

DRAFT
LAW ON WATER RESOURCES MANAGEMENT
OF THE KINGDOM OF CAMBODIA

CHAPTER I
GENERAL PROVISIONS

Article 1: Purposes of the Law

The general purpose of this Law shall be to foster the effective management of the water resources of the Kingdom of Cambodia to attain socio-economic development and the welfare of the people.

This Law shall determine:

- the rights and obligations of water users,
- the fundamental principles of water resources management,
- the institutions in charge of its implementation and enforcement, and
- the participation of users and their associations in the sustainable development of water resources.

Comment: This Article corresponds to Articles 1-2 of the previous draft Law,

Article 2: Definitions

In this Law, unless the context otherwise requires,

"water" and "water resources" means surface, underground and atmospheric water,

“groundwater” means water held within a saturated soil, rock medium, fractures or other cavities within the ground;

“aquifer” means a geological formation where underground water accumulates,

"basin" means a geographical area determined by the watershed limits of the system of waters, including surface and underground waters,

"sub-basin" means part of a basin;

“international rivers” means rivers geographically situated in the territory of two or more states;

"banks" of a river, stream, canal, lake and reservoir shall mean the land normally inundated by the water contained in such river, stream, canal, lake or reservoir, together with such soil, rock or any other material immediately adjacent thereto, but does not include any land beyond that land, soil, rock or other materials, which is occasionally inundated by such water,

“shore” means the land covered with sand or soil, and declining towards the water in a body of water, occasionally inundated by such water,

"beds" means the portion of land delimited by the banks of a river, stream, lake, canal or reservoir, and normally covered by water;

"public purpose" refers to urban and rural water supply, food production, hydro-power generation, navigation, industrial development and the maintenance of minimum flows for ecological, cultural and religious purposes and the preservation of aquatic life,

"waterworks" means dams, weirs, canals, drains, reservoirs, tanks, cisterns, intakes, dykes, embankments, wells, boreholes, tunnels, conduits, pipes, sluices, plants, pumps, and such other structures or installations as are constructed or used for the purpose of diverting, storing, conveying, abstracting, using, conserving and protecting water resources, for land drainage purposes, or for the prevention and mitig

Article 5: Declaration of Water Law Implementation Area

To implement this Law, the MOWRAM may declare any basin, sub-basin or aquifer as Water Law Implementation Area when within that basin, sub-basin or aquifer there are likely to be conflicts among water users, problems of water pollution or watershed degradation.

Comment: It might be very difficult to implement water management functions such as water resources planning and the issuance and administration of licence at once, countrywide. This is why this Article empowers the MOWRAM to declare a Water Law Implementation Area corresponding to a basin, sub basin or aquifer, when specified circumstances so warrant. Within an Area so declared, it will be possible for the MOWRAM to sort law implementation without being under pressure and using the human and financial resources available.

CHAPTER II WATER RESOURCES INVENTORY AND PLANNING

Article 6: Water Resources Inventory

The MOWRAM shall keep a centralized inventory of the water resources of the Kingdom of Cambodia. This inventory shall indicate the location, quantity and quality of the resources during the year, each year.

Data on quantity and quality, and any other water-related information collected by other institutions, whether at the national, provincial or district level, shall be submitted to the MOWRAM in a technically standardized format.

The above data and information, to the exception of confidential data and information, may be provided to any person requesting them, subject to the payment of fees.

Comment: An inventory of water resources exists in Cambodia, but needs to be updated. Data on water resources are also collected and kept by various institutions such as the Ministries of Industry, Agriculture, Public Works and Transportation and Rural Development, in addition to the MOWRAM, so that no complete picture of the water situation is available. This renders water resources planning and allocation a difficult task. It is therefore suggested that the submission of data and information by the various institutions to the MOWRAM becomes mandatory. It is very important that the data and information be submitted in a standardized format. Article 37 of the previous draft also refers to the inventory of water resources.

Article 7: Water Resources Planning

Water resources projects shall be prepared based on the data and information resulting from the water resources inventory, in accordance with the national water resources plan, the economic development plan and the national and regional environmental plans, and by maintaining the balance between water availability and present and foreseeable demands.

The public may contribute to national water resources planning.

Comment: Water resources planning is clearly one of the functions of the MOWRAM, according to Article 3 of Sub-Decree No. 58 of 30 June 1999, on the Organization and

Functioning of the Ministry of Water Resources and Meteorology. Also water resources' planning is mandatory under Article 59 of the Constitution. This draft Article highlights the fact that projects must be consistent with the water resources plan, and that the public is invited to participate in water resources planning.

CHAPTER III WATER RESOURCES USE AND DEVELOPMENT

Article 8: Free Water Uses

Everyone has the right to use water resources without a licence for drinking, washing, bathing and other domestic purposes, the watering of domestic animals and buffaloes, fishing and the irrigation of gardens and orchards, in an amount not exceedM9 that necessary to satisfy the individual and family needs of the user, Mid for the purpose of extinguishing fires, testing fire-extinguishing equipment and training people in the use of such equipment.

Comment: This Article corresponds to Article 16 of the previous draft.

Article 9: Water Uses subject to Licence

The diversion, abstraction and use of water resources for purposes other dm those mentioned in Article 8, and the construction of the waterworks relating thereto, are subject to a licence by the MOWRAM.

The extraction of sand, soil, stones or gravel from the beds and banks of watercourses, lakes, canals and reservoirs in excess of the quantity necessary to satisfy individual and family needs, and the filling of natural lakes, public ponds and reservoirs, are also subject to a licence by the MOWRAW.

Comment: This Article groups the provisions of Articles 9, 17, 18, 19 and 42 of the previous draft. It omits the distinction between medium- and large-scale water uses, because in any case these two types of use are subject to the same regime under the provisions just mentioned. Given this, the distinction would only generate confusion, in addition to more work.

Article 10: Granting of Licence

Water use licences are granted by the MOWRAM.

The refusal to grant a licence shall be justified in writing by the MOWRAM.

The procedures for the granting of water use licences shall be established by sub-decree.

Comment: This Article corresponds to Article 10.1 of the previous draft. According to the procedures to be established in order to implement the law, the application will be brought to the knowledge of the public. A deadline will be set, within which those who might be negatively affected by the proposed water use may raise objections. In case of objections, a public hearing may be organized, to enable all parties' the applicant and the author or authors of the objections - to express their opinion. The decision on the application will be made on

the basis of the results of the public hearing. The reasons for the rejection of an application will have to be stated in writing, to enable the applicant to appeal against the decision.

Article 11: Coordination with other Institutions

Before granting a water use licence to a person, the MOWRAM may consult the other institutions concerned with the proposed water use to obtain their technical views on the waterworks relating to such use.

The construction of bridges over rivers, the construction of ports and the building of structures on the beds, banks and shores of rivers, streams, lakes, canals and reservoirs, are subject to prior technical approval by the MOWRAM as regards the water regime.

Comment: The application for a water use licence may be the subject of consultation between the MOWR, 4M and the institution or institutions in charge of the sector in which the water is planned to be used (water supply, energy, etc.), when the MOWR, 4M will request advice in

It is obvious that this Article applies to the transfer of water use licences, and not to the transfer of water between a farmer and another within a FWUC.

Article 16: Cancellation and Modification for Public Purpose

A water use licence may be modified or cancelled by the MOWRAM for a public purpose.

In this case, however, the licence holder is entitled to compensation, or to the provision of the same amount of water from another source.

Comment: It is important that when a licence is cancelled for public purposes (term defined in Article 2 in order to avoid any possible abuses), the licence holder be compensated in this manner, the water user is guaranteed against a loss of the capital invested through no fault of his. This draft Article is new.

Article 17: Registration of Licences

The MOWRAM shall record all water use and wastewater discharge licences, as well as information relating to their modification, suspension, cancellation, transfer and renewal, in a register of licences.

Comment: This draft Article is new. The registration of water use and wastewater discharge licences will enable the MOWRAM to know how much water is used, by whom, at what location and for what purpose, and to obtain information on wastewater discharges. On the basis of the information contained in the register and of the data resulting from the water resources inventory, the MOWRAM will be able to plan future water allocations and measures for the protection of water quality. The register will also serve as a means to prove the existence of a licence and to oppose claims by third parties before the courts of law.

Article 18: Recognition of Existing Uses

Within [three] years from the date of entry into force of this Law, anyone who uses water for purposes other than those indicated in Article 8 shall declare such use to the MOWRAM and apply for registration.

At the same time, the author of the declaration shall apply for a water use licence, but within the above period of [three] years may continue to use the water.

Within the end of the above period, the MOWRAM shall issue the applicant with a water use licence.

The above water use shall be accorded priority over competing applications for new uses.

Comment: This Article is a modified version of Article 21 of the previous draft Law. It aims at bringing existing water uses within the fold of the Law, by ensuring a smooth transition from an unregulated situation to a regulated one. The declared water uses are recorded in the register of licences. Thus, they are protected as against anyone who claims a conflicting right to use water from the same source.

Article 19: Water Use Fee

The use of water on the basis of a water use licence is subject to the payment of water use fees, at such rates as shall be determined by sub-decree.

Certain uses, or categories of uses, may be exempted from the payment of water use fees, subject to annual review.

Water use fees shall be collected by the MOWRAM. However, in the case of irrigation systems for which a Farmer Water User Community has been established, the water use fees shall be collected and kept by such Community, and shall be used to finance the operation and maintenance of the irrigation system.

Comment: This Article is a modified version of Article 35 of the previous draft Law. Flexibility is provided by allowing certain uses to be exempted from the payment of water fees if the need arise, although the principle remains that the user pays for water.

Article 20: Farmers' Water User Communities

All farmers using water from the same irrigation system or part thereof may form a Farmers' Water User Community.

A Farmers' Water User Community may be established upon the initiative of the MOWRAM when the interest in the efficient and sustainable management (operation and maintenance) of the irrigation system, or part thereof, so requires.

The statutes of a Farmers' Water User Community shall be registered with the MOWRAM.

As of the date of registration the Community shall acquire juridical personality.

The procedures for the establishment, functioning and dissolution of Farmers' Water User Communities shall be determined by way of sub-decree.

Comment: These provisions set basic principles underlying the formation of Farmers' Water User Communities (FWUCs), i.e., basic criteria, the need for statutes and the registration requirement to become legal entities. The FWUCs will be registered with the MOWRAM (or its provincial departments). In this manner, the MOWRAM will be facilitated in the

GROUNDWATER

Article 22: Drillers' licences

Whoever intends to undertake the drilling and digging of wells on a professional basis, that is, for commercial purposes, shall obtain a drillers' licence from the MOWRAM.

The driller shall supply the MOWRAM with a detailed report on the drilling operation and the technical specifications and other information on the well.

The procedures for the granting of wastewater discharge licences shall be the subject of a sub-decree.

The MOWRAM shall set technical standards of wastewater discharge in consultation with the other institutions.

Comment: Granting a wastewater discharge licence to a person does not mean that such person has the right to discharge untreated wastewater into water bodies. The discharge licence contains conditions as to how the wastewater is to be treated and discharged. A wastewater discharge licence is LeEster so that the MORR,4M knows that the discharge is taking place and is in a position to verify, through inspections, whether the licence holder respects the conditions attached to the licence. When existing wastewater discharges are concerned, the licence will indicate levels of treatment of the effluent and a time schedule for complying with them. This approach aims at enabling the authors of such discharges to comply with the law gradually, so that they will be more willing to incur the costs inherent to the treatment of the effluent. This Article reflects the content of Articles 17, 43 and 44 of the previous draft.

Article 25: Combined Licence

When the applicant for a water use licence is also the author of a wastewater discharge, the wastewater discharge licence shall be part of the water use licence.

Comment: The provision of this Article means that when a water user is also the author of a wastewater discharge there is no need for two separate licences. The conditions relating to the wastewater discharge are incorporated into the water use licence.

Article 26: Protected "Water Use" Zones or Areas

The MOWRAM may declare protected "water use" zones or areas when surface or underground water sources are seriously threatened in their quantity, quality or ecological balance, when a watershed is undergoing degradation, or when there is a risk of spreading of human and animal diseases.

The limits and legal regime of protected "water use" zones or areas shall be established on a case-by-case basis by way of regulations.

The same servitude may be obtained, at the same conditions, for the disposal of wastewater, sewage water and drainage water.

In the case of damage, the beneficiary of a servitude under this Article shall be liable to pay compensation to the owner or occupier of the land on which the servitude is established.

Article 32: Rights of Neighbours

The holders of intervening or neighbouring land are entitled to use the works provided for in Article 31.

In such case, they are required to contribute, in proportion to their utilization of the works, to the cost of construction, operation and maintenance of those works, and to bear the costs relating to the modifications that the exercise of the right provided for in this Article may render necessary.

Article 33: End of Servitudes

A servitude ceases to exist when the exercise of the right ceases.

Article 34: Settlement of Disputes

All disputes relating to the establishment of a servitude, the laying of pipes or conduits and the amount of the compensation due to the owner or occupier of the land on which the servitude is established shall be settled by the MOWRAM or by the competent court.

Article 35: Power to enter Land

Any officer authorized by the MOWRAM to such effect has the power to enter any land, at any reasonable time, for the purpose of:

- establishing and using flow measuring stations, water quality monitoring stations, meteorological stations, and carrying out water resources surveys and research,
- constructing, maintaining and repairing waterworks, including water supply and sewerage conduits and bank protection works,
- maintaining and protecting natural lakes, public ponds and reservoirs;
- maintaining and protecting the beds and banks of rivers and streams;

- undertaking inspections to ensure compliance with the provisions of this Law and the regulations made thereunder.

The officer shall give not less than twenty four hours notice in writing to the owner or occupier of the land, and, before entering such land, shall present his identity card and mission order.

If, through the exercise of powers under this Article, damage is caused to the land, the land owner or occupier is entitled to compensation.

Comments to Articles 29-35: Articles 29 and 30 correspond to Articles 25, 26 and 27 of the previous draft; Article 31 consolidates the provisions of Articles 28, 29 and 30 of that draft. Article 32 has been added to allow the owners or occupiers of the land on which a servitude is established to use the servitude itself against a contribution to the costs involved. Article 33 corresponds to Article 32 of the previous draft. Article 34 is new, aiming at providing legal protection to those who might be affected by the establishment of a servitude. Article 31

In case of repeated offence, the penalty shall be double.

Comment: This Article corresponds to Articles 51, 53 and 55 of the previous draft.

Article 38: Supply of Unclean Water

Whoever supplies the public with unclean water, that is, water of a quality not meeting the standards for drinking water set by the Government, thereby adversely affecting public health and security, is punished with a fine not exceeding ... Riels, or with a term of imprisonment not exceeding ... years, or with both such fine and imprisonment.

Comment: This Article corresponds to Article 55 of the previous draft. Drinking water is unclean when it does not meet the standards set by the Government. The implementation of this provision requires the adoption of national quality standards for drinking water.

Article 39: Destruction or Alteration of Public Waterworks

Whoever intentionally destroys or alters waterworks of any kind constructed or installed by the Government is punished with a fine not exceeding ... Riels, or with a term of imprisonment not exceeding ... years, or with both such fine and imprisonment.

Comment: This Article corresponds to Article 52 of the previous draft.

Article 40: Additional Measures

In addition to the above provisions on offences and on the cancellation of licences, the violator may be condemned to remove all kinds of works constructed in violation of this Law, and to restore the things to the former state.

Comment: This Article corresponds to Article 57 of the previous draft.

Article 41: MOWRAM Officials

Any official of the MOWRAM who is negligent, violates the regulations of the MOWRAM,

policies and with the obligations stemming from the international agreements to which Cambodia is a Party.

Comment: This draft Article corresponds to Article 59 of the previous draft.

CHAPTER X FINAL PROVISIONS

Article 43: Coordination

The MOWRAM will coordinate with other Ministries in the implementation of this Law.

Article 44: Repeals

All legal provisions inconsistent with this Law are hereby repealed.