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**NATIONAL WATER LAW OF TAJIKISTAN; ITS COORDINATION WITH  
INTERNATIONAL WATER LAW. PRIORITIES AND PROBLEMS. LINE OF  
ACTIVITIES FOR IMPROVEMENT.**

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**INTRODUCTION**

Since 1991 new period of independent sovereign development of the Central-Asian states (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan) has started. Transition from planned to market economy is underway. It required creation of new legal base regulating water and other relations under independent development. Historically, legal base working out went simultaneously with public-political system transformation and gradual legislation changes. Transition period is always complicated because of experience absence.

That is why, at the first stage of development some provisions were taken from other countries legislation, sometimes USSR legislation was duplicated. Along with experience accumulation legislative acts, responding to transition period, became more often. For, example, Tajikistan Water Code, accepted in 1993, has been revised and accepted again in 2000.

Now new Land Code instead of old one accepted in 1996 and new law on nature protection dated 1993 are being developed. The same situation is with law on dehkan (farmer) farms, law on paid land use, etc.

In connection with new Water Code, accepted on November 2000, existing legislation is being revised to match this Code, which main link is water use economic mechanism; privatization and water fund transfer yet should be fixed by by-laws of the government of the Republic of Tajikistan. Transition to the market started in 1996 after President Decree on paid water delivery from state irrigation systems. It became possible after the program of economic transformation acceptance in 1995 and was facilitated by democratization., decentralization and development of different forms of property and market relations.

In water-economic sphere privatization touched only branch housing fund and obsolete machinery. Water complex complicity supposes that the most important and unique structures would remain in state property, maintained at expense of the budget and managed by the Ministry of Reclamation and Water Resources, which should be major coordinator of water policy in the country. Such solution would simultaneously eliminate division of single water-economic complex into inter-farm and on-farm parts.

For water resources management system improvement at the national level is necessary to make gradual transition to system management method within hydrographic boundaries , accelerate WUA establishing, introduce water demand management, provide differentiated charges for water and its delivery depending on specific conditions, develop various forms of private, collective and sharing water use based on market water-economic activity.

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Interstate water relations are based until now on water allocation principles of the Soviet period. But in modern conditions, when compensation mechanism smoothing irregular water allocation, does not work, former water allocation does not meet interests of Tajikistan. That is why is necessary to develop and establish new principles of water allocation at the interstate level with compensation mechanism. Besides, is necessary to foresee share compensation payments for water harmful impact prevention and its protection within watershed.

Main difficulties in water-related measures undertaking in Tajikistan are bounded with consequences of past civil war, depend crisis in economy and adaptation to the market conditions. For modern water-related complex major issues are the following: lack of financing, 50% obsolete assets (65% in water lift), imperfect economic mechanism of relations between water supplies and consumers, tariffs irrelevance to actual expenses level for water systems O&M.

In midterm program on water-related complex development prior directions up to 2005, accepted by the government in September 2000, main directions of crisis overcoming are fixed. This program realization is foreseen within the framework of different programs of various international organizations: World Bank, Asian Development Bank, Islamic Bank, etc.

At present time the government is considering Draft Concept of water resources use and protection; Draft Program of economic development of Tajikistan is underway up to 2015, wher perspectives of water-related complex development will be fixed.

## **LEGAL BASE OF WATER RELATIONS OF THE REPUBLIC OF TAJIKISTAN**

### **National Level**

Water legislation of the Republic of Tajikistan is based on the Constitution of Tajikistan and consists of Water Code, laws and acts and international legal acts recognized by the Republic of Tajikistan.

In accordance with the Constitution of the Republic of Tajikistan, water is exclusively state property and it guarantees its effective use and protection in interest of people.

Inventory of laws regulating various aspects of water-related activity in Tajikistan are presented below:

- Water Code
- Law on environment protection
- Law on depths
- Law on power engineering
- Land Code
- Law on dehkan (farmer) farms
- Law on state sanitary control
- Law on paid land use
- Civil Code
- Tax Code
- Criminal Code
- Annual laws on state budget, land tax directed to irrigation systems maintenance and land reclamation, financing interstate bodies of IFAS.

To regulate water relations President decrees, government provisions and territorial legislative acts (orders of the ministries, agencies, local administrations as well as rules, regulations, standards) are accepted.

Along with above mentioned laws and codes, rights and obligations of the ministries, agencies and organizations are fixed in provisions and statuses approved in established order. In spite of permanent legal base improvement, some by-laws from Soviet time are in force but they will gradually be replaced by new acts. According to opinion of some specialists, in order to fully introduce water use economic mechanism, it is necessary to issue the law of direct action on paid water use like law on paid land use, that will positively impact fees collection for water resources and its delivery to consumers, specific state support based on budget financing, tariff, credit and tax policy.

### **Interstate Level**

International water relations of the Republic of Tajikistan are reflected in the articles 145-146 of the Water Code and articles 88-89 of the Law on nature protection. In the Article 145 of the Water Code principles of international collaboration in water relations are described where it is said: "The Republic of Tajikistan in its policy in water relations is coming out from necessity of sustainable economic development, water resources rational use and protection, based on observance of international principles, mutual benefit and friendship with foreign states, common ecological security and international collaboration". International water relations with other countries are regulated by the Water Code, other legislative acts, international legal documents, recognized by the Republic of Tajikistan.

In the Article 145 of the Water Code mentioned economic interrelations with other states in water-related issues are based on international water right and interstate agreements. It is necessary to note, that the republic of Tajikistan yet did not become participant of the Convention on Transboundary watercourses and international lakes (Helsinki, 17.03.1992) because this document is not adapted to the conditions of the Republic of Tajikistan and Central Asia as a whole (except Kazakhstan, which joined this Convention).

Meaningful factor in water relations development in the region became conclusion of the Law on creation of common economic space in 1997. But, unfortunately, this space formation is going very slowly: along with custom and others barriers, visa barriers are being built.

Very important document is Agreement dated 9.04.1999 (Ashgabad) concluded by 5 Central-Asian states on optimization of IFAS management structure, which plays significant role in international water relations.

In January 1994 on the conference of Head of States in Nukus "Program of concrete actions on ecological situation improvement in the Aral sea basin" was accepted. Program envisaged common strategy of water allocation and based on it legal documents development. Unfortunately, the first approach to the main provisions of the regional water strategy creation (1996) did not receive further development. At present time the project "Water resources and environment management" which also should lead to legal documents preparation. This shows that water allocation is main issue in the basin. Existing water allocation without economic mechanism can not last for long time. Objective contradictions availability between watersheds and middle and lower reaches and states' inertia in these problems solution make difficult regional legal base of water relations establishing.

As a result, rapprochement has not been achieved in:

- Common strategy of water allocation, rational use and protection in the Aral sea basin (World Bank project);
- Sharing expenses to interstate water-related structures O&M;
- Creation of water-power consortium covering AmuDarya and SyrDarya basin (Tajikistan proposal);
- Draft Agreement between the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Tajikistan and the Republic of Uzbekistan on main principles of collaboration in water relations (Kyrgyzstan project). To this list other draft agreements, proposed by ICWC, can be added:
  - On Transboundary water bodies use under present conditions (№ 2);
  - On information exchange (№ 4);
  - On collaboration in interstate water-related structures use (№ 6)
  - On joint planning of transboundary water resources use, development and protection (№ 3).

Laws accepted in Tajikistan as well as interstate agreements on water and power resources use because of difficult economic situation and old Soviet provisions are realized ineffectively. Meaning of the regional interest, when maximum economic effect was distributed among all, satisfied all republics. Now these principles do not meet states in upper reaches. For this issue solution long-term agreements between all states of the region are needed. Existing international conventions and declarations have not mechanism of their realization and Central-Asian states will be forced to develop own mechanism with regard for respectful attitude to the interests of other states and based on realities of post-soviet period. Central point of this agreement should be economic mechanism of water use, national and regional strategies approval.

All states of the region are interested in available water resources increase. For this task solution Tajikistan has favorable natural conditions: deep and narrow gorges, significant water resources. On non-regulated river Pyanj there are 13 sites of potential water reservoirs with power plant of total capacity 36.1 km<sup>3</sup> including useful volume of 17.4 km<sup>3</sup>. Total capacity of potential reservoirs 66.8 km<sup>3</sup> can be achieved with useful volume 35.6 km<sup>3</sup> that will constitute 56.6-30.2 % from multiyear annual average flow of the Aral sea basin. At present time only 40-50% of existing hydro-power resources (about 300bln.kvh per year) are technically possible. That is why Tajikistan, with regard for mutually beneficial international collaboration in the region, can become unique clean water and power supplier. Cooperation of Central-Asian states in these resources development is very useful. This problem solution should be started immediately because population is growing, supplies of coal, oil and gas are limited. Economy stabilization on background of demographic growth without available water resources increase will rise mutual claims for water. In particular, Tajikistan wants to reach food security and power independence. This will require agriculture and power engineering development and additional water resources if alternative ways of food security achievement will not be found. This can in perspective to influence water resources use regime in the river SyrDarya, Zerafshan, Kafirnigan basin as well as Amudarya basin.

Transboundary water resources question remains complicated issue, especially ground and return water as well as guaranteed water supply to the Aral sea. Last events, linked with Golden Lake and Koksaray water reservoir construction, existing natural depressions (Sarikamish, Aydarkul, Arnasay, losses for percolation from Karakum canal), which volume is almost equal to the Aral sea losses, shows that the Aral sea saving is not on the agenda. In result of this, salt and dust accumulating on the glaciers of Central Asia, that will lead to unpredicted consequences.

It is necessary to note, that Afghanistan non-participation in legal process will lead to corrections in water allocation in the future. Unused volumes of water should be directed to the Aral sea, but there are not clear legal documents concerning this issue and existing ones are not observed.

### **Measures on water relations legal regulation improvement. Perfection of legislative and legal base.**

In context of new Water Code improvement of legislative and legal base should be executed. For this is necessary to accept during next 2-3 months the Concept of water resources rational use and protection in the Republic of Tajikistan, which should reflect state water policy for long period of time:

- revise water legislation and eliminate existing contradictions at all levels;
- develop new by-laws instead of existing documents of Soviet period;
- provide paid water use by act of direct action, i.e. to accept the law about fees for water resources, which is not yet introduced.
- specify rights and obligations of water relations subjects, i.e. exclude existing inter-branch contradictions;
- specify economic mechanism of water use in order to water users fees along with financial means of state support (republican, local budgets, land tax, customs and tax privileges) cover water organizations expenses for irrigation network O&;
- develop agreed criteria and methodologies with consequent conclusion of bilateral and multilateral agreements in the sphere of interstate relations;
- strengthen control over branch documents (statutes, provisions) to meet Civil Code provisions through their juridical expertise and registration in juridical bodies of Tajikistan;
- control licensing of water-related activity (design, construction) and water use permitting;
- define at governmental level the body responsible for State Cadastre of water-related structures and establish its functions and order of conducting;
- define inventory of strategic structures subjected to protection from terrorists and accidents and provide their guard;
- define what international conventions and treaties are worth to join for Tajikistan.

At present time economic situation in Tajikistan and general concept of transition to the market do not allow to fully cover water-related complex expenses. That is why is necessary to develop and strengthen new mechanisms of economic management and water-related activity under market conditions allowing to water-related complex both survive and develop. On contrary, irrigation network degradation process will accelerate.

Existing legislation defines the following sources of investments:

- water users fees;
- republican and local budgets;
- land tax;
- foreign investments;
- other sources not prohibited by law.

It is very important that at the stage of the state budget formation annually financial means from state and local budgets as well as land tax were foreseen for land reclamation and water-related needs. When land tax considering, is necessary to take into account Land Code provisions which foresees 85% of tax to forward for water-related needs and land fertility improvement. This provision is not fulfilled by local authorities (hukumats).

It is necessary also to develop and introduce obligatory mechanism of collection and directing financial means from land alienate for non-agricultural needs, instead of retired lands or productivity increase.

It is necessary to facilitate creation of joint ventures in irrigated lands development and management, execute tariff regulation of electricity, tax, custom and duty payments, soft crediting.

All these questions can be solved only through strict legislative basis, flexible to emergency situations. From irrigation systems financing will mostly depend foreign investment activity for their rehabilitation, because poor system management will not attract investors.

Definition of needed financing will promote acceptance of the Act of the Republic of Tajikistan on main assets inventory which was not conducted since 1990.

Many issues solution of water-related complex depends on water users financial state, because of that protection of their interests plays very important role.

### **FOREIGN POLICY OF THE REPUBLIC OF TAJIKISTAN IN WATER RELATIONS AND INVENTORY OF MAIN ISSUES REQUIRING SOLUTION**

Tajikistan foreign policy in water relations is directed to water resources integrated use and protection, recognizing water as an economic good and setting economic mechanism of water use, support of regional efforts on common water resources management, creation and strengthening effective mechanism of possible contradictions prevention, especially in dry years. Sources water availability forecast and compromise should facilitate water-related issues solution.

In order to overcome existing problems, is necessary that states mutually recognize positions of each other and concentrate their efforts on their overcoming. With this purpose GEF project is being implemented.

At the same time, both at the regional and national level there is system of shortcomings which should be eliminated using foreign experience:

- management and assessment of all water types disconnection;
- absence of integrated water management at inter-branch level and conflict situation creation;
- necessity of management and registration according to natural (basin) in linkage with territorial division;
- necessity of simultaneous management of water amount and quality;

Legal issues to be solved, which will rise degree of trust and widen collaboration framework are the following:

- equitable water allocation in the region establishing;
- procedure of water supply to the Aral sea establishing;
- order of interstate water structures maintenance acceptance according to agreed inventory;
- accelerate signing of agreement on principles of information exchange in water-related sphere and signing based on it interstate agreement;
- improvement of interstate system of transboundary water resources management;
- development and perfection of legal base of interstate relations in water resources use and protection;

- establishing mechanism of international assistance coordination.

In accordance with current legislation, the Republic of Tajikistan develops interstate water relations, through bilateral and multilateral agreements on legal, technical, economic and other directions of activity; participates in interstate and international programs, facilitates direct international links between ministries, branches, organizations and local authorities. Tajikistan representative works in International Fund for Aral sea saving and its bodies. Fruitful collaboration takes place in framework of ICWC. These organizations, in turn, have their branches in the Republic of Tajikistan. Documents accepted by ICWC come to force after internal procedures foreseen by Tajikistan legislation.

For water relations regulation in the Republic of Tajikistan there is following organizational structure:

- Parliament(Mazhlis Oly) – legislative level;
- President of the Republic of Tajikistan;
- Government of the Republic of Tajikistan;
- Ministries and agencies which are charged to fulfill international agreements.

Interstate issues to be resolved together with the neighbors are as follow:

- irrigated lands reclamation state dependence on water supply sources in neighboring countries;
- lost benefits because of ineffective use of Nurek and Kairakkum water reservoirs;
- water allocation issues in dry years;
- growing demographic pressure on water use problems.

For interstate issues solution agreed criteria and methodologies as well as bilateral and multilateral agreements are needed.