

Water Regulations 2012

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Chapter 1

Introductory Provisions

Title

1. This Regulation shall be called “the Water Regulation, 2011”.

Mandate

2. This Regulation is adopted under the mandate of Section XX of the Water Act of Bhutan, 2011.

Purpose

3. This Regulation:
 - 3.1 Establishes procedures for the practical and effective implementation of the provisions of the Water Act of Bhutan, 2011;
 - 3.2 Identifies the precise role and area of responsibility of the Authorities with a view to establishing a coherent regulatory framework for sound water management practices at every level of administration, including water resources planning, approval of water abstraction and use, prevention and control of water pollution, and monitoring procedures;
 - 3.3 Assigns costs among users and operators of water services by means of a comprehensive system of fees, charges and fines for non-compliance; and
 - 3.4 Controls pollution of water resources in order to prevent environmental degradation.

Scope

4. This Regulation applies to all issues related the water resources of the Kingdom of Bhutan and their management by relevant Competent Authorities.

Commencement

5. This Regulation comes into force with effect from XXXX, 2011 corresponding to Bhutanese calendar XXXX.

Chapter 2

Definitions

1. For the purposes of these Regulations, the definitions set out under Section 83 of the Water Act of Bhutan, 2011 shall apply, unless the context otherwise requires.
2. In addition, for the purposes of the Water Act, 2011 and of these Regulations, the terms listed below shall be understood as follows:
 - (a) “Approval” means permission granted in principle for the abstraction operations concerned subject to a subsequent detailed application for an Environmental Clearance under sections 26 and 28 of the Water Act, 2001.
 - (b) “Hazardous waste” means a waste (i) which because of its quantity, concentration, persistence or physical, chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating irreversible, illness, or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed, and (ii) belong to any of the categories listed in Annexes to the Regulation on Hazardous Waste adopted under section 53 of the Waste Prevention and Management Act, 2009.
 - (c)

Chapter 3

General Provisions / Principles

1. The general principles set out under Chapter 2, sections 4-11, of the Water Act 2011, and the values inherent thereto, shall guide and inform all aspects of the interpretation, implementation and application of these Regulations. Such principles and approaches as the polluter pays principle, integrated water resources management, community participation and freedom of access to water-related information shall be understood having regard to the continuing development of relevant international best practice.

Chapter 4

Functions and Powers of Authorities

1. The National Environment Commission shall have overall responsibility for the effective implementation of the Water Act, 2011 and shall, to this end, exercise the functions listed under section 13 of the Act. As a priority, the Commission shall, within 12 months of the entry into force of the Water Act, 2011:
 - a. Review and adopt policies, technical standards, guidelines, environmental quality standards and objectives and any other binding standards or detailed guidance required to facilitate a coherent and consistent approach by the Commission and Competent Authorities to the issuance of Approvals or Environmental Clearances for water abstraction and effluent discharge operations;
 - b. Review and adopt procedures for sharing information between the relevant Competent Authorities and the Commission relating to Approvals and Environmental Clearances and for coordinating water resources development and environmental protection;
 - c. Adopt and periodically review reporting formats and procedures to be followed by the relevant Competent Authorities in reporting to the Commission on the statutory functions listed under section 15 of the Water Act, 2011;
 - d. Designate any Ministry, Organisation, Agency or Committee as a Competent Authority, additional to those designated under Annex 2 of the Regulation for the Environmental Clearance of Projects, necessary to effectively implement and enforce the provisions of the Water Act, 2011;
 - e. Develop, further to Annex 2 of the Regulation for the Environmental Clearance of Projects, an indicative list of the classes of activities [projects] which are not listed in Annex 2 and for which the Commission has primary responsibility for issuing Environmental Clearances;
 - f. Establish and maintain a National Registry in which to record the details of all Approvals and Environmental Clearances applied for and issued, including any administrative action taken in respect of such Approvals and Environmental Clearances;
 - g. Prepare and adopt the National Integrated Water Resources Management Plan in consultation with the relevant stakeholders;
 - h. Prepare and adopt detailed technical criteria for the safety of dams and other infrastructure and a programme for the examination and review, as appropriate, of Environmental Clearances [if any] for dams and other water infrastructure having regard to these safety criteria;

- i. Adopt a scheme of administrative fees for the processing of applications for Approvals and Environmental Clearances at set out in Chapter 7 of this Regulation and a scheme of charges for water supply services, wastewater disposal services, and other services as provided for under the Water Act, 2011.
2. Further to section 6 of the Water Act 2011, on Integrated Water Resource Management a National Water Resources Board shall be established with immediate effect. The Secretary of the National Environment Commission shall act as Chair and the Head of WRCD shall act as Member Secretary of the National Water Resources Board, which shall also be comprised of the following members from the following agencies
 - o MoEA – Director General, DoE, and Head, DGM;
 - o Thimphu City Corporation – Thrompon;
 - o MoH – Director, Department of Public Health;
 - o MoHCA – Director, Department of Local Governance;
 - o RSPN – Executive Director;
 - o MoWHS – Director, DUDES;
 - o MoAF – Director, DoA; Director, Council for RNR Research of Bhutan; Head, Watershed Management Division; Head, Water Department, UWICE.

The Water Resources Board shall be accountable to the National Environment Commission and shall:

- o Act as a technical advisory committee to the National Environment Commission on water resource protection, development and management;
- o Facilitate in the process of the National Environment Commission's overseeing of the implementation of the Water Act 2011, related regulations and by-laws;
- o Submit recommendations to the National Environment Commission to ensure smooth implementation of water resources activities, policies and programmes;
- o Act as a forum for discussion and coordination of water resources activities and sharing of information to avoid duplication of efforts and resources;
- o Coordinate the institutional linkage mechanism within and beyond the water resources sector;
- o Make recommendations on matters pertaining to water bodies of national and international importance for consideration by the National Environment Commission ;

- Consider issues related to water resources [management] including, but not limited to, the following:
 - Research on water resources *vis-à-vis* Climate Change;
 - Vulnerability and Adaptation of water resources;
 - Mitigation of adverse impacts of Climate Change;
 - Capacity building and awareness;
 - Technology needs and technology transfer for water resources management; and
 - Positions and issues relating to water resources of a trans-boundary nature.

The National Environment Commission may, through its Secretariat, task any member(s) of the National Water Resources Board to provide relevant information to enable informed decision-making. It will be the sole responsibility of the Board member(s) concerned to make appropriate arrangements within their own organization for the fulfillment of the given task. The Board shall meet at least quarterly. The Chair may convene special meetings as and when required. .

3. Further to Annex 2 of the Regulation for the Environmental Clearance of Projects, the Competent Authorities listed therein shall have primary responsibility for issuing Environmental Clearances for the respective classes of activity [projects] listed therein. The Commission shall have primary responsibility for issuing Environmental Clearances for those classes of activities [projects] which are not listed in Annex 2
4. The Competent Authorities listed under section 15 of the Water Act, 2011 shall bear primary responsibility for the functions listed thereunder, and will submit reports on each of these functions on or before December 31 of each calendar year.
5. In the exercise of their functions under section 15 of the Water Act, 2011, the Competent Authorities shall be bound by the standards, guidelines, policies and procedures developed by the Commission, but may also prepare such standards, guidelines, policies and procedures for approval by the Commission such as:
 - a. Bhutan Electricity Authority may prepare, for approval and adoption by the Commission, detailed technical criteria for the safety of dams and a programme for the examination and review, as appropriate, of Environmental Clearances [if any] for dams having regard to these safety criteria;

- b. The Ministry of Agriculture may prepare, for approval and adoption by the Commission, a list of lakes, rivers or waterways, or any parts thereof, to be declared for environmental conservation [water resource areas]; and
 - c. The Ministry of Home and Cultural affairs may prepare, for approval and adoption by the Commission, detailed emergency and contingency plans in order to ensure national coordination of disaster preparedness and the viability of mitigation measures related to water resources.
- 6. In the course of the preparation of such standards, guidelines, policies and procedures, either by the Commission or the Competent Authorities, the full participation of stakeholders shall be actively encouraged by means of proactive public consultation, outreach activities, awareness raising and access to information..
- 7. The Competent Authorities will supervise and oversee the implementation of the standards, guidelines, policies and procedures adopted by the Commission..
- 8. The Competent Authorities shall report to the Commission on progress made on such implementation according to the reporting formats and procedures prepared by the Secretariat of the National Environment Commission. .
- 9. Pursuant to sections 8 and 27 of the Water Act, 2011, the National Environment Commission shall establish the River Basin Committee to coordinate measures for the conservation, protection and management of the water catchment areas and to promote community participation in the protection, use, development, conservation, management and control of water resources in its area of operation. The functions and responsibilities of the Committee are set out under section 28 of the Water Act, 2011, and may be further determined by the National Environment Commission. The membership of such River Basin Committees shall be determined by the National Environment Commission in accordance with section 27 of the Water Act, 2011, and shall include representatives of:
 - a. Water Users' Associations or Federations of Water Users' Associations;
 - b. Hydropower generation agency;
 - c. Industries;
 - d. Drinking water supply and sanitation service providers;
 - e. Recreation and tourism operators;
 - f. Registered environmental non-governmental organizations;

- g. Traditional communities, with particular regard to those engaged in subsistence farming;
- h. Departments of Forests;
- i. [local authorities in whose functional area(s) the catchment area is located - Dzongkhag, Dungkha and Gewog Administration]; and
- j. the National Environment Commission.

10. In accordance with section 50 of the Water Act, 2011, any group of individuals or legal entities using a particular water source for their water supply needs may form a Water Users' Association to maintain the water supply source and to manage water supply services. A Water Users' Association must be registered with the Competent Authorities in accordance with section 51 of the Water Act, 2011 and may exercise a wide range of functions at the local level in accordance with section 52 of the Water Act, 2011. A group of Water Users' Associations using a particular water source may federate in order to coordinate their activities.

Chapter 5

Planning and Management of Water Resources

Water Resources Planning

National Integrated Water Resources Management Plan

1. Pursuant to section 23 of the Water Act, 2011, the Secretariat, with the assistance of the Competent Authorities, shall prepare and periodically update [a National Integrated Water Resources Management Plan, which shall be mainstreamed into National Policies, Plans and Programmes and shall guide and inform the Commission and the Competent Authorities in all water related decisions. Preparation of the first National Integrated Water Resources Management Plan shall be concluded within 2 years of the entry into force of the Water Act, 2011.
2. In the preparation of the National Integrated Water Resources Management Plan, the Secretariat may take the following steps:
 - a. Conduct water Inventory which includes compilation of existing water related data and information.
 - b. Identify the individual river basins lying within the national territory and assign them to river basin areas. Small river basins may be combined with larger river basins or joined with neighbouring small basins to form individual river basins areas where appropriate. Where ground waters do not follow a particular river basin, they shall be identified and assigned to the nearest or most appropriate river basin area.
 - c. submit the lists of river basins to the Commission for assignment to River Basin Committees.
 - d. Pursuant to section 43 of the Water Act, 2011, identify the best available water resources as water resources allocated for drinking purposes and develop detailed guidelines on the adoption of mechanisms to protect and conserve watersheds located above drinking water intakes;
 - e. Identify the key current and prospective socio-economic needs served by the river basins in Bhutan;
 - f. Identify and advise the Commission and River Basin Committees in respect of any area that might appropriately be declared as a water management area, in accordance with section 55 of the Water Act, 2011..
 - g. Develop detailed guidance on the analysis of the characteristics of the river basin area required for the preparation of each River Basin Management Plan, including guidance on:

- i. Analysis of the hydrological characteristics of river basins;
 - ii. Analysis of the impact of human activity on the status quality and quantity of surface waters and groundwater; and
 - iii. Economic analysis of water use.
- h. Develop detailed guidance on the programmes of measures to be included in each River Basin Management Plan in order to meet the requirements of the Water Act, 2011 for the achievement of the objectives of water management and environmental protection including:
 - i. Guidance on the necessary measures to prevent deterioration of all bodies of surface water;
 - ii. Guidance on the necessary measures for enhancing and restoring polluted or depleted bodies of surface water;
 - iii. Guidance on the necessary measures for progressively reducing pollution from priority substances and ceasing or phasing out emissions, discharges and losses of priority hazardous substances;
 - iv. Guidance on the necessary measures to prevent or limit the input of pollutants into groundwater and to prevent the deterioration of all bodies of groundwater;
 - v. Guidance on the necessary measures for enhancing and restoring polluted or depleted bodies of groundwater;
 - vi. Guidance on the necessary measures for progressively reducing pollution of bodies of groundwater;
 - vii. Guidance on the criteria for identification and declaration of any area as a water management area, in accordance with section 55 of the Water Act, 2011;
 - viii. Guidance on the necessary measures to achieve compliance with any standards and objectives adopted for the sustainable management of protected areas;
- i. Establish a register of all water resources designated for drinking purposes and of all areas lying within each river basin which have been designated as requiring special protection. Establish a programme for the monitoring of water status in order to obtain a coherent and comprehensive overview of water status within each river basin area. The programme of monitoring shall set out technical specifications and standardized methods for analysis and monitoring of water status. The programme of monitoring shall cover
 - i. The ecological and chemical status of surface waters;
 - ii. The volume and level or rate of flow of surface waters to the extent relevant for ecological and chemical status;
 - iii. The chemical and quantitative status of ground waters;

- iv. The ecological, chemical and quantitative status of critical surface waters and groundwater in protected areas.
3. Consistent with section 7 of the Water Act, 2011, the Secretariat shall, prior to submitting the draft National Integrated Water Resources Management Plan to the Commission for approval, take proactive steps to ensure proper public consultation on the draft, including:
 - a. Publication of a timetable and work programme for the preparation of the National Integrated Water Resources Management Plan;;
 - b. Publication of an interim overview of the significant water management issues likely to be identified and addressed in the National Integrated Water Resources Management Plan, at least one year before the beginning of the period to which the plan applies
 - c. Distribute and consult the draft National Integrated Water Resources Management Plan to key stakeholders, including:
 - i. Water Users' Associations and/or Federations of Water Users' Associations;
 - ii. A broad selection of social, developmental and registered environmental NGOs;
 - iii. Relevant agencies, particularly those involved in the agriculture, energy, housing, environmental and industrial sectors;
 - iv. Significant private sector users of water, particularly those involved in the agriculture, energy, environmental and industrial sectors;
 - d. Publication of the draft National Integrated Water Resources Management Plan on the NEC website with easily accessible facilities for the submission of comments;

River Basin Management Plans

4. Pursuant to section 24 of the Water Act, 2011, the Secretariat with the assistance of the relevant River Basin Committee shall prepare and periodically update every six years a River Basin management Plan for each river basin area identified in the National Integrated Water Resources Management Plan.
5. In accordance with section 24(b) of the Water Act, 2011, the National Integrated Water Resources Management Plan shall serve as a binding guideline for the preparation of River Basin Management Plans.
6. Each River Basin management Plan may contain:

- a. A general description of the characteristics of the River Basin Area, which shall include:
 - i. Maps of the location and boundaries of surface water bodies and groundwater;
 - ii. Identification of reference conditions for surface water bodies and groundwater;
 - iii. Maps of protected areas;
 - iv. Maps of monitoring networks;
 - b. A summary of significant pressures and impact of human activity, including:
 - i. Estimation of point source pollution;
 - ii. Estimation of diffuse source pollution, including a summary of land use;
 - iii. Estimation of pressures on the quantitative status of water, including abstractions;
 - iv. Analysis of other impacts of human activity on the status of water;
 - c. A list of the environmental objectives established under the Water Act, 2011 and a summary of the measures taken to achieve these objectives;
 - d. A summary of the economic analysis of water use;
 - e. A summary of the measures to be included;
 - f. A Summary of the steps taken (options available) to apply the principle of recovery of costs of water use;
 - g. A summary of the controls on abstraction and discharges, including reference to the registers recording relevant environmental clearances;
 - h. A summary of the public information and consultation measures taken, their results and the changes to the plan made as a consequence;
 - i. The first update and all subsequent updates of the River Basin Management Plan shall also include:
 - i. A summary of any changes or updates;
 - ii. An assessment of the progress made towards achievement of the environmental and water management objectives, including presentation of the monitoring results for the period of the previous plan;
 - iii. An explanation for any measures envisaged under the previous plan which were not undertaken;
7. In preparation of the River Basin Management Plans, the Secretariat and the relevant River Basin Committee shall draw up the following programmes of measures for inclusion in each River Basin Management Plan:

- a. Measures required to implement legislative requirements for the environmental protection of water;
 - b. Measures required to promote efficient and sustainable water use in order to avoid compromising the achievement of the objectives established under sections 25 and 42 of the Water Act, 2011;
 - c. Measures required to safeguard water quality in order to reduce the level of purification treatment required for the provision of drinking water;
 - d. Measures for enhancing and restoring polluted or depleted bodies of surface water and groundwater;
 - e. Controls over the abstraction of surface waters and groundwater and over the impoundment of surface water;
 - f. Appropriate measures for the recovery of costs for water services;
 - g. Measures for the protection and sustainable management of protected areas within the river basin area;
8. Each River Basin Management Plan may also contain
- a. Details of any area as a water management area, in accordance with section 55 of the Water Act, 2011;
 - b. Details of the minimum environmental flow [for each watercourse within] the river basin area set by the Commission under section 25 of the Water Act, 2011;
 - c. Details identifying Flood Risk Zones within the river basin area at risk of flooding, including flood risk maps in respect of such zones, and flood risk management plans for each zone focusing on measures necessary for prevention, protection and preparedness;
 - d. Details of any area designated for the conservation of habitats and species protected under directly depending on water;
 - e. A programme for the monitoring of water status within the river basin area.
9. The Secretariat and River Basin Committees shall encourage the active involvement of all interested parties in the production, review and updating of the River Basin Management Plans. Specifically, they should ensure that, for each river basin area, they publish and make available for comment:
- a. A timetable and work programme for the preparation of the plan;
 - b. An interim overview of the significant water management issues identified in the river basin, at least [two years] before the beginning of the period to which the plan applies;
 - c. Draft copies of the River Basin Management Plan at least one year before the beginning of the period to which the plan applies

The Secretariat and River Basin Committees shall allow at least six months for interested parties to comment in writing on those documents in order to allow full and active involvement and consultation.

Chapter 6

Water Abstraction and Use

Part I Procedures for Approvals and Environmental Clearances

General

1. Further to section 47(a) of the National Environmental Protection Act, 2007 and sections 32-38 of the Water Act, 2011, the Commission and/or Competent Authorities shall be responsible for issuing an Environmental Clearance for any project involving water abstraction or use not exempted under section 33 of the Water Act 2011 and for any project involving effluent discharge. Such Environmental Clearance shall be necessary for Development Consent and shall be issued in accordance with Chapter III of the Environmental Assessment Act, 2000 [as amended - status?] and Chapter II of the Regulation for the Environmental Clearance of Projects, 2002.

Approvals

2. Further to section 31 of the Water Act, 2011, the Commission may upon recommendation from the Secretariat, may issue an approval for identified projects prior to the conduct of feasibility studies for the abstraction of water. For the purposes of section 31, an “Approval” means a permission granted in principle for the abstraction operations concerned subject to a subsequent detailed application for an Environmental Clearance under section 34 of the Water Act, 2001 and [section 9] of these Regulations.
3. Where an Approval is issued under section 31 of the Water Act, 2011, that Approval shall not operate to authorize the carrying out of any abstraction operations to which the Approval relates until a subsequent Environmental Clearance has been granted under section 34 of the Water Act, 2001 and [section 9] of these Regulations.
4. The Approval shall contain detailed terms and conditions having regard to the factors listed under [section 12] and the water related and environmental objectives and standards adopted under [section 14] of these Regulations.

5. Where an Approval has been granted by the Commission, any subsequent application for an Environmental Clearance must be made within a period of three years beginning on the date of the grant of the Approval, or such longer period, not exceeding five years, as may be specified by the Commission. The Approval shall cease to have effect at the end of the period referred to in paragraph (a) unless the subsequent application for an Environmental Clearance is made within that period.

Environmental Clearances

6. Further to sections 32, 34 and 40 of the Water Act, 2011, a person who wishes to abstract water or to discharge effluent to water shall apply to the Secretariat and/or Competent Authority for an Environmental Clearance. Further to section 33.1 of the Environmental Assessment Act, 2000 and in accordance with Annex 2 of the Regulation for the Environmental Clearance of Projects, the Commission shall adopt a comprehensive list of water related projects for which the Secretariat shall screen and issue the Environmental Clearance and another comprehensive list of water related projects for which the Competent Authorities shall screen and issue the Environmental Clearance. Water related projects not listed under Article 33.1 of the Environmental Assessment Act, 2000 [with the potential to have the most significant impact upon water resources and the environment] shall be reserved within the exclusive competence of the Secretariat.
7. The application for an Environmental Clearance under section 34 of the Water Act, 2011, and the determination of such an application, must follow, as appropriate, the procedures set down under Chapter II of the Regulation for the Environmental Clearance of Projects.
8. In accordance with section 30(1) of the National Environmental Protection Act, 2007, the Commission shall shut down any activities without compensation when false or misleading information is provided in the course of an application for an Environmental Clearance, on the basis of which the Environmental Clearance was issued. In accordance with sections 99 and 101 of the National Environmental Protection Act, 2007 and section 49.3 of the Environmental Assessment Act, 2000, the provision of false or misleading information in the course of an application for an Environmental Clearance shall also constitute an offence within the meaning of section 66 of the Water Act 2011.
9. While reviewing an application for an Environmental Clearance under [section 9 above], the Secretariat and/or the Competent Authority shall, consistent with sections 35-40 of the Water Act 2011, have due regard to:

- a. Water quantity and quality required for nature conservation [minimum environmental flows];
 - b. The prevention of natural disasters and emergencies;
 - c. Customary rights and practices;
 - d. The order of water use priorities provided in section 38(a) of the Water Act 2011.
10. The Secretariat and/or Competent Authorities shall attach detailed environmental terms and conditions for the project to an Environmental Clearance and/or a Development Consent. When a Development Consent is required, the Environmental Clearance shall be attached to and be an integral part of it.
11. In order to assist the Secretariat and/or Competent Authorities in effectively reviewing applications for Environmental Clearances and in identifying and attaching appropriate environmental terms and conditions, the Commission shall progressively develop and adopt, and from time to time review, environmental standards and detailed technical guidance, based on international best practice and best available technology, in respect of water related and environmental objectives. Pursuant to section 42(c) of the Water Act, 2011, all competent authorities under these Regulations are required to give effect to the standards listed above, and to take account of the guidance listed above, in exercising their powers and duties under these Regulations and under the Act. Such standards and guidance shall include:
- a. Water Quality Standards, pursuant to section 42(a) of the Water Act, 2011;
 - b. Effluent Discharge Standards for certain substances, pursuant to section 42(a) of the Water Act, 2011;
 - c. Technical guidance on measures for the ecological protection of surface water bodies ;
 - d. Technical guidance on determining minimum environmental flows for surface water bodies;
 - e. Guidance establishing a list of priority hazardous substances and setting out measures aimed at ceasing or phasing-out of emissions, discharges and losses of these substances];
 - f. Guidance establishing environmental quality standards for priority hazardous substances and certain other pollutants;
 - g. Guidance establishing water quality and quantity standards and objectives for protected areas; and/or
 - h. Technical guidance on the presentation and reporting of results of monitoring of water quality and quantity.

12. In accordance with sections 14(i) and 36 of the Water Act, 2011 and section 29 of the Environmental Assessment Act, 2000 [as amended], Environmental Clearances and Approvals issued by the Commission/Secretariat and/or Competent Authorities, and any administrative action taken thereunder, shall be recorded in the National Registry maintained by the Commission/Secretariat. The information recorded in the National Registry shall contain, as a minimum, the information outlined in section 28 of the Environmental Assessment Act, 2000 [as amended]. The National Registry shall be made available to the public in accordance with sections 29-31 of the Environmental Assessment Act, 2000 [as amended] and Chapter 10 of these Regulations.

Notice of Application for Approvals and Environmental Clearances

13. Further to the requirements of public consultation set out under section 31 of the Regulation for the Environmental Clearance of Projects, an applicant, within the period of two weeks before the making of an application for [or a renewal of] an Approval or an Environmental Clearance, shall:
- a. Publish a notice in a newspaper circulating in the area in which the abstraction or discharge is to take place, of the intention to make the application and of the location of the abstraction or discharge to which the application relates;
 - b. Give notice of the intention to make the application by the erection or fixing of a site notice at the location of the abstraction or discharge to which the application relates; and
 - c. Give written notice of the said application to the Secretariat and/or Competent Authority.
14. Such newspaper notice, site notice and notice to the Secretariat and/or Competent Authorities shall contain the following information:
- a. The name and address of the applicant;
 - b. The location or postal address and a description of the abstraction or discharge operations to which the application relates;
 - c. A statement that the following documents / information shall, as soon as it is practicable after receipt by the Secretariat and/or Competent Authority, shall be available for inspection at the headquarters / offices of the Secretariat and/or Competent Authority:
 - i. The application for an Approval or an Environmental Clearance [or for the review of an Approval or an Environmental Clearance, as the case may be];

- ii. Any Environmental Assessment Report required; and
 - iii. Such further information relating to the application as may be furnished to the Secretariat and/or Competent Authority in the course of its consideration of the application.
- d. A statement that submissions in relation to the application may be made to the Secretariat and/or Competent Authority at its headquarters / offices.

Fee for Application for an Approval or Environmental Clearance

15. A fee shall be paid to the Secretariat and/or Competent Authority by an applicant in respect of an application for an Approval or Environmental Clearance, and a review of an Approval or Environmental Clearance. The fee payable shall be the amount determined in accordance with the EA Act, Water Act and regulations under the Acts. In setting the level of fees payable, the Commission shall aim to recover the full administrative cost to the Secretariat / Competent Authority of processing such applications.

Emission controls and environmental quality standards

16. Further to section 41 of the Water Act 2011, [point source and diffuse source] discharges liable to cause water pollution are prohibited unless authorized by an Environmental Clearance issued in accordance with Chapter III of the Environmental Assessment Act, 2000 [as amended] and Chapter II of the Regulation for the Environmental Clearance of Projects, 2002. The Commission and/or Competent Authority issuing an Environmental Clearance for a discharge to waters shall lay down emission limits in the Environmental Clearance that satisfy the following requirements:
- a. The emission limits shall establish the maximum concentration and the maximum quantity of a substance permissible in a discharge and shall aim to comply with the Water Quality Standards, Effluent Discharge Standards, Water Quality Standards for water resources used for or intended to be used for drinking purposes, and other environmental objectives established under [section 14] of these Regulations;
 - b. Discharges shall be controlled by means of the application of limits which aim to achieve the quality standards referred to in sub-paragraph (a) above and, where relevant, the application of limits based on:
 - i. Emission controls based on best available techniques; or
 - ii. Relevant emission limit values; or
 - iii. In the case of diffuse impacts, controls including, as appropriate, best environmental practices set out in [e.g. Good Agricultural Practice for the protection of Waters Regulations, or measures or controls identified in a pollution reduction plan for the river basin

district prepared by the Commission in accordance with [section **] of these Regulations for the reduction of pollution by priority substances or the ceasing or phasing out of emissions, discharges or losses of priority hazardous substances / as part of a River Basin management Plan, etc.]

17. A person, public authority or body corporate authorized under [section 9 above] shall comply within the timeframe specified, with the emission limits, or other requirements, laid down in the Environmental Clearance.

Environmental Clearances for Existing Uses

18. Further to Chapter 7 of the Water Act 2011 and section 25 of the Environmental Assessment Act, 2000 [as amended], the projects that are in existence prior to the Water Act, 2011 coming to force shall be granted a maximum of two years from the date of enforcement of this regulation, to bring the project within the purview of the Water Act, 2011. In doing so:
 - 19.
 20. a. all projects requiring EC as per the Water Act, 2011, shall apply for an EC to the Secretariat or Competent Authority within one year from the date of this regulation coming into force; and
 21. b. Upon receipt of the application, the Secretariat or the Competent Authority shall review and decide whether an environmental assessment is required and determine its scope and the necessary follow-up actions including the time frame.
22. The Commission/Secretariat and / or Competent Authority shall from time to time carry out such further examination, and where necessary review, of Environmental Clearances as may be necessary to ensure compliance with the water resources and environmental objectives and established standards..

Safety of Dams and other Water Infrastructure

23. Further to section 49 of the Water Act 2011, for the purposes of [section 26] of these Regulations, in order to reduce pollution of waters by dangerous substances, and to give further effect to the requirements of [sections 14 and 24] of these Regulations, the Competent Authorities in collaboration with the Secretariat and relevant Agencies shall as soon as may be practicable, but not later than one year after the commencement of this regulation, prepare or cause to have prepared:
 - a. Detailed technical criteria for the safety of dams and other water infrastructure. Referring to international best practice, such criteria shall

take full account of risks presented by climate change and environmental pollutants to human health and ecosystems;

- b. Programmes, including deadlines, for the examination and review, as appropriate, of Environmental Clearances [if any] for dams and other water infrastructure having regard to the safety criteria prepared under sub-paragraph (a). Such programmes shall include measures to ensure compliance with Environmental Clearances granted as well as measures for the identification and follow-up of deficiencies in terms of the safety criteria prepared under sub-paragraph (a);
- c. Programmes for the ongoing monitoring and inspection of dams and other water infrastructure to verify compliance with the safety criteria prepared under sub-paragraph (a). Such programmes shall include measures for follow-up action, including enforcement measures where relevant, in the event that non-compliance with the safety criteria prepared under sub-paragraph (a) is detected.

24. Competent authorities shall ensure strict compliance with the programmes and deadlines so prepared.

Appeals

25. In accordance with sections 33.4 and 61 of the Environmental Assessment Act, 2000, the Commission may hear and decide disputes arising under that Act. In accordance with section 61(a) of the Water Act, 2011, a [any?] person who is not satisfied with a decision of the Competent Authority may appeal to the Commission.

[Appeals against decisions of the Commission in respect of Approvals or Environmental Clearances may be appealed to the court of justice.

26. Such disputes might concern any decision relating to the issue or refusal of an Approval or Environmental Clearance, including:

- a. An appeal against a refusal of an Approval or Environmental Clearance;
- b. An appeal against a determination that an applicant had provided false or misleading information in the course of an application for an Approval or Environmental Clearance; or
- c. An appeal against the validity of any guidance, criteria or standards adopted which apply to the issuance of Approvals or Environmental Clearances.

27. In accordance with section 36 of the National Environmental Protection Act, 2007, when hearing and deciding such appeals the Commission shall be deemed to be a civil court and proceedings before it shall be deemed to be judicial proceedings.
28. The provisions of Chapter IX of the Environmental Assessment Act, 2000 [as amended] and the procedures set down under section 42 of the Regulation for the Environmental Clearance of Projects shall apply to any appeals and legal challenges taken under these Regulations.
29. In accordance with section 61(c) of the Water Act, 2011, an appeal made under [section 33] above shall not stay the operation of the decision or order of the Commission if the decision or order relates to an emergency situation. Otherwise, the availability of interim relief [interim injunction] pending the final decision of the High Court remains at the discretion of the High Court.

Part II Regulations on the Supply of Drinking Water

Duties of Suppliers [Dzongkhag Tshogdu and Gewog Tshogde]

- a. Subject to any exemption granted under [section *], a water supplier shall ensure that the water is safe and potable] and meets the requirements of this Regulations Water shall be regarded as safe and potable providedIt is free from any micro-organisms and parasites, any chemical substances and radiological hazards that constitute a potential danger to human health;
 - b. It meets the Water Quality Standards for water resources used for or intended to be used for drinking purposes mandated under section 42(b) of the Water Act, 2011 and specified under section 7 of Chapter 7;
 - c. It meets the requirements set out in the current World Health Organisation (WHO) *Guidelines for Drinking Water Quality*; and
 - d. It is of an acceptable colour, odour and taste for personal or domestic use.
2. A water supplier shall not be in breach of its obligations under [section 1] of these Regulations where non-compliance is due to the domestic distribution system in a premises, or the maintenance thereof, and that distribution system is not in the charge or control of the water supplier in its capacity as a water supplier.

Duties in Relation to Water in Premises

3. The owner of a premises where water is supplied for human consumption as part of a commercial [or public] activity, including but not limited to hotels and restaurants [schools, hospitals], shall maintain the domestic distribution system of

the premises in such condition that it does not cause, contribute to, or give rise to a risk of non-compliance of that water with a parametric value specified in [Table 1]

4. Where a non-compliance referred to in [section 3] of these Regulations, or a risk of such non-compliance, is in a premises where water is supplied for human consumption as part of a commercial [or public] activity, the relevant [local authority] shall ensure that appropriate action is taken promptly (whether by the owner of the premises or the water supplier, or both, as the [local authority] may consider appropriate), to:
 - a. Immediately prevent or restrict as the [local authority] deems appropriate, the further supply of water for human consumption to the public through the domestic distribution system of the premises until the system is restored to such condition as to no longer be a cause or a risk of non-compliance;
 - b. Restore the domestic distribution system of the premises to a standard necessary for compliance with these Regulations; and
 - c. Ensure that the consumers concerned are duly informed and advised of any possible additional remedial action that should be taken by them.

The [local authority] may issue such directions as it considers necessary for this purpose.

5. Where a premises referred to in [section 3] is owned [managed, controlled] by the [local authority], the local authority shall
 - a. Promptly inform the Competent Authority [Ministry of Health] of the non-compliance and of the action it proposes to take under [section 4] and the proposed timeframe for completion of such action; and
 - b. Inform the Competent Authority when the action proposed under paragraph (a) is completed, and of the resulting effect on the quality of water for human consumption in the premises.
6. For the purposes of [section 4], the [local authority] shall decide what action should be taken having regard to the risk to human health which would be caused by an interruption of the supply or a restriction in the use of water intended for human consumption.

7. A person commits an offence if that person:
 - a. Contravenes [section 3] of these Regulations; or
 - b. Fails to comply with a direction under [section 4] of these Regulations.

Monitoring Functions of Competent Authority [Ministry of Health] and Local Authority

8. The Ministry of Health shall verify compliance of water intended for human consumption supplied by a [local authority], or any person acting jointly with it or on its behalf, with the parametric values specified in [Table / Schedule *].
9. Each [local authority] shall monitor compliance of water intended for human consumption supplied within its functional area by any water supplier, including that local authority, with the parametric values specified in [Table / Schedule *]. Each [local authority] shall be responsible for enforcement of compliance with these Regulations by the water suppliers for whom it has supervisory responsibility under these Regulations.
10. For the purpose of establishing compliance with the parametric values specified in [Table / Schedule *], and of fulfilling their respective obligations under [sections 8 and 9] of these Regulations, each [local authority] and the Ministry of Health shall take all measures necessary to ensure that monitoring is carried out of water supplies for which it has supervisory responsibility, in accordance with any guidelines issued by the Competent Authority / Commission under [section **] of these Regulations.
11. For the purposes of [section 9] of these Regulations, each [local authority] shall:
 - a. Specify the points at which samples shall be taken for analysis and establish a monitoring programme in respect of every supply of water for human consumption in its functional area; and
 - b. Submit the monitoring programme referred to in paragraph (a) to the Ministry of Health for review at such times as the Ministry may direct.
12. The Ministry may direct a [local authority] to amend, in such manner as the Ministry may specify, a monitoring programme submitted by a local authority under [section 11] and the local authority shall comply with that direction.
13. A monitoring programme established under [section 11] shall comply with all / any specifications for the analysis of parameters set down in guidance issued by the Competent Authority / Commission under [section **] of these Regulations.

14. The Ministry or [local authority] shall ensure that additional monitoring is carried out on a case-by-case basis (whether by itself or the relevant water supplier) of substances or micro-organisms for which no parametric value has been specified in [Table / Schedule *], if there is reason to suspect that such substances or micro-organisms may be present in amounts or numbers that constitute a potential danger to human health, and may direct a water supplier to carry out such monitoring as it considers necessary for this purpose.

Point of Compliance

15. Measurement of compliance with the parametric values specified in [Table / Schedule *] shall be made in the case of:
- a. Water supplied from a distribution network [or a private source] at the point within a premises at which it emerges from the tap or taps that are normally used for the provision of water for human consumption;
 - b. Water supplied by a tanker or similar means at the point from which it emerges; and
 - c. Water used in a food production undertaking, at the point where the water is used in the undertaking.

Records

16. The Ministry of Health and/or a [local authority] may direct a water supplier to keep such records and to submit to it, in such a manner and at such times and in such circumstances as it may direct, such information as the Ministry of Health and/or a [local authority] may specify in relation to:
- a. the management and treatment of water intended for human consumption;
 - b. the monitoring of compliance with water quality standards or other parametric values specified in [Table / Schedule *];
 - c. corrective action taken following a non-compliance with water quality standards or other parametric values specified in [Table / Schedule *]; or
 - d. verification of the efficiency of any [disinfectant] treatment of water.
17. A water supplier commits an offence if it fails to comply with a direction from the Ministry of Health and/or a [local authority] under [section 16] of these Regulations.

18. The Ministry of Health and/or a [local authority] shall carry out, cause to be carried out, or arrange for such monitoring as it considers necessary to verify information provided to it under [section 16] of these Regulations.
19. Each [local authority] shall keep a register to record the details of each water supply for which it is responsible and such register shall at a minimum record:
 - a. The name and address of the water supplier;
 - b. The volume of water supplied per day (either in cubic metres or a population equivalent);
 - c. The type of water treatment employed;
 - d. The source of the water supply;
 - e. Any other information required to be included in the register under guidance issued by the Competent Authority / Commission under [section **] of these Regulations.
20. The register referred to in [section 19] of these Regulations shall be made available for inspection by any person upon request within office hours at the principal office of the authority concerned.

Protection of Human Health

21. Where a [local authority], in consultation with the Ministry of Health, considers that a supply of water intended for human consumption constitutes a potential danger to human health, the [local authority] shall ensure that:
 - a. The supply of such water is prohibited, or the use of such water is restricted, or such other action is taken as is necessary to protect human health; and
 - b. Consumers are informed promptly thereof and given the necessary advice.
22. In any situation to which [section 21] of these Regulations applies, the [local authority], in consultation with the Ministry of Health, shall issue such direction to the relevant water supplier as it considers necessary to ensure that appropriate measures are taken for the purposes of preventing, limiting, eliminating or abating such risk, and the water supplier shall comply with such a direction.
23. The Ministry of Health may issue guidelines to assist local authorities to fulfill their obligations under these Regulations.
24. A water supplier commits an offence if it fails to comply with a direction from a local authority [and / or the Ministry of Health] under these Regulations.

Quality of Treatment, Equipment and Materials

25. Each water supplier shall take all measures necessary to ensure that no substances or materials used in the preparation or distribution of water intended for human consumption, or impurities associated with such substances or materials, remain in water intended for human consumption in concentrations higher than is necessary for the purpose of their use, and that any such substances or materials do not, either directly or indirectly, reduce the protection of human health provided for in these Regulations.
26. Each water supplier shall take all measures necessary to ensure that, where disinfection forms part of the preparation or distribution of water intended for human consumption, the efficiency of the disinfection treatment is verified and that any contamination from disinfection by-products is kept as low as possible without compromising the disinfection, in accordance with such directions as the [local authority] may give.
27. A [local authority] may direct a supplier to undertake specific measures for the purpose of compliance with [sections 25 and 26] of these Regulations.
28. A water supplier commits an offence if that [legal] person fails to comply with a direction under [section 27] of these Regulations.

Charges / Fees

29. A [local authority] may charge for monitoring the quality of water supplies intended for human consumption.
30. A charge made by a [local authority] under [section 29] of these Regulations shall be of such amount as the authority considers appropriate, but shall not exceed the cost of such monitoring.
31. A [local authority] may recover the amount of any charge made under [section 29] of these Regulations as a simple contract debt in any court of competent jurisdiction.

Part III Irrigation

1. Consistent with section 44 of the Water Act, 2011, water for irrigation purposes shall generally be allocated in accordance with established customary practices, and subject to the rules on allocation adopted by the relevant Water Users' Association and to the provisions of section 44 of the Water Act, 2011 and of these Regulations.
2. The specific rules on allocation of water resources for irrigation purposes as between individual users, and for the protection, alignment and management of irrigation channels and embankments, set down under section 44 (b) – (m) shall apply, subject to the provisions of [sections 3 and 4 below]
3. However, pursuant to section 4 of the Water Act, 2011 the purpose of the Act and these Regulations is to ensure that water resources are managed in and 'economically efficient' and 'socially equitable' manner. In addition, under section 5 of the Water Act 2011, rights over water are ultimately vested in the State as the public trustee of the nation's water resources. In this capacity, the State is under a legal duty to ensure that water resources are managed in and 'economically efficient' and 'socially equitable' manner, and that every individual shall have access to safe, affordable and sufficient water for basic human needs, including the water resources required for securing livelihoods.
4. Section 39 of the Water Act, 2011 dictates that every citizen has an equal right to water resources and section 40 provides that customary practices of water allocation may continue, but only provided that these are recognized by the relevant Water Users' Association or other local beneficiaries' group, and are fair and equitable and do not result in denial of water to any individual or community.
5. Therefore, notwithstanding the privileged position afforded to established customary practices under the rules set out in section 44 (b) – (m) of the Water Act 2011, or any rules on allocation adopted by the relevant Water Users' Association, no provision of the Water Act, 2011 nor of these Regulations may be used to deny or discriminate against any legitimate claim for water resources for irrigation purposes, including claims made later in time to those qualifying as established customary practices.
6. Where there is not sufficient water in an [irrigation channel / water body] for all [existing and prospective] users claiming water use rights, the [relevant Water Users' Association] or other local beneficiaries' group shall have responsibility

for determining, monitoring and enforcing an appropriately equitable regime of allocation amongst individual water users. In so doing, the [relevant Water Users' Association] or other local beneficiaries' group shall consult with all beneficiaries and stakeholders in line with the principle of community based water resources management set out under section 7 of the Water Act, 2011. In making such a determination, the [relevant Water Users' Association] or other local beneficiaries' group shall have regard to, *inter alia*:

- a. Established customary practices regarding the water resource to which the determination relates;
 - b. The water use priorities identified under section 38 of the Water Act, 2011;
 - c. The requirement that every individual shall have access to safe, affordable and sufficient water for basic human needs, set out under section 5(c) of the Water Act, 2011;
 - d. Pursuant to section 4 of the Water Act, 2011, the objective of ensuring that water resources are protected, conserved and/or managed in an:
 - i. economically efficient manner;
 - ii. socially equitable manner; and
 - iii. environmentally sustainable manner;
 - e. Pursuant to section 52(b) of the Water Act, 2011, the need:
 - i. To foster a sense of ownership among the users; and
 - ii. To ensure sustainability of such service;
 - f. Any guidance relating to the factors listed in paragraphs (a) – d) above issued by the Commission, the Competent Authorities or the relevant Water Users' Association or other local beneficiaries' group.
7. In accordance with section 61(a) of the Water Act, 2011, a [any?] person who is not satisfied with a decision of the relevant Water Users' Association or other local beneficiaries' group [Competent Authority] may appeal to the Competent Authorities.

Chapter 7

Protection of Water Bodies and Prevention and Control of Water Pollution

1. Pursuant to section 41 of the Water Act, 2011, a person may not discharge any effluent directly or indirectly to any water resource unless authorized under an Environmental Clearance issued by Secretariat or the competent authority under Chapter 6 of these Regulations.
2. An Environmental Clearance authorizing the discharge of any effluent directly or indirectly to any water resource shall not be issued unless the discharge is in compliance with the Effluent Discharge Standards, and consistent with the Water Quality Standards, issued by the Commission under section 42(a) of the Water Act, 2011..
3. In line with the Effluent Discharge Standards issued by the Commission, all effluents discharged to any water resource must be treated using best available technology, pursuant to section 41(b) of the Water Act, 2011.
4. Notwithstanding any other provisions of the Water Act 2011 or of these Regulations, it shall be unlawful under any circumstances to discharge any chemical, radiological, radioactive, medical or any other hazardous waste into water bodies, pursuant to section 41(c) of the Water Act, 2011. 'Hazardous waste' shall be interpreted in line with section 141.24 of the Waste Management Regulation, 2011.
5. Any person discharging effluent to water bodies under an Environmental Clearance issued under Chapter 6 of these Regulations shall be liable to pay a charge as prescribed under Chapter 11 of these Regulations and any Schedule of Charges adopted thereunder. Charges for the discharge of effluent to water bodies shall reflect the cost of pollution containment, avoidance, abatement, mitigation, remediation, restoration and compensation for any loss, damage or injury, in line with the polluter pays principle as set out under section 9 of the Water Act 2011 and sections 12-14 of the National Environmental Protection Act of Bhutan, 2007.
6. In addition to the general Water Quality Standards referred to in section 2 above, the Secretariat in consultation with the Ministry of Health and the Ministry of Works and Human Settlement shall develop, and from time to time review, Water Quality Standards for water resources used for or intended to be used for drinking

- purposes. Such standards shall take account of the current World Health Organisation (WHO) *Guidelines for Drinking Water Quality* and of the available capacity for the treatment of drinking water. Such standards shall be based on the parameters and parametric values set out in Table 1 to these Regulations.
7. Pursuant to section 25(a) of the Water Act, 2011, the Commission shall in collaboration with the relevant Competent Authority(ies) set the minimum environmental flow of watercourses required to support and conserve riverine habitats and their flora and fauna. The Commission shall notify determinations made under this section to the Secretariat and the relevant Competent Authority(ies) which, as required under section 25(c) of the Water Act, 2011, shall ensure that the notified minimum flows are reflected in Approvals and Environmental Clearances issued for the abstraction of water.
 8. Pursuant to section 26(a) of the Water Act, 2011, no person shall develop or encroach upon the bed and banks of watercourses or upon a strip of land adjacent to the banks of watercourses of a width of [XX metres – *Is this likely to encroach upon constitutionally / legally protected property rights, thus requiring the payment of compensation by the State?*], except for the operation and implementation of activities with an Environmental Clearance. Such operations must comply fully with any conditions set down in the Environmental Clearance for the protection of the bed and banks of the watercourse and, notwithstanding any such condition, must cause the minimum possible disturbance to bed, banks and other natural features of the watercourse and the free flow of water therein.
 8. River Basin Committees, established under and in accordance with [Chapter 4, section 9] of these Regulations shall have responsibility for coordinating measures for the conservation, protection and management of the water catchment areas within their respective areas of operation. All persons are under a general duty to cooperate in the conservation, protection and management of water catchment areas, in accordance with section 8 of the Water Act, 2011. Any person who fails to cooperate fully in the conservation, protection and management of water catchment areas shall be guilty of an offence under these Regulations. Such a failure to cooperate may arise, for example, from:
 - a. A failure to provide information requested by the Secretariat or any Competent Authority;
 - b. The provision of false, incomplete or misleading information in response to any request for information from the Secretariat or any Competent Authority;

- c. A failure to inform the Secretariat or the relevant Competent Authority of any incident or circumstances which threaten the conservation, protection or management of water catchment areas; or
 - d. A failure to allow the officials of the Commission or of any Competent Authority access to land in order to carry out any sampling, monitoring, inspection, investigation, or remedial works.
9. Pursuant to section 26(c) of the Water Act, 2011, existing developments at the time of the commencement of the Water Act, 2011 shall be allowed to continue, subject the imposition at any time of such reasonable terms and conditions [by means of an Environmental Clearance?] as the Commission may impose to safeguard the integrity of the bed and banks and other natural features of the watercourse and the free flow of water therein.
10. Pursuant to section 32 of the Water Act, 2011, no person shall carry on a car washing business [operation] except where such business [operation] is permitted by and operated in accordance with an Environmental Clearance. Such operations must comply fully with any conditions set down in the Environmental Clearance for the conservation and protection of water resources.
11. Without prejudice to [section 8] above, any surface collection of sand and boulders from a watercourse may only be operated by a State Agency duly authorized under these Regulations [by means of an Environmental Clearance issued by the Commission / Secretariat?]
12. In adopting Effluent Discharge Standards, Water Quality Standards, or Water Quality Standards for water resources used for or intended to be used for drinking purposes, or in setting minimum environmental flows for watercourses, the Commission shall set the highest achievable environmental objectives, having regard to the precautionary principle as set out under sections 8-10 of the National Environmental Protection Act of Bhutan, 2007.
13. In considering the issuance of any Approval or Environmental Clearance relating to any discharges of effluents to water resources or to ongoing development or activities impacting upon the integrity of the bed and banks and other natural features of a watercourse, the Secretariat / Competent Authority(ies) shall have due regard to the precautionary principle as set out under sections 8-10 of the National Environmental Protection Act of Bhutan, 2007. Specifically, where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing measures to prevent environmental degradation.

14. Pursuant to section 41(e) of the Water Act, 2011, any person who acts in breach of the provisions of this Chapter shall be guilty of an offence under section 7 of Chapter 12 of these Regulations.

Chapter 8

Construction and Safety of Water Infrastructure

1. Pursuant to section 48 of the Water Act, 2011, the Commission or the competent authority shall have the authority to approve [by means of an Environmental Clearance where required under section 9 of Chapter 6 of these Regulations] the construction of water related infrastructure, including any installation for storage, abstraction, treatment, protection, development, conveyance and control and measurement of water.
2. Pursuant to section 48 of the Water Act, 2011, for the purposes of preventing or minimizing the risk of flooding and flood damage the Commission and/or Competent Authorities may prescribe measures for the control and management of storm water and flood risk. Specifically, they may:
 - a. Prohibit the construction of dykes, levees or other structures on submersible lands [flood plains?] that may be likely to hinder water runoff;
 - b. Authorise the construction of such structures if they are deemed necessary for the protection of residences or other structures, or for the protection of human health, the environment, cultural heritage or economic activity;
 - c. Alter or demolish dykes, embankments, levees, structures or other works, irrespective of their legal status [subject to the payment of appropriate compensation in respect of legal structures?], if they hinder water runoff or extend the flood plain with harmful results;
 - d. Prohibit the growing of crops, the building of structures or the placing of deposits on land located between a watercourse and any protective dykes, embankments or levees; [*Might compensation be payable in respect of such prohibitions under the Land Act?*] and
 - e. Identify Flood Risk Zones in respect of river basin areas at risk of flooding, draw up flood risk maps in respect of such zones, and prepare flood risk management plans for each zone focusing on measures necessary for prevention, protection and preparedness. [See, for example,

3. For the purposes of ensuring the safety of dams and other water infrastructures, the Competent Authorities, in collaboration with the Commission and relevant Agencies, shall, in accordance with section 49 of the Water Act 2011 and as set out under section 28 of Chapter 6 of these Regulations prepare:
 - a. Detailed technical criteria for the safety of dams and other water infrastructure;
 - b. Programmes for the examination and review on grounds of safety of Environmental Clearances issued for dams and other water infrastructure; and
 - c. Programmes for the ongoing monitoring and inspection of dams and other water infrastructure on grounds of safety.

Chapter 9

Water Related Emergencies and Special Circumstances

1. Pursuant to section 54 of the Water Act, 2011, in the event of risk of drought or serious water scarcity, or other threats relating to water resources, the Commission may revoke, suspend or amend the terms and conditions of any Environmental Clearance to eliminate or reduce such threats.
2. Temporary deterioration in the status of surface water bodies due to the threats to water resources contemplated under [section 1 above] shall not result in a failure to meet the [non-compliance with] environmental objectives set out under these Regulations provided the deterioration is the result of natural circumstances or force majeure which are exceptional and could not reasonably have been foreseen.
3. The Competent Authorities shall take all necessary measures to deal with the emergency so as to eliminate or reduce such threats, in particular:
 - a. All practicable steps to prevent further deterioration in status and to protect other water bodies not affected directly by the said circumstances;
 - b. The effects of the said circumstances are to be reviewed periodically and, subject to consideration of scale, technical feasibility, cost and natural conditions, all practicable measures must be taken to restore the body of water to the status that obtained prior to the said circumstances as soon as reasonably practicable; and
 - c. A summary of the effects of the said circumstances and of such measures taken to restore the body of water to the status that obtained prior to the effects of those circumstances must be included in the next update of the River Basin Management Plan.

4. In accordance with sections 55 and 56 of the Water Act, 2011, the Commission may, in consultation with the affected parties, declare any area to be a Water Management Area for the purpose of protecting any water resource [body] facing a threat contemplated under [section 1 above], The Commission may amend the boundaries of a Water Management Area or withdraw its declaration as and when the circumstances require. The Commission may prescribe limitations to be observed within a Water Management Area in accordance with section 55(c) of the Water Act, 2011.

Chapter 10

Public Right to Information

General

1. Further to sections 15 and 81 of the National Environment Protection Act of Bhutan, 2007 and section 11 of the Water Act of Bhutan, 2011 all citizens shall have a right of access to water related information [held by public authorities]. Subject to the exceptions listed in [sections 6 and 7 below], such information shall include any information held by, or on behalf of, a public authority in accordance with these Regulations. A “public authority” does not include any body when acting in a judicial or legislative capacity.
2. For the purposes of these Regulations, a “public authority” means:
 - a. Government or other public administration, including public advisory bodies, at national regional or local level, including in particular the National Environment Commission, competent authorities designated under the Water Act 2011, River Basin Committees and Water Users’ Associations;
 - b. Any natural or legal persons performing public administrative functions under law, including specific duties, activities or services in relation to water resources; and
 - c. Any natural or legal person having public responsibilities or functions, or providing public services, relating to water resources, under the control of a body or person falling within paragraphs (a) and (b) above.

Scope

3. “Water related information held by a public authority” means any information in written, visual, aural, electronic or any other material form, in possession of a public authority that has been produced or received by that authority in accordance with these Regulations. Such information includes information and data relating to:
 - a. The state of the elements of the aquatic environment, such as water, soil, land, landscape and natural sites including wetlands, biological diversity and its components including genetically modified organisms, and the interaction among these elements;
 - b. Factors, such as substances, energy, noise, radiation or waste, including emissions, discharges and other releases into the aquatic environment, affecting or likely to affect the elements of the aquatic environment;
 - c. Measures (including administrative measures), such as policies, legislation, plans, programmes, environmental clearances, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) above, as well as measures and activities designed to protect those elements;
 - d. Reports on the implementation of water related legislation;
 - e. Cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in paragraph (c); and
 - f. The state of human health and safety, including the availability or contamination of waters, the safety of dams and other conditions of human life

General Duties of a Public Authority

4. A public authority shall:
 - a. Inform the public of their rights under these Regulations and the Water Act and provide information and guidance on the exercise of those rights; and
 - b. Make all reasonable efforts to maintain water related information held by or for it in a form or manner that is readily reproducible and accessible by means of information technology or by other electronic means.

Request for Water Related Information

5. On making a request for water related information, an applicant, who may be any natural or legal person, shall not be required to state his or her interest in making the request. A request for water related information shall:
 - a. Be made in writing or electronic form;

- b. State that the request is made under these Regulations;
- c. State the name, address and any other relevant contact details of the applicant;
- d. State, in terms that are as specific as possible, the water related information that is the subject of the request; and
- e. If the applicant desires access to water related information in a particular form or manner, specify the form or manner of access desired.

Action on Request

- 6. A public authority shall, subject only to these Regulations, make available to the applicant any water related information held by or for the public authority the subject of the request.
 - a. A public authority shall make a decision on a request and, where appropriate, make the information available to the applicant as soon as possible and at the latest, subject to paragraph (b), not later than one month from the date on which such request is received by the public authority concerned.
 - b. Where a public authority is unable, because of the volume or complexity of the water related information requested, to make a decision within one month from the date on which such request is received, it shall, as soon as possible, and at the latest before the expiry of that month: i. give notice in writing to the applicant of the reasons why it is not possible to do so; and ii. specify the date, not later than two months from the date on which the request was received, by which the response shall be made.
 - c. Where a request has been made to a public authority for access to water related information in a particular form or manner, access shall be given in that form or manner unless: i. the information is already available to the public in another form or manner that is easily accessible; or ii. Access in another form or manner would be reasonable. Where a public authority decides to make available water related information other than in the form or manner specified in the request, the reason therefore shall be given to the public authority in writing.
 - d. Where a decision is made to refuse, in whole or in part, a request for water related information, the public authority concerned shall: i. Subject to paragraph (b), notify the applicant of the decision not later than one month following receipt of the request; ii. Specify the reasons for the refusal; iii. Inform the applicant of his or her rights of review and/or appeal in accordance with these Regulations, including the time within which such rights may be exercised.

- e. Where a request is made to a public authority and the information requested is not held by or for the authority concerned, that authority shall inform the applicant as soon as possible that the information is not held by or for it. Where the public authority concerned is aware that the information requested is held by another public authority, it shall as soon as possible: i. transfer the request to the other public authority and inform the applicant accordingly; or ii. inform the applicant of the public authority to whom it believes the request should be directed.
- f. Where a request is made to a public authority which could reasonably be regarded as a request for water related information but which is not a request which has been made in accordance with these regulations, the public authority concerned shall inform the applicant of his or her right of access to water related information and the procedure by which that right can be exercised, and shall offer assistance to the applicant in this regard.
- g. Where a request is made by the applicant in too general a manner, the public authority shall, as soon as possible and at the latest within one month of the receipt of the request, invite the applicant to make a more specific request and offer assistance to the applicant in the preparation of such a request.
- h. Where, in a request for information on factors affecting or likely to affect the aquatic environment, the applicant specifies that he or she requires information on the measurement procedures, including methods of analysis, sampling and pre-treatment of samples, used in compiling that information, the public authority shall either make that information available to the applicant or refer the applicant to the standardized procedures.
- i. A public authority shall, in the performance of its functions in respect of access to water related information, have regard to any timescale specified by the applicant.

Mandatory Grounds for Refusal

- 7. A public authority shall not make available water related information in accordance with these Regulations where disclosure of the information:
 - a. Would adversely affect the confidentiality of personal information relating to a natural person who has not consented to the disclosure of the information, and where that confidentiality is otherwise protected by law;

- b. Would adversely affect the interests of any person who, voluntarily and without being under any legal obligation to do so, supplied the information requested, unless that person has consented to the release of that information;
- c. Would adversely affect the protection of the aquatic environment to which that information
- d. Would adversely affect the confidentiality of the proceedings of public authorities, where such confidentiality is otherwise protected by law [Constitution?]; or
- e. To the extent that it would involve the disclosure of discussions at one or more meetings of the Government, as prohibited under [Constitution?]

Discretionary Grounds for Refusal

- 8. A public authority may refuse to make available water related information:
 - a. Where disclosure of the information requested would adversely affect international relations, national defence or public security;
 - b. Where disclosure of the information requested would adversely affect the course of justice, including criminal inquiries and disciplinary inquiries [civil actions?];
 - c. Where disclosure of the information requested would adversely affect commercial or industrial confidentiality, where such confidentiality is provided for in law to protect a legitimate economic interest;
 - d. Where disclosure of the information requested would adversely affect intellectual property rights;
 - e. Where the request is manifestly unreasonable having regard to the volume or range of information sought;
 - f. Where the request remains formulated in too general a manner, taking into account [section 6(g)];
 - g. Where the request concerns material in the course of completion, or unfinished documents or data, in which case the public authority shall inform the applicant of the estimated time needed for completion; or
 - h. Where the request concerns internal communications of public authorities, taking into account the public interest served by the disclosure.

Issues Relating to Refusal

- 9. Notwithstanding [sections 7 and 8 above] a public authority shall not refuse a request for water related information where the request relates to information on emissions into the environment, though this section does not include any

discussions on the matter of such emissions at any meeting of the Government.
[any other core information?]

10. The grounds for refusal of a request for access to water related information under these Regulations shall be interpreted restrictively having regard to the public interest served by disclosure. The public authority shall consider each request on an individual basis and weigh the public interest served by disclosure against the interest served by refusal.
11. Nothing in [sections 7 and 8 above] shall authorize a public authority not to make available water related information which, although held with information to which [section 7 and 8] apply, may be separated from such information.

Internal / Commission Review

12. Where the applicant's request has been refused [under sections 7 and 8], in whole or in part, the applicant may, not later than one month following the decision of the public authority concerned, request the [Commission (NEC)] to review the decision, in whole or in part. The reference to a request refused in whole or in part includes a request that:
 - a. Has been refused on any of the grounds set out under [sections 7 and 8];
 - b. Has been inadequately answered; or
 - c. Has otherwise not been dealt with in accordance with these Regulations, including the ground that the amount of the fee charged under [section 18] is excessive.
13. Following receipt of a request for a review [under section 12] the Commission shall designate a person unconnected with the original decision whose rank is the same as, or higher than, that of the original decision-maker, to review the decision. That person shall:
 - a. Affirm, vary or annul the decision; and
 - b. Where appropriate, require the public authority to make available water related information to the applicant.

A decision under this section shall be notified to the applicant within one month from receipt of the request for review. Where a decision under this section affirms the decision of a public authority under [sections 7 and 8 above], or varies it in a way that results in the request being refused in whole or in part, the [Commission] shall:

- a. specify the reasons for its decision, and
- b. inform the applicant of his or her right of appeal in accordance with these Regulations, including the time within which such right may be exercised.

Appeal to High Court [On a Point of Law]

14. A party to a review [under section 12] or any other person [directly and individually] affected by the decision of the Commission may appeal to the High Court on a point of law from the decision. Such an appeal shall be initiated not later than two months after notice of the decision [under section 13] was given to the party to the appeal or other person [directly and individually] affected.
15. Where an appeal under this section is dismissed by the High Court, the Court may order that some or all of the costs related to the appeal be paid by the public authority concerned, if it considers that the point of law concerned was of exceptional public importance. [Practices re legal costs?]
16. In an appeal under this section to the High Court, the Court shall, where appropriate, specify the period within which effect shall be given to its order.

Guidelines

17. The [Commission] may publish guidelines in relation to the implementation of these Regulations by public authorities. A public authority shall, in the performance of its functions under these Regulations, have regard to any guidelines published by the [Commission] under this section.

Fees

18. A public authority may charge a fee when it makes water related informational available in accordance with these Regulations, including when it makes such information available following a review or appeal [under sections 12 and 14], provided that such fee shall be reasonable having regard to all relevant circumstances. Where a public authority charges a fee under this section, it shall make available to the public a list of fees charged, information on how they are calculated and the circumstances under which they may be waived.
19. The Commission may charge a fee for a review [under section 12], provided that such fee shall be reasonable having regard to all relevant circumstances.

Chapter 11

Financial Provisions

Charges for Water Services

1. In accordance with the principle of community based water resources management, set out under section 7 of the Water Act, 2011, the polluter pays principle, set out under section 9 of the Water Act, 2011, and the user pays principle, set out under section 10 of the Water Act, 2011, and the need to ensure that the water resources rights set out under section 5 of the Water Act, 2011, are realized, the Commission must establish a scheme of community charges for water abstraction and water use that is socially equitable and affordable, whilst also ensuring that water resources are protected, conserved and managed in an economically efficient and environmentally sustainable manner in accordance with section 4 of the Water Act, 2011.

2. In accordance with section 18 of the Water Act, 2011, the Competent Authorities may
 - a. Impose and collect water supply service charges, wastewater disposal service charges, and other service fees; and
 - b. Provide incentives to encourage sustainable use of water resources, reduction of water wastage, and practices that support the general objectives of the Water Act, 2011.

3. Further to [section 1(k) of Chapter 4] of these Regulations, the Commission shall direct that charges shall be paid to [the relevant Competent Authority under section 15 of the Water Act, 2011] in respect of a range of water related services, including:
 - a. Water abstraction and use, pursuant to section 10 of the Water Act, 2011;
 - b. Water supply, wastewater disposal and other services, pursuant to section 18(a) of the Water Act, 2011;
 - c. Effluent discharge, pursuant to section 41(d) of the Water Act, 2011;
 - d. Environmental [watershed] services, pursuant to section 59(a) of the Water Act, 2011; and
 - e. Any other water related services provided.

4. The charge payable shall be the amount set by the Commission and indicated in the Schedule of Charges and Fees attached to these Regulations. The Commission may, at its discretion, reduce, by whatever amount it considers appropriate, a charge payable in order to ensure the realization of the water resources rights set out under section 5 of the Water Act, 2011. The fee required may be recovered by the Commission as a simple contract debt in any court of competent jurisdiction.
5. In accordance with section 58 of the Water Act, 2011, charges and fees collected under these Regulations shall be reserved for the establishment, operation and maintenance of water related activities and the attainment of the relevant principles of Integrated Water Resources Management. This shall require the establishment by the Commission of appropriate institutional arrangements to administer the funds collected. This provision does not limit in any way the ultimate responsibility of the Royal Government to allocate sufficient funds to enable the Commission and Competent Authorities to exercise and discharge their statutory powers, duties and functions effectively, as required under section 57 of the Water Act, 2011.
6. Further to [section 1(k) of Chapter 4] of these Regulations, the Commission shall direct that a fee shall be paid to the Commission in respect of an application for an Approval or Environmental Clearance or in respect of a review of an Environmental Clearance. These fees shall aim to recover in full the costs involved in administering the system of Approvals and Environmental Clearances. However, when required, the Royal Government shall allocate sufficient funds to enable the Commission and Competent Authorities to exercise and discharge their statutory powers, duties and functions effectively, as required under section 57 of the Water Act, 2011.
7. The fee payable shall be the amount set by the Commission and indicated in the Schedule of Charges and Fees attached to these Regulations. The Commission may, at its discretion, reduce, by whatever amount it considers appropriate, a fee payable in order to ensure the realization of the water resources rights set out under section 5 of the Water Act, 2011. The fee required may be recovered by the Commission as a simple contract debt in any court of competent jurisdiction.

Chapter 12

Offences and Penalties

General

1. In accordance with section 63 of the Water Act, 2011, the Commission/Secretariat and/or Competent Authorities shall have primary responsibility for monitoring compliance with and for enforcing the obligations set out under the Water Act, 2011 or under these Regulations. [But section 100 NEPA 2007 - what about Competent Authorities?]
2. Where the Commission/Secretariat and/or Competent Authority is of the opinion that a person, public authority or body corporate has failed to comply with a statutory function or duty under the Water Act, 2011 or under these Regulations, or has performed that function or duty in an unsatisfactory manner, the Commission/Secretariat and/or Competent Authority may request a report within a specified period from the person, public authority or body corporate in relation to the matter and the person, public authority or body corporate concerned shall comply with the request.
3. The Commission/Secretariat and/or Competent Authority, having considered any report of the person, public authority or body corporate concerned may, with a view to ensuring the satisfactory performance of the function or duty in question:
 - a. Issue such advice and recommendations to the person, public authority or body corporate concerned as it considers necessary; or
 - b. Provide, on such terms and conditions as may be agreed, such assistance or support as the Commission/Secretariat and/or Competent Authority considers, in consultation with the person, public authority or body corporate concerned, would be helpful.
4. Where the Commission/Secretariat and/or Competent Authority is of the opinion that the response of the person, public authority or body corporate concerned to advice or recommendations issued or support offered under [section 3 of Chapter 12] of these Regulations is inadequate for the purpose of complying with a function or duty under the Water Act, 2011 or under these Regulations it may, without prejudice to any powers existing under any other provision, direct the person, public authority or body corporate concerned to carry out, cause to carry out, or arrange for, such action related to the function or duty in question as the

Commission/Secretariat and/or Competent Authority considers necessary within such period as may be specified.

5. Where a person, public authority or body corporate fails without reasonable cause to comply with a direction under [section 4 of Chapter 12] of these Regulations, the Commission/Secretariat and/or Competent Authority may carry out, cause to carry out, or arrange for, such action related to the function or duty in question as it considers necessary to ensure compliance with the direction and the costs of such action may be recovered by the Commission/Secretariat and/or Competent Authority from the person, public authority or body corporate concerned.
6. The powers, duties and functions assigned to the Commission/Secretariat and/or Competent Authority under [this Chapter of] these Regulations are additional to, and not in substitution for, the powers, duties and functions assigned by any other statutory or regulatory provisions.

[Criminal] Offences

7. In accordance with [sections 99 and 101 of the National Environmental Protection Act, 2007 and] section 66 of the Water Act, 2011, a violation or infringement of any of the obligations set out in that Act or under these Regulations shall constitute an offence and may be subject to penalty according to the Penal Code of Bhutan [section 104].
8. In accordance with section 70 of the Water Act 2011, offences and penalties not specifically set out under that Act shall be dealt with in accordance with the Penal Code of Bhutan, Chapter IX of the National Environmental Protection Act, 2007, Chapter VII of the Environmental Assessment Act, 2000 [as amended], or any other applicable law in force.
9. Any legal person [individual, body corporate, public authority or unincorporated body] found guilty of the offences of felony, misdemeanour and petty misdemeanour set out under sections 71 – 76 of the Water Act 2011 shall be liable to be sentenced in accordance with the Penal Code of Bhutan.

[Civil Offences] / Administrative Sanctions

10. In accordance with section 67 of the Water Act, 2011, the Commission and the Competent Authorities may issue administrative orders to legal persons in violation of the provisions of that Act or of these Regulations.

11. In accordance with section 68 of the Water Act, 2011, the Commission and Competent Authorities may also impose administrative sanctions upon any legal person for any violation of the provisions of that Act or of these Regulations ['civil offence' – per section 102 of the National Environmental protection Act, 2007], which may comprise one or more of the sanctions listed under section 68.

12. Further to sections 68(a) and 68(b) of the Water Act, 2011 such administrative sanctions may require, *inter alia*:
 - a. the replacement of fish stocks;
 - b. the restoration of spawning grounds;
 - c. the taking of measures to prevent the continuance of the polluting entry or discharge;
 - d. the removal of polluting matter from waters;
 - e. the treatment of affected waters so as to mitigate or remedy the effects of the polluting entry or discharge concerned;
 - f. the making of alternative arrangements for the supply of water for domestic, commercial, industrial, fishery (including fish-farming), agricultural or recreational purposes or the payment of a specified amount to the public [Competent] authority, or other person concerned, to defray all or part of the costs of such arrangements;
 - g. the making good of any damage to plant or equipment or to any water abstraction or treatment works and any consequential losses incurred by any person by reason of the entry of polluting matter into waters.

13. Administrative sanctions imposed upon a legal person for a violation of the Water Act 2011, or of these Regulations must be reasonable and proportionate having regard to all relevant circumstances. In identifying appropriate administrative sanctions, the Commission and Competent Authorities shall have regard, *inter alia*, to:
 - a. The seriousness of any harm caused or of any risk of harm;
 - b. The degree of culpability of the legal person concerned, including whether the violation in question resulted from a deliberate, reckless or negligent breach;
 - c. The environmental compliance [performance] record of the legal person concerned;
 - d. Any profits earned or material advantage gained by the legal person concerned as a result of [attributable to] the violation concerned;
 - e. The financial, technical and other resources available to the legal person concerned; and

- f. A cost-benefit analysis of the environmental and water resources benefits to be achieved by the measures ordered, as against the costs of such measures;
14. A legal person on whom administrative sanctions are imposed under [section 11] of these Regulations [or any other person directly affected by the decision to impose administrative sanctions] may appeal to the High Court on a point of law from the decision. An appellant must register their intention to appeal not later than 10 working days after notice of the decision was given to the party to the appeal [or other person directly affected].
 15. The provisions of Chapter IX of the Environmental Assessment Act, 2000 [as amended] and the procedures set down under section 42 of the Regulation for the Environmental Clearance of Projects shall apply to any appeals and legal challenges taken under these Regulations.

Bodies Corporate

16. Where an [criminal or civil] offence under these Regulations has been committed by a body corporate and is proved to have been committed with the consent or connivance, or to be attributable to any neglect on the part of, a person being a director, manager, secretary or other similar officer of the body corporate, or of a person who was purporting to act in such a capacity, that person as well as the body corporate is guilty of an [criminal or civil] offence and is liable to be proceeded against personally and punished or subjected to administrative sanctions.
17. Where the affairs of body corporate or unincorporated body are managed by its members, [section 13] above shall apply to the acts and defaults of a member in connection with that member's functions of management as if that member was a director or manager of that body.

Chapter 14

Miscellaneous Provisions

1. Authoritative text
2. Amendment
3. Entry into force

Schedule of Charges and Fees

Administrative Charges

Community Charges for Water Abstraction and Water Use

Table 1

Parameters and Parametric Values for Drinking Water Quality