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Ministry of Energy and Natural Resources
Royal Government of Bhutan
Thimphu

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SECRETARY

MoENR/SEC/CAB/14/2024 286

25th June, 2024

The Secretary,
Cabinet Secretariat
Thimphu

Subject: Submission of Legislative Proposal and Legislative Impact Assessment report on the Water Act of Bhutan, 2011

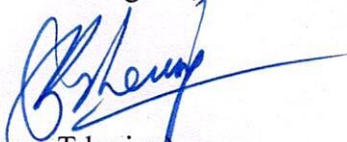
Dasho,

In accordance with the Cabinet directive vide letter no. C-3/144/2023/1662 dated 05.06.2024 to conduct a Legislative Impact Assessment (LIA) for the Water Act of Bhutan 2011 (Water Act), the Ministry conducted a LIA for the Water Act by circulating a survey questionnaire to the key and relevant stakeholders. The survey questionnaire was aimed to assess the gaps and the issues in the existing Water Act and to determine whether an amendment is necessary.

The survey responses were thoroughly reviewed and analyzed to understand any strengths, shortcomings, issues and opportunities regarding the existing Water Act. From the survey, 79.2% of the respondents agreed that the Water Act has to undergo amendments. These survey analyses served as the basis for drawing conclusions that underpin the compilation of the LIA report and the proposal. In this regard, the Ministry is proposing an amendment to the Water Act.

In view of the above, the Ministry would like to submit the Legislative Proposal and LIA report on the Water Act for endorsement by the Lhengye Zhungtshog. The Ministry's Approved note, Legislative Proposal and the LIA report and Submission note are being submitted for your kind perusal.

With warm regards,


(Karma Tshering)
SECRETARY



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Ministry of Energy and Natural Resources
Royal Government of Bhutan
Thimphu

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Copy to :

1. The Honorable Minister, MoENR, for kind information.
2. Director, DoW, MoENR, Thimphu.
3. Chief Legal Officer, LSD, MoENR, Thimphu



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MoENR/LD/Misc/08/2024/ 109

June 24, 2024

NOTESHEET

Subject: Legislative Impact Assessment Report on The Water Act of Bhutan 2011

Following the enactment of the Civil Service Reform Act 2022 and the institutional reforms that followed, the Ministry of Energy and Natural Resources received a Cabinet directive vide letter no: C-3/144/2023/1662 dated 05.06.2023 to conduct a Legislative Impact Assessment (LIA) for the Water Act of Bhutan (WAB) 2011. In this regard, the Department of Water (DoW) in collaboration with the Legal Service Division (LSD) initiated the LIA process by framing and circulating the survey questionnaires to the key and relevant stakeholders. The survey questionnaires were aimed to assess the gaps and issues in the existing act and whether there is a need for amendment and consolidation as a Water Bill.

The discussion for the LIA was initiated in January 2024, and the work plan and draft questions were shared with the DoW for suggestions and firming up. The questions were discussed, finalized, and later distributed to the stakeholders in April 2024. The list of stakeholders was the Ministry of Agriculture and Livestock; Ministry of Infrastructure and Transport; Ministry of Industry, Commerce and Employment; Ministry of Home Affairs; Ministry of Health; National Land Commission Secretariat; Thromde Administration: Thimphu, Phuentsholing, Gelephu and S/Jongkhar; Dzongkhag Administration: Paro, Punakha, Tsirang, Trashigang, Pemagatshel, Chukha and Samtse; Department of Environment and Climate Change, Department of Forest and Park Services, and Department of Energy.

Although responses to the questionnaires were expected much earlier, the time had to be extended due to the poor responses by the stakeholders. Upon several follow-ups, only 24 responses were received within 21.05.2024 based on which the LIA report was consolidated and finalized for submission.

The survey responses were analyzed to understand any strengths, shortcomings, issues and opportunities regarding the existing WAB and therefore served as a basis for drawing inferences to support the compilation of the LIA report. From the survey, 79.2% of the respondents agreed to the amendment of the WAB.

Given the gap analysis and the survey responses, the LIA report proposes for formulation of the Water Bill. The LIA report including survey findings is enclosed herewith for kind

P.O Box No. 141, Telephone (975) 322665

Ministry Energy & Natural Resources
Dak Receive No. 261
Date 24/6/24

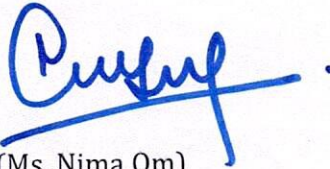


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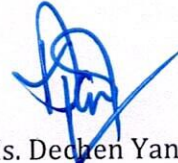
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consideration. Thus, the DoW and LSD would like to submit the LIA report to the Ministry for consideration and approval for submission to the Cabinet Secretariat.




(Ms. Nima Om)
Chief Legal officer, LD



(Ms. Deden Yangden)
Director, DoW

Recommended for
approval

(Karma Tshering)
Secretary, MoENR 24/6/24




(Gem Tshering)
Hon'ble Lyonpo, MoENR 25/6/2024

LEGISLATIVE PROPOSAL

TITLE OF THE PROPOSAL

Type of Legal Measure: Water Bill (Amendment of the Water Act of Bhutan, 2011).

Lead Ministry/Commission/Agency: Department of Water (DOW), Ministry of Energy and Natural Resources (MOENR).

Expected Date of Adoption Day/Month/Year: 2026

PROBLEM IDENTIFICATION

The Water Act of Bhutan, 2011 was enacted during the 7th Session of the First Parliament in May 2011, providing the legal basis for the Bhutan Water Vision and Bhutan Water Policy 2009. The Act designated the National Environment Commission (NEC), supported by the National Environment Commission Secretariat (NECS), as the independent authority to exercise the overall mandates of the Water Act. In parallel, seven other competent authorities have been identified to liaise with the NEC through NECS for effective implementation of the Act and to foster institutional linkages for better coordination and cooperation.

Following the Civil Service Reform Act 2022, the DoW of MoENR is the implementing agency responsible for carrying out all mandates of the NECS on the Water and any other functions related to water resources specified in other laws. In addition, the roles and mandates of the competent authorities need to be reviewed in line with the new mandate of the DoW to provide clear segregation of the roles in policy-making, planning, implementation, and regulation. Furthermore, following the creation of the DoW under the new Ministry, it is essential to clarify the roles of the NEC and the Ministry. A clear delineation is needed to specify which matters will be submitted and decided by the Ministry and the NEC.

Therefore, it has become important to make the necessary amendments regarding the implementing agency and to provide better clarity on the powers and functions of DoW in line with its Vision, Mission, and Purpose. Also, as a result of the reform, several agencies were either dissolved, merged, or created, so the subsequent changes related to them are required to be reviewed and updated coherently.

OBJECTIVE OF THE PROPOSAL

The objectives of the proposal are as follows:

1. Provide the legal framework for the newly established DoW to function as a lead agency on overall water-related mandates;
2. Clarity in the roles of the NEC and the Ministry on matters that will be decided by the Ministry and which need to be submitted to the NEC;

3. Establish strong institutional coordination and linkages in water resources management by recognizing the DoW as an overall policy-making, regulatory, and coordinating agency;
4. Bring clarity in institutional arrangements, mandates, powers and functions, roles and responsibilities of policymakers, regulators, service providers, consumers, and others;
5. Ensure water security and development of security indexes for planning and informed decision-making;
6. Integrated and holistic approach for sustainable utilization and management of water resources;
7. Create an enabling environment for the engagement of the private sector in water-resource development, water-based industry, and others.
8. Recognize water as central to all social and economic development;
9. Enhance service delivery;
10. Valuing water as a finite and non-sustainable resource;
11. Ensure safe, adequate, and affordable water;
12. Research and development and instituting a data repository system;
13. Enhance climate-resilient infrastructures, nature-based solutions, Gender Equality, Disability and Social Inclusion (GEDSI) inclusiveness, and innovative financing mechanisms in the water sector.

In this regard, the overall purpose is to align the mandate as per the Civil Service Reform Act 2022. According to the mandate, define the roles and responsibilities starting from policy-making, planning, implementation, and regulation to ensure holistic management of water resources both from the source and the supply end to achieve the goal of the Integrated Water Resources Management principle. It also provides an opportunity for the Department to include emerging issues and opportunities such as climate change, Naturebased Solutions, GEDSI, partnership and collaboration with institutes after the introduction of the water curriculum, establishing knowledge centres, and others, that are not included in the existing Act.

POLICY OPTIONS

What are the options that are available to reach the objective and what range of alternatives will be considered?

The water being cross-sectoral and multi-facet, even with the passing of the Reform Act with its intended purpose, there is still confusion on the implementation of the provision. To wean away from fragmented approaches and quick-fix solutions, and to assess and manage the water resources in an integrated manner with clear-cut accountability, the available approach and option is to revise the existing act and incorporate all the issues that are highlighted in the above points to make a comprehensive an inclusive act which are relevant to the changing scenario.

How have the principles of subsidiarity and proportionality been taken into account?

The new proposal will have clarity on the roles and responsibilities of the Ministry, National Environment Commission, technical Department and regulatory agencies and cover all the domains of water. The new law will strengthen the sectoral roles as well as enforcement powers of the relevant sectors in enforcing the Act. It will enhance the integrated approach and holistic management and draw clearer accountability. The revised Act will have a clear provision on the imposition of fees and water tariffs, shorter dispute settlement procedures for effective remedy, engagement of relevant sectors in water resource mapping and inventory, resolving the coordination issues, ensuring safe, sustainable, adequate, and affordable water in the country, engagement of private sector in water resource development and management and water-based industries.

IMPACTS – POSITIVE AND NEGATIVE

The revision of the Water Act is expected to positively impact society by ensuring adequate, equitable, affordable, quality, sustainable, and reliable water supply. However, it may also impose restrictions on traditional water use practices (e.g., customary practices, irrigation, etc.), potentially affecting local communities. Additionally, the imposition of fees and tariffs for water services could limit household water usage and impact low-income households.

The affected parties of the proposed bill will include the following:

- i. Department of Infrastructure Development and Department of Human Settlement: There will be clear roles and responsibilities between the DoW and the Departments under the Ministry of Infrastructure and Transport;
- ii. Local Government: With the revision of the Act, there will be clear powers and functions of the local government;
- iii. Competent Authorities: There will be the removal of roles from most of the competent authorities and alignment with the mandates of the DoW;
- iv. Water Service Provider (Thromdes and Dzongkhags): Bring clear roles and responsibilities in providing water services, as well as accountability for poor services; and
- v. Water Users/Water User Associations: Clarity in availing water-related services (water abstraction permits, dispute resolution, etc.)