

**THE HIMACHAL PRADESH GROUND WATER (REGULATION
AND CONTROL OF DEVELOPMENT AND
MANAGEMENT) ACT, 2005**

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THE HIMACHAL PRADESH GROUND WATER (REGULATION AND CONTROL OF DEVELOPMENT AND MANAGEMENT) ACT, 2005

(ACT NO. 31 OF 2005)¹

(Received the assent of the Governor on the 27th October, 2005 and was published in Hindi and English in the Rajpatra, Himachal Pradesh (Extraordinary), dated 28th October, 2005, pp. 4203-4228).

An Act to regulate and control the development and management of ground water and matters connected therewith.

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Fifty-sixth Year of the Republic of India, as follows:-

1. Short title and commencement.- (1) This Act may be called the Himachal Pradesh Ground Water (Regulation and Control of Development and Management) Act, 2005.

(2) It shall come into force on such date² as the State Government may by notification, in the Official Gazette, appoint.

2. Definitions.- In this Act, unless the context otherwise requires,-

- (a) “Act” means the Himachal Pradesh Ground Water (Regulation and Control of Development and Management) Act, 2005;
- (b) “artificial recharge to ground water” means the process by which ground water reservoir is augmented beyond the natural condition of replenishment;
- (c) “Authority” means the Himachal Pradesh Ground Water Authority established under section 3 of this Act;
- (d) “drinking water” means water for consumption or use by human population for drinking and for other domestic purposes, which shall include consumption or use of water for cooking, bathing, washing, cleansing and other day-to-day activities and shall include water meant for consumption by the livestock ;
- (e) “exploitation limit” means such limit where the estimated annual ground water extraction is more than eighty-five percent of the estimated average annual ground water recharge;

¹. Passed in Hindi by the Himachal Pradesh Vidhan Sabha. For Statement of Objects and Reasons see the Rajpatra, Himachal Pradesh (Extra-ordinary), dated 10th August, 2005, pp. 2336 and 2350.

². Act came into force from 23rd June, 2007 vide Notification. No. PWB (PH) A (3) - 2/92-II, dated 23rd June, 2007, published in the Rajpatra, Himachal Pradesh (Extra-ordinary), dated 23rd June, 2007, pp. 2489-2490.

- (f) “Government” or “State Government” means the Government of Himachal Pradesh;
- (g) “ground water” means the water which exists below the ground surface in the zone of saturation and can be extracted through wells or any other means or emerges as springs and base flows in streams and rivers;
- (h) “notified area” means the area notified under section 5 (5) of this Act ;
- (i) “Official Gazette” means the Rajpatra of Himachal Pradesh;
- (j) “prescribed” means prescribed by rules made under this Act;
- (k) “rain water harvesting” is the process of collection and storage of rain water at surface or in sub-surface aquifer;
- (l) “royalty” means the royalty payable to the State Government under section 12 of this Act;
- (m) “sink” with all its grammatical variations and cognate expression in relation to a well includes any digging, drilling or boring of new wells or deepening of the existing wells;
- (n) “State” means the State of Himachal Pradesh;
- (o) “user of ground water” means a person or an institution including a company or an industry or an establishment, whether Government or not, who or which uses ground water for any purpose excluding domestic use;
- (p) “well” means a structure sunk for the search or extraction of ground water by any person, except by the authorized officials of the State or Central Government, for carrying out scientific investigations, exploration, development, augmentation, conservation, protection or management of ground water and shall include open well, dug well, bore well, dug-cum-bore well, tubewell, filter point, collector well, infiltration gallery, recharge well, disposal well, or any of their combinations or variations, except any manually operated device for extraction of ground water.

3. Establishment of the Authority.- (1) The State Government shall, by notification in the Official Gazette, establish, with effect from such date as may be specified in the notification, an Authority to be known as “The Himachal Pradesh Ground Water Authority”.

(2) The Authority shall have as members,--

- (i) Engineer-in-Chief, Irrigation and Public Health, Himachal Pradesh .. Chairman,
- (ii) Principal Chief Conservator of Forests, Himachal Pradesh .. Member,

- (iii) Director, Industries, Himachal Pradesh. .. Member,
- (iv) Director, Rural Development and Panchayati Raj Department, Himachal Pradesh .. Member,
- (v) Director, Agriculture Department, Himachal Pradesh .. Member,
- (vi) Head, Remote Sensing Cell, Himachal Pradesh .. Member,
- (vii) Member-Secretary, Pollution Control Board, Himachal Pradesh .. Member,
- (viii) Nominee of Himachal Pradesh State Electricity Board .. Member,
- (ix) Regional Director, Central Ground Water Board .. Member,
- (x) Superintending Engineer (Planning and Investigation Unit-II), Irrigation and Public Health Department .. Member-Secretary and
- (xi) Such other members not exceeding five, who in the opinion of the State Government have special knowledge or practical experience in matters relating to management of ground water resources.

(3) The members shall advise the Chairman who shall be the Chief Executive of the Authority.

(4) The headquarters of the Authority shall be at Shimla.

4. Staff of the Authority.- The State Government may deploy such member of technical personnel and other staff with the Authority as it may consider necessary.

5. Power to notify areas to regulate and control the development and management of ground water.- (1) The Authority shall function under the over all control and supervision of the State Government.

(2) If the Authority is of the opinion that it is necessary or expedient in the public interest to control and or regulate the extraction of ground water in any form in any area, it shall advise the State Government to declare any such area to be a notified area for the purposes of this Act.

(3) The State Government after examining the advice of the Authority, received under sub-section (2), and after making such further enquiry, as it may deem fit, may by notification, declare such area or part thereof to be the notified area, with effect from such date, as may be specified therein:

Provided that the State Government may *suo motu* by notification declare its intention to notify any area to be the notified area under this section, if deemed necessary.

(4) Every such notification issued under sub-section (3) shall, in addition to its publication in the Official Gazette, be published in not less than two daily regional language newspapers having wide circulation in the State and shall also be served by affixing a copy of the notification at the offices of the Gram Panchayats located in the said area and at some conspicuous places of the locality.

(5) The persons likely to be affected by the notification issued under sub-section (3), may file objections or suggestions within thirty days from the date of publication of the same in the Official Gazette, against such declaration to the State Government which shall be decided by it within thirty days, after public hearing and thereafter, final notification shall be issued within thirty days.

(6) If in the opinion of the Authority, the availability of the ground water has improved in a notified area, it may advise the State Government to de-notify such area, and the State Government may in the like manner, de-notify such area.

(7) The Authority shall take steps to ensure that exploitation of ground water resources does not exceed the natural replenishment to the aquifers and wherever, there is mismatch, steps shall be taken to ensure augmentation of ground water resources in addition to regulatory measures.

6. Authority to maintain data base on ground water.- The Authority shall maintain and update the data base on ground water resources of the State.

7. Grant of permit to extract and use ground water.- (1) Any user of ground water desiring to sink a well within notified area, for any purpose shall, on payment of such fee as may be prescribed, apply to the Authority for grant of a permit, and shall not proceed with any activity connected with such sinking unless a permit has been granted by the Authority.

(2) Every application made under sub-section (1) shall be in such form and contain such particulars as may be prescribed.

(3) The Authority shall consider the application made under sub-section (1) and if satisfied, may grant a permit, in such form as may be prescribed, subject to such conditions and restrictions as may be specified, within sixty days from the date of receipt of the application:

Provided that while considering the application the Authority shall give first priority for drinking water needs in preference to other needs:

Provided further that no permit shall be refused without affording an opportunity of being heard.

(4) The decision regarding grant or refusal of the permit shall be intimated by the Authority to the applicant within a period of thirty days from the date of decision.

(5) In granting or refusing a permit under sub-section (3), the Authority shall have regard to -

- (a) the purpose or purposes for which water is to be used;
- (b) the existence of other competitive users;
- (c) the availability of water;
- (d) quality of ground water to be drawn with reference to proposed usage;
- (e) spacing of ground water structures keeping in view the purpose for which water is to be used;
- (f) minimum distance of two hundred meters in case of shallow well and three hundred meters in case of tube well from the existing source of water supply scheme or irrigation scheme, as the case may be;
- (g) long term ground water level behaviour; and
- (h) any other factor relevant thereto.

8. Registration of existing users of ground water.- (1) Every existing user of ground water in a notified area shall, within a period of two months from the date of establishment of the Authority shall, make an application on such form containing such particulars and fees, as may be prescribed, to the Authority for the grant of certificate of registration recognizing its existing use:

Provided that the Authority may entertain any such application after the expiry of the said period of sixty days, if it is satisfied that the user was prevented by sufficient cause from filing application in time.

(2) On receipt of an application under sub-section (1), if the Authority is satisfied that it shall not be against the public interest to do so, it shall grant, subject to such conditions and restrictions as may be specified therein, a certificate of registration in such form as may be prescribed authorizing continued use of the ground water:

Provided that while considering the application, the Authority shall give first priority for drinking water needs in preference to other needs:

Provided further that no user of ground water shall be refused a certificate of registration without being given an opportunity of being heard.

(3) The decision regarding grant or refusal of the certificate of registration shall be intimated by the Authority to the applicant within a period of thirty days from the date of decision.

(4) In granting or refusing a certificate of registration under sub-section (2), the Authority shall have regard to,-

- (a) the purpose or purposes for which water is to be used;
- (b) the existence of other competitive users;
- (c) the availability of water;

- (d) quality of ground water with reference to its usage;
- (e) spacing of ground water abstraction structures keeping in view the purpose for which water is to be used;
- (f) long term ground water level behaviour; and
- (g) any other factor relevant there to.

(5) Every existing user of ground water in the notified area during pendency of decision of the Authority under sub-section (2) shall be entitled to the continued use of the ground water in the same manner and to the same quantity as he was entitled prior to the date of application.

(6) If a registered well becomes defunct, this fact shall be immediately brought to the notice of the Authority by the user of ground water and such well may be used for ground water recharging if in the opinion of the Authority it is found fit.

9. Registration of drilling agencies.- Every rig owner operating in the State shall register his machinery with the Authority in such manner and on payment of such fee as may be prescribed and shall follow the instructions issued by the Authority.

10. Power to alter, amend or vary the terms of the permit or certificate of registration.- At any time after a permit or certificate of registration, as the case may be, has been granted, the Authority may, for reasons to be recorded in writing, alter, amend or vary the terms of the permit or certificate of registration, as the case may be:

Provided that no change shall be made in the permit or certificate of registration, as the case may be, unless the user of ground water is afforded an opportunity of being heard:

Provided further that before taking such action, the Authority shall ensure that the standing crop(s) are not damaged.

11. Cancellation of permit/certificate of registration.- If the authority is satisfied either on a reference made to it in this behalf or otherwise that,-

- (a) the permit or certificate of registration granted, under sub-section (3) of section 7 of sub-section (2) of section 8 as the case may be, is not based on facts, or
- (b) the holder of the permit or certificate of registration has without reasonable cause failed to comply with the conditions subject to which the permit or certificate of registration has been granted or has contravened any of the provisions of this Act or the rules made there under, or
- (c) a situation has arisen which warrants limiting of the use or extraction of ground water, then without prejudice to any other penalty to which the holder of the permit or of the certificate of registration may be liable under this Act, the

Authority may after giving the holder of the permit or certificate of registration, as the case may be, an opportunity of being heard, cancel the permit or certificate or registration, as the case may be.

12. Royalty in respect of use of ground water.- (1) Every user of ground water in a notified area shall pay to the State Government a royalty for extraction of ground water at such rates and in such manner as may be prescribed:

Provided that a user of ground water who irrigates less than one hectare of land, whether owned or leased or both, shall be exempted from payment of royalty under this section.

(2) The State Government may, assign such proportion of the royalty, as may be prescribed, for development of ground water resources.

13. Powers of the Authority.- (1) The Authority or any person authorized under section 17 of this Act in this behalf shall have the following powers, namely :-

- (a) to inspect the well, which has been or is being sunk and the soils and other materials excavated therefrom;
- (b) to take specimens of such soils or other materials or of water extracted from such wells;
- (c) to require, by order, in writing the person sinking a well to keep and preserve in the prescribed manner specimens of soil or any material excavated therefrom for such period not exceeding three months from the date of completion or abandonment of such work, as may be specified by the Authority, and there upon such person shall comply with such order;
- (d) to inspect and to take copies of the relevant record or documents and seek any information including diameter or depth of the well which is being or has been sunk; the level at which the water is or was struck and subsequently restored/rested, the types of strata encountered in the sinking of the well and the quality of the water struck, required for carrying out the purposes of this Act;
- (e) to seize any equipment or device utilized for illegal sinking and destroy the work executed fully or partly ;
- (f) to require, by order, any user of ground water who does not comply with the provisions of this Act or the rules made there under to close down any water supply or destroy any hydraulic work found to be in contravention of the provisions of this Act or the rules made thereunder:

Provided that where the user of ground water does not comply with such order within a period of sixty days from

the date of issue of the same, the Authority or any person authorized in this behalf may carry out the necessary work and recover the cost from such user of ground water ;

- (g) to enter and search with such assistance, if any, as it considers necessary, any place in which it has reason to believe that offence under this Act has been or is being committed, and order, in writing, the person who has been or is committing the offence, not to extract ground water for a specified period not exceeding thirty days;
- (h) to direct an appropriate body to assess exploitation limit of ground water in different areas and submit periodic report for consideration of the Authority ;
- (i) to exercise such other powers as may be necessary for carrying out the purposes of this Act or the rules made there under.

(2) The power conferred by this section includes the power to break open the door of any premises where sinking, extraction and use of ground water may be going on:

Provided that the power to break open the door shall be exercised only after the owner or any other person in occupation of the premises, if he is present therein, refuses to open the door on being called to do so.

(3) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall, so far as may be, apply to any search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued under section 93 of the said Code.

(4) Where the Authority or any person authorized by it seizes any mechanical equipment or device under clause (e) of sub-section (1) it shall, as soon as may be, inform a Magistrate having jurisdiction and take his orders as to the custody thereof.

14. Installation of measuring devices.- Every user of ground water in a notified area shall install water measuring device on ground water abstraction structure within a period of thirty days from the date of registration under section 7 or 8, as the case may be:

Provided that where the user of ground water does not comply with the provisions of this section within a period of thirty days, the Authority or any person authorized in this behalf may install such water-measuring device and recover the cost from the defaulting user of ground water.

15. Rain water harvesting for conservation and ground-water recharge.- (1) The Authority may, in order to improve the ground water situation, identify the areas of ground water recharge and issue guidelines for adoption of rain water harvesting for ground water recharge in such areas.

(2) The Authority may, issue directions to the concerned departments of the State Government, to include rain water harvesting in all developmental schemes within notified areas.

(3) The Authority may, in urban areas, issue directions, in such manner as may be prescribed, for construction of rain water harvesting structures in residential, commercial and other premises having plinth area of 100 square meters or above and in the event of failure to comply with the directions so issued, such rain water harvesting structures shall be constructed by the Authority and the cost there on shall be recovered along with such penalty in such manner as may be prescribed.

(4) The Authority may, issue directions to the Municipal Corporation or any other Local Authority, as the case may be, to impose stipulated conditions for providing roof top rain water harvesting structures in building plans with plinth area of 100 square meters or above.

16. Service of orders etc.- (1) Every order or notice made under this Act shall be served in the following manner, namely:-

- (a) by giving or tendering copy of the order or the notice by sending it by post to the user of ground water, if such user of ground water cannot be found, by giving or tendering the copy of such order or notice to any adult member of his family or his servant;
- (b) if the service of such order or notice cannot be effected under clause (a), by affixing the copy of such order or notice on some conspicuous place of his last known residence or place of business or on any part of the land or building in which the well is being sunk.

(2) Where the person on whom an order or a notice is to be served is a minor, service of such order or notice upon his guardian in the manner provided in sub-section (1), shall be deemed to be served upon the minor.

17. Delegation of powers and duties.- The State Government may, by general or special order in writing, direct that all or any of the powers and duties which may be exercised or discharged by the Authority shall, in such circumstances and under such conditions, if any, as may be specified in its order, be exercised by any person specified in such order.

18. Members and employees of the Authority to be public servants.- All members and employees of the Authority shall when acting or purporting to act in pursuance of the provisions of this Act or the rules made thereunder be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

19. Protection of action taken in good faith.- No prosecution, suit or other legal proceedings shall be instituted against any officer/official of the Government or any member or other employee of the Authority for anything done or intended to be done in good faith, under this Act, or the rules made thereunder.

20. Cognizance and trial of offences.- (1) No prosecution for an offence under this Act shall be instituted except on a written complaint of the Authority or a person authorized in this behalf by the State Government.

(2) No court inferior to that of a Magistrate of the first class shall try any offence under this Act.

21. Offences and penalties.- (1) If any user of ground water fails to supply information required under the provisions of this Act or the rules made thereunder or obstructs the Authority or any other person authorized by the State Government to exercise any of the powers under this Act, he shall be punished for the first offence with fine which may extend to one thousand rupees and for the second and subsequent offence with fine which may extend to two thousand rupees.

(2) If any user of ground water sink, constructs or uses well in contravention of the provisions of this Act or the rules made thereunder, he shall be punished for the first offence with imprisonment for a term which may extend to three months or with fine which may extend to five thousand rupees, or with both and for the second and subsequent offence, with imprisonment for a term, which may extend to six months, or with fine which may extend to ten thousand rupees or with both.

22. Compounding of offences.- Where any offence under this Act has been committed, such an offence may, at any time before or after the institution of proceedings, be compounded by the Authority, or any other officer authorised by the State Government after accepting by way of compensation thereof, a sum of money not exceeding such amount as may be prescribed, and such composition shall have the effect of discharging such person of the offence and no further proceedings shall be taken or continued against him in respect of the offence so compounded.

23. Offences by Companies.- (1) Whenever an offence under this Act has been committed by a Company, every person who at the time of the commission of the offence was in charge of, or was responsible to the Company for the conduct of the business of the Company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent or connivance of, or is attributable to any neglect on the part of any Director, Manager, Secretary or other officer of the Company, such Director, Manager, Secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment under this Act, if he proves that offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Explanation.- For the purpose of this section-

- (a) “Company” means any body corporate and includes a firm or other association of individuals; and
- (b) “Director” in relation to a firm, means a partner in the firm.

24. Appeals.- (1) Any person aggrieved by an order of the officer exercising powers delegated under this Act may, within a period of thirty days from the date of such order, on payment of such fee as may be prescribed, prefer an appeal to the State Government:

Provided that the State Government may entertain an appeal after the expiry of said period of 30 days, if satisfied that the applicant was prevented by sufficient cause from filing the appeal within time.

(2) On receipt of an appeal under sub-section (1), the State Government shall, after giving the appellant an opportunity of being heard, dispose of the appeal as expeditiously as possible but not later than six months and the decision of the State Government shall be final.

25. Power to make rules.- (1) The State Government may, by notification in the Official Gazette, after previous publication, make rules for carrying out the purpose of this Act.

(2) Every rule made under this section shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fifteen days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, Assembly agrees in making any modifications in the rules or Assembly agrees that the rule should not be made, the rule thereafter, shall have effect only in such modified form or be of no effect, as the case may be. However, that any such modification or annulment shall be without prejudice to the validity of anything done earlier under that rule.
