



Lao People's Democratic Republic

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Department of Water Resources
Division of Law and Legislation

Report
on the First and Second Meetings of Working Group Two:
Permits and Water Resource Fees
December 21, 2012, and January 10, 2013
Department of Water Resources,
Ministry of Natural Resources and Environment

Background

This report is a result of two working group meetings on permits and water resources fees, held on December 21, 2012, and January 10, 2013, at the Department of Water Resources, Ministry of Natural Resources and Environment

The meetings discussed three key issues: (1) water use permits, (2) wastewater discharge permits, and (3) water fees. Based on guidelines prepared by the IFC and distributed earlier to the participants, options and issues for discussion were as follows.

(1) Water Use Permits

Legislative Options:

- a) Maintain the status quo with different ministries allocating water for the sectors for which they are responsible
- b) Introduce a single permit scheme for water use

Discussion Points:

- 1. Discuss the advantages and disadvantages of the legislative options proposed.
- 2. Which ministries are currently involved in authorizing water use?
- 3. What are the practical challenges of water allocation?
- 4. How can coordination be improved between the different ministries involved in aspects of water allocation/use?

(2) Wastewater Discharge Permits

Legislative Options:

- a) Introduce a wastewater discharge permit regime in the revised water law
- b) Introduce a wastewater discharge permit scheme on the basis of some other law
- c) Maintain the *status quo* with water pollution/discharge permits being addressed in other legislation

Discussion Points:

- 1. What kinds of activities that involve the discharge of wastewater take place in Lao PDR?
- 2. Do you agree that discharges of wastewater should be regulated under a single permit scheme?
- 3. If discharges of wastewater are not regulated pursuant to a single permit scheme under the revised water law then under what legal basis should they be regulated? How would coordination be achieved with water use permits?

(2) Water Resource Fees

Legislative Options:

- a) Ignore the issue and leave it to be addressed only in a decree
- b) Include provisions on the water resources fee in a specific law on water resource fees
- c) Include provisions on the water resources fee in another law

Discussion Points:

- 1. Do you agree that the revised water law should provide for water resource fees?
- 2. Should water resource fees be seen as a royalty (a charge for the use of water calculated on the basis of the revenue generated from the use) or as a user fee (set on the basis of the costs of managing water resources)?
- 3. On what basis should water resource fees be established: 'profit' of user, costs of the Ministry of Natural Resources and Environment/Department of Water Resources, or some other basis?
- 4. Should different tariffs be set for different types of water use?
- 5. Should the water resource fees be set nationally or at river basin level?

Results of the First Meeting

(1) Water Use Permits

All participants agreed that water use permits are necessary and that permit issues should be addressed in the revised water law. To do so, however, other relevant laws, including environmental law, which has recently been revised and approved by the National Assembly, need to be consulted on the subject of permits in order to avoid conflicts. There is consensus that there must be a single or 'one window' permit system. For example, all permits must be authorized by the Water Resource Committee. Permits, however, must be based on scale and nature of use. Certain scales and types of use such as small-scale and household consumption must be exempted from permits. Permits must be quick, easy to apply for (not many steps), and accountable to ensure speedy development and attractiveness to investors.

Permits granted only at central level would be preferred, ensuring better coordination (for example, where several hydropower dams in one river or basin are administered by different levels of government (central, provincial or district)), and avoiding delays thanks to the 'one window' of authorization and use of the same standards for consideration. At the same time, this will contribute to setting up a single database, and easier, timely management as there would be no need to wait for data to be reported from local authorities on an annual basis. This would also facilitate better access by data users.

Availability of data at a single source would also facilitate better and faster decision making. For example the water supply authority, Nam Papa Lao, usually spends a lot of time studying places with water suitable for pumping. If water use permits are issued through 'one window' or one system that also has data on groundwater needed by the water supply authority, then this will be useful not just to make decisions on permits, but also for the water supply authority to make decisions. Experience shows that the drying up of the Mekong last year created difficulties to Nam Papa Lao. It was not

sure who to contact about issues related to water. Nam Papa Lao then decided to use the Nam Ngum River for water supply. This was, however, not easy because of the need for contact with various sectors and multiple levels.

(2) Wastewater Discharge Permits

All participants in the meeting agreed that wastewater discharge permits should be included in the revised water law. This should be under the same permit system as water use permits. This is because wastewater discharge directly affects water use and is a form of water use in itself. Nevertheless, there is a need to define 'wastewater discharge' because wastewater can be created by activities such as in-stream gold mining. Bearing this in mind, such a definition should include wastewater created in any water body.

(3) Water Resource Fees

All participants agreed that water resource fees should be stipulated in the revised water law. There is a need, however, to study carefully the basis to use in determining these fees. Examples include quantity and types of uses. It may be useful to arrange a study tour to neighboring countries to study how water resource fees, if any, are determined and applied. Fees for different types of use such as hydropower, mining, and agriculture should be different because of differences in profit, quantity of use, and impacts on the environment, including impacts on flow, quantity, and quality of water. Given this, the term 'water resource fee' might be changed to 'obligation cost'. Decrees frequently use the term 'fee' while laws usually use 'obligation cost'.

It is also important to distinguish between scales of use such as small, medium, and large scale. For example, household consumption should not bear any fees, while uses for business purposes, which involve many scales, should be subject to different rates.

Fees should be determined at national level to ensure equity across the nation, although fees might differ from region to region depending on abundance, scarcity, quality, and competition over water use.

All types of costs and fees, such as water use fees and royalties applied to the hydropower sector, should be combined to avoid multiple payments which may be inconvenient for investors. In any case, water use fees and service fees should be distinguished.

The Ministry of Finance is in the process of drafting a decree on water resource fees. There is a need for close consultation on this decree and others such as environmental law, mining law, and so on, to avoid conflicts.

Results of the Second Meeting

(1) Water Use Permits

The second meeting confirmed that there should be a single permit system included in the revised water law. The system must be 'one window' to ensure participation of relevant sectors. Before approval, there must be consultations with relevant sectors, particularly on technical issues. Principles for permits should be based not only on quantity used or nature of use, but also include

other perspectives such as impacts on other sectors. Nevertheless, details must be stipulated in the next level of legislation such as decrees.

(2) Wastewater Discharge Permits

The meeting confirmed that there must be wastewater discharge permits and they should be included in the revised water law. The permit must be included in a single system for water use permits. The term 'wastewater' should be defined. Examples of wastewater include dirty water and polluted water. Laws on environment and industry define wastewater, and should be consulted by those revising the water law.

It would be useful if wastewater is classified by types and stages of projects such as construction, operation, and so on. Water quality is different from one stage to the next. For example, water quality issues during construction mainly concern sediment and decomposition of organic matter, but during operation water quality might concern water chemistry. Examples of water quality would include natural, industrial, construction, agricultural, and more.

Water use permits and wastewater discharge permits might be combined in a single permit, as necessary. Standards must be the same for all sectors. In the past each sector had its own standard, which might differ from others.

(3) Water Resources Fees

The meeting of the working group confirmed that there should be water resources fees and they should be included in the revised water law. There is a need for more input from relevant sectors on criteria such as quantity, quality, type of use, and the use of profits as a basis to determine fees, which may vary from one sector to another. For example, fees for industries might be based on quantity used such as cubic meters, while hydropower is based on profits or production such as electricity, which has already been applied in some cases.

The terms 'water fee', 'water resource fee', 'service fee' and 'royalty' might need to be elaborated. Consultation with relevant sectors (such as hydropower, industries, agriculture, and so on) is important in the process. It might also be useful to start discussing penalties for non-compliance with permits.