research and design organizations of the Ministry of Land Reclamation and Water Resources of the Republic of Tajikistan, the State Unitary Enterprise "Hojagii manziliyu kommunali", the Ministry of Health of the Republic of Tajikistan, the Ministry of Agriculture of the Republic of Tajikistan, the Ministry of Internal Affairs of the Republic of Tajikistan, the Committee for Emergency

Situations and Civil Defense under the Government of the Republic of Tajikistan, the Agency for Construction and Architecture under the Government of the Republic of Tajikistan, and approved jointly with:

The Ministry of Land Reclamation and Water Resources of the Republic of Tajikistan, the Ministry of Agriculture of the Republic of Tajikistan, the Committee on Environment Protection under the Government of the Republic of Tajikistan, and the Agency for Construction and Architecture under the Government of the Republic of Tajikistan for agricultural water supply and stockwater development;

The State Unitary Enterprise "Hojagii manziliyu kommunali", the Committee on Environment Protection under the Government of the Republic of Tajikistan, the Agency for Construction and Architecture under the Government of the Republic of Tajikistan for communal services;

The Agency for Construction and Architecture under the Government of the Republic of Tajikistan, the Committee for Emergency Situations and Civil Defense under the Government of the Republic of Tajikistan, the Committee for Environment Protection under the Government of the Republic of Tajikistan, and the Ministry of Internal Affairs of the Republic of Tajikistan for the needs of firefighting, emergencies and civil defense.

12. The water use for medical, resort and recreational purposes is carried out according to water consumption norms for these needs developed by the specialized scientific - research and design organizations of the Ministry of Health of the Republic of Tajikistan, the Academy of Sciences of the Republic of Tajikistan, and approved by this Ministry in consultation with the Committee on Environment Protection under the Government of the Republic of Tajikistan and the Agency for Construction and Architecture under the Government of the Republic of Tajikistan.
13. The water use limits (limit for withdrawal of water from the source of the State Water Fund) are established on the basis of the existing water consumption norms for the corresponding sectors of the economy with account of water content of the sources without deteriorating the conditions of use of water bodies for drinking and domestic needs of the population, approved by specially authorized state bodies regulating the utilization and protection of waters based on their powers, and taken into account in the annual and long-term forecasts of economic and social development of the Republic of Tajikistan.
14. The information on the State Water Fund of the Republic of Tajikistan is reflected in the State Water Cadaster of the Republic of Tajikistan and the State Land Fund of the Republic of Tajikistan.

### 5.3. On the procedure of compensation of losses inflicted to physical and legal persons by carrying out water-related activities

**Draft**

Resolution  
Government Republic of Tajikistan  
№ \_\_\_\_ of \_\_\_\_\_ 2014

Dushanbe

On the procedure of compensation of losses inflicted  
to physical and legal persons by carrying out water-related activities

In accordance with Article 52 of the Water Code of the Republic of Tajikistan the Government of the Republic of Tajikistan d e c i d e s:

To approve the attached procedure of compensation of losses inflicted to physical and legal persons by carrying out water-related activities

Chairman  
of the Government of the Republic of Tajikistan

**Draft**

Approved  
by the Resolution of the Government  
of the Republic of Tajikistan  
№ \_\_\_\_ of \_\_\_\_\_ 2014

**Procedure**  
of compensation of losses inflicted to physical and legal persons  
by carrying out water-related activities

1. This procedure was developed in accordance with Article 52 of the Water Code of the Republic of Tajikistan.

2. The losses inflicted to physical and legal persons by carrying out water-related activities (hydraulic engineering works, etc., except for emergencies and situations related to natural disasters), as well as by termination or change in the conditions of the agreement on water use shall be compensated in full.

3. The determination of losses is carried out by the Commissions for Emergency Situations and Civil Defense of the regions, cities and districts with the participation of victims and those found responsible physical and legal persons in accordance with the existing methodologies for calculating losses and production damages.

4. The compensation of losses is carried out based on acts of the Commissions for Emergency Situations and Civil Defense approved by the decisions of local executive state government bodies. In cases of non-compliance with these decisions by those found responsible, the issues shall be considered by a court.

#### 5.4. On the procedure of granting the right of management of the state-owned water projects to the specialized local and foreign legal persons

**Draft**

Resolution  
of the Government of the Republic of Tajikistan  
№ \_\_\_\_\_ of \_\_\_\_\_ 2014

Dushanbe

On the procedure of granting the right of management of the state-owned water projects to the specialized local and foreign legal persons

In accordance with Article 6 and Article 10 of the Water Code of the Republic of Tajikistan, the Government Republic of Tajikistan d e c i d e s:

To approve the attached procedure of granting the right of management of the state-owned water projects to the specialized local and foreign legal persons.

Chairman  
of the Government of the Republic of Tajikistan

**Draft**

Approved  
Resolution Government  
Republic of Tajikistan  
№ \_\_\_\_\_ of \_\_\_\_\_ 2014

#### **Procedure**

of granting the right of management of the state-owned water projects to the specialized local and foreign legal persons.

1. This procedure was developed in accordance with Articles 6 and 10 of the Water Code of the Republic of Tajikistan.

2. The list of the state-owned water projects (national and communal) being on the balance of state organizations, enterprises, which are subjects to assignment to the specialized local and foreign legal persons for management on the limited area with maintaining the target functions, is approved by the Resolution of the Government of the Republic of Tajikistan.

3. The proposals on the list of water projects indicated in paragraph 2 of this procedure shall be submitted to the Government of the Republic of Tajikistan by:

The central executive body in the area of water resources and land reclamation (hereinafter referred to as the Central body) – on the state-owned projects;

The local executive state government bodies – on the communal property projects.

4. The bodies, referred to in paragraph 3 of this Procedure, establish the commissions to define the list of the state-owned water projects subject to assignment to the specialized local and foreign legal persons for management. These commissions consist of

- representatives of the Central body and the relevant local executive state government body, the state organizations, enterprises, which have on their balances the water projects that will be handed over for management, the central executive body in the area of agriculture, environment protection, geology, farmers' and water users' associations, and other concerned organizations.
5. In accordance with the legislation of the Republic of Tajikistan, the Central body and relevant local executive state government bodies organize a tender on the state-owned water projects that will be handed over to the specialized local and foreign legal persons for management based on the Resolution of the Government of the Republic of Tajikistan.
  6. The rights to participate in the tender have the specialized local and foreign legal persons having permits (licenses) for the operational water management activity and an independent balance sheet or budget.
  7. The Central body and relevant local executive state government bodies make contracts in written form for the handover of the state-owned water projects to the specialized local and foreign legal persons that won a tender for management subject to conditions of invariability of the target functions of these projects.
  8. Essential conditions of contracts for the handover of the state-owned water projects to the specialized local and foreign legal persons for management are regulated by the Civil Code of the Republic of Tajikistan and the Law of the Republic of Tajikistan "On state immunity and its property".
  9. The specialized local and foreign legal persons, which received the state-owned water projects for management, should ensure their normal and safe operation in accordance with the purposes specified in the contract.
  10. Concurrently with the handover of the rights of management of the state-owned water projects, the specialized local and foreign legal persons obtain the rights of use of that part of land, which is occupied by these projects and is necessary for their intended use.
  11. After signing the contract on the handover of the state-owned water projects for management, the Central Body and the relevant local executive state government bodies, as well as the specialized local and foreign legal persons, make the necessary amendments to existing accounts and records and report them to the financial, tax, statistical and other relevant bodies.

## 5.5. On the procedure of changing the form of property of the water projects in the Republic of Tajikistan

**Draft**

Resolution  
of the Government of the Republic of Tajikistan  
№ \_\_\_\_\_ of \_\_\_\_\_ 2014

Dushanbe

On the procedure of changing the form of property of the water projects  
in the Republic of Tajikistan

In accordance with Article 6 of the Water Code of the Republic of Tajikistan the Government of the Republic of Tajikistan d e c i d e s:

To approve the attached procedure of changing the form of property of the water projects in the Republic of Tajikistan.

Chairman  
of the Government of the Republic of Tajikistan

**Draft**

Approved  
by the Resolution of the Government  
of the Republic of Tajikistan  
№ \_\_\_\_\_ of \_\_\_\_\_ 2014

### **Procedure**

of changing the form of property of the water projects  
in the Republic of Tajikistan.

1. This procedure was developed in accordance with Article 6 of the Water Code of the Republic of Tajikistan.
2. Taking into account the importance of the established irrigated agricultural landscapes in providing specific employment of the population, playing significant economic, nature-establishing and ecological role for habitat of the majority of people of the country, changing the form of property of the water projects is carried out on the basis of the Strategic plans prepared for certain periods of time and approved by the Government of the Republic of Tajikistan.
3. Strategic plans of changing the form of property of the water projects define the policy of the Government of the Republic of Tajikistan in the area of establishing various forms of property of the water projects with specification of their list and guidelines for implementation.

The main goals of the Strategic Plans are the following: a gradual change of the state form of property of the water projects for further deepening of market reforms

undertaken by the Government of the Republic of Tajikistan, creating the necessary conditions for more dynamic private sector development, for formation of modern forms of business patterns, attracting domestic and foreign investments in the water sector of the country, forming the securities market and increasing the efficiency of utilization of assets of enterprises, reducing the burden on the national budget, creating new jobs and increasing employment.

4. To prepare the Strategic plans of changing the form of property of water projects, the standing national and local commissions are created, consisting of representatives of the Ministry of Land Reclamation and Water Resources of the Republic of Tajikistan (Head of the Commission), the relevant local executive state government bodies (Deputy Head of the Commission), bodies of local self-government of small towns and villages, the State Committee on Investment and State Property Management of the Republic of Tajikistan, the Ministry of Agriculture of the Republic of Tajikistan, the State Committee on Land Management and Geodesy of the Republic of Tajikistan, farms - water users, Water User Associations, Associations of Dehqan farms, and agricultural cooperatives, if necessary, representatives of other concerned organizations.

Activities of local commissions are implemented under the direction of the national commission.

5. The national and local commissions specify the lists and the cost of the water projects, based on which changing of the form of property is planned and the forms and methodologies of their privatization are proposed. Upon adoption of the appropriate resolution by the Government of the Republic of Tajikistan, the Commissions monitor its progress.
6. In accordance with the Regulation of the Government of the Republic of Tajikistan, the draft resolutions on the Strategic plans of changing the form of property of the water projects shall be submitted by the national commission to the Government of the Republic of Tajikistan for consideration. Furthermore, the functional focus of water projects regardless of changes in their form of property shall remain unchanged.
7. The Regulation on the national commission and its personnel (by positions) shall be approved by the Government of the Republic of Tajikistan.  
The Regulation on the local commissions and their personnel (by positions) shall be approved by the relevant local executive state government bodies in consultation with the bodies referred to in paragraph 4 of this procedure.
8. The State Committee on Investment and State Property Management of the Republic of Tajikistan ensures the implementation of the Strategic plans of changing of the forms of property of water projects in full, according to the timeframe set in these plans and to the legislation of the Republic of Tajikistan.
9. The leadership of the national and local commissions, concerned ministries, agencies, enterprises and organizations ensure the timely submission to the State Committee on Investment and State Property Management of the Republic of Tajikistan of the documentation on water projects, which form of property is planned to be changed, in accordance with the requirements of the Strategic plans.
10. The most important and unique water facilities remain in the state ownership. The list of such facilities shall be approved by the Government of the Republic of Tajikistan based on the proposals of the national commission.

**5.6. On the procedure of organizing and coordinating activities to ensure proper technical condition and improvement of water reservoirs, lakes and other water bodies used as water reservoirs, as well as monitoring compliance with rules of their operation**

Draft

Resolution  
of the Government of the Republic of Tajikistan  
№ \_\_\_\_\_ of \_\_\_\_\_ 2014

Dushanbe

On the procedure of organizing and coordinating activities to ensure proper technical condition and improvement of water reservoirs, lakes and other water bodies used as water reservoirs, as well as monitoring compliance with rules of their operation.

In accordance with Article 106 of the Water Code of the Republic of Tajikistan the Government of the Republic of Tajikistan **d e c i d e s**:

1. To approve the attached procedure of organizing and coordinating activities to ensure proper technical condition and improvement of water reservoirs, lakes and other water bodies used as water reservoirs, as well as monitoring compliance with rules of their operation.
2. The Resolution № 293 of the Council of Ministers of the Tajik Soviet Socialist Republic of November 3, 1978 “The Resolution № 815 of the Council of Ministers of the USSR of October 2, 1978 “On the procedure of organizing and coordinating activities to ensure proper technical condition and improvement of water reservoirs and on the implementation of these activities” shall be deemed to have lost force.

Chairman  
of the Government of the Republic of Tajikistan

**Draft**

Approved  
by the Resolution  
of the Government  
of the Republic of Tajikistan  
№ \_\_\_\_\_ of \_\_\_\_\_ 2014

**Procedure**

of organizing and coordinating activities to ensure proper technical condition and improvement of water reservoirs, lakes and other water bodies used as water reservoirs, as well as monitoring compliance with rules of their operation.

1. This procedure was developed in accordance with Article 106 of the Water Code of the Republic of Tajikistan.
2. Organization and coordination of activities to ensure proper technical condition and improvement of water reservoirs, lakes and other water bodies used as water reservoirs and improvement of reservoirs, lakes and other water bodies used as water reservoirs (hereinafter referred to as the water reservoirs) are carried out by the Ministry of Land Reclamation and Water Resources of the Republic of Tajikistan, the Ministry of Energy and Industry of the Republic of Tajikistan in consultation with the Committee for Environment Protection under the Government of the Republic of Tajikistan.
3. By agreement with the Committee for Environment Protection under the Government of the Republic of Tajikistan, the state sanitary and veterinary inspection bodies, other concerned bodies, the Ministry of Land Reclamation and Water Resources of the Republic of Tajikistan, the Ministry of Energy and Industry of the Republic of Tajikistan approve the Rules of operation of water reservoirs, cascades or systems of water reservoirs, regardless of form of property and departmental affiliation, and monitor compliance with these rules, as well as determine the annual regime of the water use of water reservoirs adjusted for the requirements of the integrated use of water resources and environment protection.
4. Technological certification of water reservoirs, implementation of the ordering customer functions on developing the schemes of improvement of technical condition and improvement of water reservoirs and their coastal strips (zones) are carried out by the ministries and agencies, organizations, enterprises, regardless of their form of property, which have the water reservoirs on their balance sheet.
5. The development of schemes referred to in paragraph 4 of this Procedure is carried out by the Ministry of Land Reclamation and Water Resources of the Republic of Tajikistan, agreed with the Ministry of Agriculture of the Republic of Tajikistan, the Committee for Environment Protection under the Government of the Republic of Tajikistan, the Ministry of Energy and Industry of the Republic of Tajikistan, the Ministry of Health of the Republic of Tajikistan, Agency for Construction and Architecture under the Government of the Republic of Tajikistan, the Chief Directorate of Geology under the Government of the Republic of Tajikistan, as well as relevant local executive state government bodies, and approved by the Ministry of Economic Development and Trade of the Republic of Tajikistan.
6. Execution of the bank protection, ameliorative, water protection and other works on the improvement of technical condition and improvement of water reservoirs is provided for in the forecasts of the economic and social development of the Republic of Tajikistan for the short-, medium- and long-term perspective in accordance with the procedure established by the Ministry of Economic Development and Trade of the Republic of Tajikistan.
7. The ordering customers for execution of the bank protection, ameliorative, planning and surveying and other works, carried out within the water area of the water reservoirs, shall be the ministries, agencies, enterprises and organizations, which have the water reservoirs on their balance. These works are funded with the mandatory share participation of the water users, water consumers, relevant local executive state government bodies in accordance with the procedure established by the Ministry of Economic Development and Trade of the Republic of Tajikistan. The share participation of foreign states is determined in accordance with the procedure and on the terms of the concluded by bilateral and multilateral intergovernmental agreements.
8. The functions of the customer of planning and surveying and water protection works within the coastal strips (zones) of water reservoirs shall be carried out by the ministries, agencies, organizations, institutions of all forms of property, which are in

charge of the enterprises and facilities that affect the condition and regime of water resources of the water reservoirs.

9. Contracting construction organizations executing the works provided for in paragraph 7 of this Procedure shall be determined by the ordering customers by tender.
10. The Chief Directorate of Geology under the Government of the Republic of Tajikistan shall provide the Ministry of Land Reclamation and Water Resources of the Republic of Tajikistan, the Ministry of Energy and Industry of the Republic of Tajikistan, other ministries, agencies and organizations, having water reservoirs, with materials on the regional study of engineering - geological and hydrogeological conditions of the areas adjacent to the water reservoirs, and also study the landslide-prone slopes of reservoir banks and predict the occurrence of landslides.
11. The Committee for Environmental Protection under the Government of the Republic of Tajikistan shall:  
take a sight on the hydrometeorological regime, the level of the water reservoir pollution and provide concerned organizations with the forecasts of inflow to the water reservoir and hydrometeorological conditions, as well as urgent information on the sharp increase of pollution in water reservoirs;  
jointly with the Academy of Sciences of the Republic of Tajikistan, other concerned ministries, agencies and organizations develop comprehensive forecasts of changes in water quality in reservoirs affected by the economic activity and hydrometeorological conditions.
12. Ministries, agencies and organizations implementing activities as well as scientific - research and planning and surveying works related to the improvement of technical condition and improvement of water reservoirs and their integrated utilization shall coordinate the forecasts and programs of these works, as well as the design assignment with the Ministry of Land Reclamation and Water resources of the Republic of Tajikistan, the Committee for Environment Protection under the Government of the Republic of Tajikistan, the Chief Directorate of Geology under the Government of the Republic of Tajikistan, the Chief Directorate of State Control of Safety in Industry and Mining under the Government of the Republic of Tajikistan, the relevant bodies regulating the utilization and protection of water resources, sanitary, veterinary and fire inspection bodies, and other concerned bodies of state inspection and control.
13. To ensure proper technical condition and improvement of water reservoirs, as well as to monitor compliance with the rules of their operation, the service of reservoir operation in the system of relevant ministries, agencies, organizations and enterprises, having the water reservoirs, is created and operates. It is prohibited to commission the hydro systems and water reservoirs, which do not have approved operating rules.
14. The Ministry of Agriculture of the Republic of Tajikistan, the Ministry of Land Reclamation and Water Resources of the Republic of Tajikistan, the Ministry of Energy and Industry of the Republic of Tajikistan, the State Committee on Land Management and Geodesy of the Republic of Tajikistan, the Committee for Environment Protection under the Government of the Republic of Tajikistan on the basis of their functional duties and by mutual agreement shall develop and implement within the coastal strips (zones) of the water reservoirs the hydrotechnical, erosional-preventive, forest improvement, forestry and other activities ensuring the prevention of water erosion and water reservoir sedimentation, maintenance of favorable water regime, improvement of living environment of aquatic animals and the preservation of typical rare natural landscapes.
15. The Ministry of Agriculture of the Republic of Tajikistan shall ensure the development and coordination of the activities on prevention of water reservoir pollution with plant-protecting agents, growth-promoting substances, fertilizers and other drugs used in agriculture, as well as with wash-off of livestock facilities, on

preservation and enrichment of healthy flora and fauna of the water reservoirs by agricultural organizations and enterprises of different forms of property.

16. The State Committee on Land Management and Geodesy of the Republic of Tajikistan shall develop the schemes of territorial-economic management of the areas within the coastal strips (zones) of the water reservoirs in consultation with the concerned ministries, agencies, and organizations.

**Endnote:** In connection with the reorganization of some ministries and agencies, according to the Decree №12 of the President of the Republic of Tajikistan “On improving the structure of the executive state government bodies of the Republic of Tajikistan” of November 19, 2013, amendments of the text in the above-mentioned regulatory-legal acts will be made after determining the powers and approval of the regulations of these ministries and agencies.