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USAID FAMILY FARMING PROGRAM TAJIKISTAN

REVIEW OF THE LEGAL FRAMEWORK FOR WATER USER
ASSOCIATIONS IN TAJIKISTAN

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USAID FAMILY FARMING PROGRAM

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CONTENTS

1	INTRODUCTION	3
2	THE LEGISLATIVE FRAMEWORK FOR EFFECTIVE WUAS: INTERNATIONAL PRACTICE & EXPERIENCE	4
2.1	WUA LEGISLATION	5
2.1.1	SPECIFIC LEGISLATION.....	5
2.1.2	A SPECIFIC TYPE OF LEGAL ENTITY	6
2.1.3	THE LEGAL STATUS OF WUAS.....	6
2.1.4	PARTICIPATION.....	8
2.1.5	WUA ESTABLISHMENT	8
2.1.6	GOVERNANCE ISSUES	10
2.1.7	VOTING & THE ALLOCATION OF VOTES	12
2.1.8	TARIFFS & CHARGES	12
2.1.9	REGULATORY OVERSIGHT	13
2.2	RIGHTS OF WUAS TO USE IRRIGATION INFRASTRUCTURE.....	13
2.3	RIGHTS WUAS TO WATER	14
2.4	WUA TAX ISSUES.....	15
3	EVALUATING THE CURRENT LEGAL FRAMEWORK FOR WUAS IN TAJIKISTAN	17
3.1	THE WUA LAW	17
3.1.1	THE PRECISE TASKS OF WUAS.....	18
3.1.2	LEGAL STATUS.....	19
3.1.3	ESTABLISHMENT PROCEDURE	19
3.1.4	MEMBERSHIP ISSUES.....	20
3.1.5	THE RIGHT TO WATER.....	21
3.1.6	THE GENERAL MEETING.....	21
3.1.7	THE BOARD AND THE CHAIRMAN	22
3.1.8	DISPUTE RESOLUTION COMMISSION.....	22
3.1.9	COMMON PROVISIONS ON ELECTED WUA OFFICERS	22
3.1.10	WUA EMPLOYEES	22
3.1.11	RELATIONSHIP WITH NON-MEMBERS	22
3.1.12	FEES AND TARIFFS.....	23
3.1.13	INTERNAL RECORDS AND REGISTERS.....	24

3.1.14	REGULATORY OVERSIGHT	24
3.1.15	WUA FEDERATION	26
3.2	THE RIGHTS OF WUAS TO USE IRRIGATION INFRASTRUCTURE	26
3.3	THE RIGHTS OF WUAS TO USE WATER	27
3.4	TAX ASPECTS UNDER THE WUA LAW	27
4	THINKING ABOUT LEGISLATIVE REFORMS	28
5	CONCLUSIONS	29
	ANNEX A - DOCUMENTS REVIEWED	30
	ANNEX B - RECOMMENDED AMENDMENTS TO THE WUA LAW	31
	ANNEX C - COMMENTARY ON THE RECOMMENDED AMENDMENTS TO THE WUA LAW	50

REVIEW OF THE LEGAL FRAMEWORK FOR WATER USER ASSOCIATIONS IN TAJIKISTAN

1 INTRODUCTION

As has been the case in other transition countries, one of the main challenges to arise from the land agrarian reforms that have taken place in Tajikistan since independence has been how to manage the irrigation systems of the former state and collective farms. These systems were constructed to irrigate and drain the large mono-crop fields of the state and collective farms. Responsibility for the operation and maintenance of the irrigation and drainage systems lay with irrigation brigades or teams.

With land reform, and the restructuring of the state and collective farms, the process of operating and maintaining the irrigation systems has become technically more complex. There are often now more small fields that may be cropped differently resulting in different water demands. At the same time, though, there is a management gap: as the former irrigation brigades no longer exist, as a result of the demise of the state and collective farms, who should take responsibility for the operation and maintenance of the irrigation systems?

In Tajikistan, as in many other transition countries, the government has promoted the establishment of farmer-managed water user associations (WUAs) to undertake this task. In 2006 specific legislation on WUAs was adopted in the form of the Law on Water User Associations of the Republic of Tajikistan (the “WUA Law”).

This report sets out an analysis of the current legislative framework for WUAs in Tajikistan based on a desk study of a limited number of documents that have been provided¹ and international practice in other countries.

¹ These are listed in Annex A.

2 THE LEGISLATIVE FRAMEWORK FOR EFFECTIVE WUAS: INTERNATIONAL PRACTICE & EXPERIENCE

Although they are a relatively new concept for Tajikistan, WUAs are in fact found in many countries around the world. They are particularly long-established in Europe, North America and parts of Latin America. Some of the oldest WUAs, for example, existed in Spain and the Netherlands for many hundreds of years. As such they can be said to be sustainable.

The experience of WUAs is more recent in transition and developing countries. In the transition countries of Eastern Europe and the former Soviet Union, such as Tajikistan, WUAs have been established following the transition to a market economy and the conversion of the large agro-industrial state and collective farms (*sovkhos* and *kolkhos*), with their specialized irrigation brigades, into hundreds and thousands of smaller private farms. The task of WUAs is to operate the irrigation and drainage systems of the former state and collective farms.

WUAs in developing countries have generally been promoted to take over responsibility for the operation and maintenance of irrigation systems, or parts of such systems, which were formerly operated by public irrigation agencies.

A common feature of WUAs is that each WUA undertakes a discrete task relating to land and water. Nevertheless there can be significant differences from country to country, WUA to WUA. The range of possible tasks undertaken by WUAs around the world is rather broad. It includes irrigation (of all types including furrow irrigation, flood irrigation, drip, sprinkler and spray irrigation), which may be supplementary or a pre-requisite for crop production, land drainage, flood defense, soil conservation, land improvement, water supply, sanitation, the management of surface water bodies and nature conservation.

Depending on the country concerned and the type of tasks they undertake WUAs go by a variety of different names. These include “Comunidad de Usuarios/Irrigantes” (Spain), “Water and Soil Association” (Germany), “Landowners’ Syndical Association” (France), “Water Board” (the Netherlands), “Consorzio” (Italy), “Internal Drainage Board” (UK), “Irrigation District” (USA, Canada), “Organizacine de regantes” (Bolivia), “Organizacine de usuarios” (Colombia and Peru) and “Land Reclamation Organisation” (Romania). There can, moreover, be significant differences in the size of the land area served by WUAs ranging from 50 ha to as much as 200,000 ha.

Nevertheless, WUAs all share a basic common basic approach in that they all:

- operate on a non-profit basis;
- focus on a specific task;
- are democratically controlled by their participants; and
- are self-funding by their participants.

In terms of their basic structure and overall approach the actual task undertaken by a WUA does not really, therefore, make that much of a difference as to how that WUA operates at least as far as its structure is concerned and its relationship with its participants.

Although they are found around the world WUAs are a rather unusual, not to say unique, type of organization. For a start there is an internal tension at the heart of many WUAs: they are predicated on the notion that farmers will benefit from working together to manage, operate and maintain an irrigation (or drainage) system yet at the same time those farmers may well be in competition with each for land and water.

At the same time, although WUAs are managed and controlled by water users, usually farmers, they still undertake what is effectively a public function. They manage a state owned resource and

operate irrigation schemes that are funded wholly or in part with public money. In many countries irrigation is an essential agricultural input. The correct operation of irrigation systems is therefore a matter of public interest.

Moreover only one WUA can be established per irrigation system: WUAs cannot have overlapping boundaries (at least not when they are providing the same kind of service). Consequently a WUA is effectively a monopoly water supplier. Every person who holds land on an irrigation scheme needs to be able to obtain water from the WUA and/or to become a member of the WUA. It follows that WUAs cannot be established just anywhere or anyhow. It also follows that a WUA cannot operate as a purely private organization, like a private club, determining who may or may not be a member.

Consequently the state, as the guardian of public interest, has an interest in ensuring that WUAs operate correctly and legally. At the same time, however, WUAs are not state entities. After all, as previously mentioned, they are funded and controlled by private farmers. As a result this raises two distinct, yet interrelated issues. The first concerns the legal status of WUAs. The second concerns the issue of how the state can supervise the performance of WUAs to ensure that they fulfil their public interest tasks. These issues are key factors to be considered in both analyzing and developing the legal framework that regulates the establishment and operation of WUAs.

However, beyond the legislation that regulates the establishment and operation of WUAs, the overall legislative framework includes a number of additional elements, the most important of which are:

- a) the legislation that regulates the rights of WUAs to own and/or use irrigation infrastructure;
- b) the legislation that regulates the rights of WUAs to receive bulk water supply; and
- c) tax legislation.

Of course WUAs, like any other kind of legal entity, are subject to the law and thus to the legal rules contained in other laws that may also impact their functioning (for example employment law, contract law, etc.). These three areas, however, are the main elements of the wider WUA legislative framework.

In the discussion that follows international practice is briefly described so that a comparison can be made with the WUA Law and the legal framework for WUAs in Tajikistan.

2.1 WUA LEGISLATION

2.1.1 SPECIFIC LEGISLATION

In terms of international practice, WUAs around the world are generally established on the basis of specific legislation, *lex specialis*. This can be a specific WUA law (as in the case in France, Germany, Italy, India), the basic water code or water law (in the cases for example of Spain and California) or an irrigation/drainage law (in the United Kingdom for example).

So far it does not appear that any of the transition countries have included legislation on WUAs in their basic water code or law. In Albania, Azerbaijan and Romania WUA legislation is contained in an irrigation/drainage law while in Armenia, Bulgaria, Estonia, Georgia, Kyrgyz Republic, Moldova WUs are established on the basis of specific WUA laws. There is no single “correct” approach. This is however an issue that is considered in more detail below.

In terms of the form of WUA laws, it is important to note that they are what can be called “organizational” rather than “regulatory.” Water resources laws and are a good example of environmental laws: the basic rules are set out in the law with the detail being set out in subordinate legislation in the form of decrees, regulations, etc. Although WUA laws may provide for the

subsequent adoption of subordinate legislation by the government or minister on matters of procedure or detail (such as the format for reports or accounts for example) generally speaking WUA laws tend to be rather complete in themselves. One issue here is that it is important that WUA laws can be widely disseminated to the farmers in the countryside who will be their main readers. If excessive use is made of subordinate legislation then it can be difficult for farmers and other people in rural areas to access these.

2.1.2 A SPECIFIC TYPE OF LEGAL ENTITY

Especially in the European and American countries with a long WUA tradition, WUAs are generally established as a specific or *sui generis* kind of legal entity. In other words, a WUA is established as a WUA, and not just as a variant or sub-category of an existing legal form such as a company, cooperative or association or other form of non-government organization.

When WUAs were first introduced in the transition countries, on a pilot basis, they were often introduced using existing legislation and existing legal forms. In Azerbaijan, for example, the first WUAs were set up as companies, in Romania they were set up as public associations (the form used to create non-government organizations or NGOs) while in Armenia they were set up as cooperatives. For a range of reasons that need not be rehearsed here these existing legal forms were legally inappropriate: their use caused too many legal problems.

2.1.3 THE LEGAL STATUS OF WUAS

In countries with a long WUA tradition WUAs have a specific legal status namely as public corporations or bodies of public law. In other words, WUA legislation typically provides for the establishment of WUAs under “public law” as opposed to “private law.”² This is a somewhat technical legal distinction. It is nevertheless a crucially important one in terms of the legal powers that can be conferred on WUAs.

In general terms, public law is the body of legal rules that regulates the conduct of state bodies (including central and local government) as well as bodies that undertake public functions (such as state agencies and universities) on the basis of specific laws.³ The fact that most bodies of public law receive state funding does not prevent self-governing, self-financing WUAs from also having this legal status.

In contrast, private law regulates the private legal relationships between natural persons (citizens) and legal persons. Companies, cooperatives and associations are, for example, established under private law.

As such, in legal terms WUAs can be understood to operate half way between the private sector and the state or public sector. Unlike most public law bodies, which tend to be funded by, and largely controlled by, the state, they are self-managed making their own decisions concerning operation and maintenance as well as setting of their own tariffs and their operating rules. While they may be entitled to claim subsidies or state assistance, they are largely self-financing the bulk of their income being provided by their participants. They operate on a “non-profit” basis or, more accurately, such profits (surpluses) as they accumulate are retained rather than distributed.

² Article 74 of the Spanish Water Law provides: “The water users communities are corporations under public law, assigned to the river basin administration. They shall supervise the fulfilment of the statutes or rules as well as the proper use of water.”

³ The distinction between public law and private law is more marked in the legal systems of the civil law tradition (which includes continental Europe, large parts of Africa, South America, a number of Asian countries including Japan and China) than in the legal systems of the common law tradition (which includes Australia, England, India, North America, New Zealand and Pakistan and a number of African and Caribbean countries): for example in some civil law jurisdictions disputes concerning public law are resolved before a separate system of courts. Nevertheless the distinction is found in all legal systems that follow the two main legal traditions.

At the same time, as a result of their public interest status the performance of such WUAs is supervised by the state, which may challenge their decisions in the courts. It is, however, important to note that a decision taken by a WUA can usually not be challenged on the ground of illegality. In other words the supervisory body can only challenge a decision made by a WUA if that decision is legally wrong: it cannot challenge a decision that it does not like in order to substitute its own decision. In other words, despite their public law status, WUAs retain their functional independence from state bodies involved in the water sector.

Finally, by reason of the legislation and their public law status, WUAs focus only on clearly defined water management tasks. They cannot branch out into potentially risky commercial activities.

So why are WUAs established under public law? There are a number of reasons for this. First of all because WUAs serve a public interest function the creation of WUAs under public law offers the possibility to confer useful legal rights upon them, rights that it would not be appropriate to confer on a private organization. These include:

- The rights to use public infrastructure;
- The rights to access to land, including the land of third parties, for the purpose of undertaking maintenance to irrigation systems;
- The right to make and enforce rules against their participants;
- The right to expropriate land if necessary (subject to the payment of compensation);
- The rights to charge non-members at a higher rate than members;
- The right to raise funds (e.g. issuance of bonds against income, charges against participants lands, access to specific government funding);
- The right to benefit from various tax exemptions (such as profit tax, land tax, VAT, etc.); and
- Specific rights to recover costs.

Depending on the circumstances some or all of these kinds of power will typically be necessary to permit a WUA to operate effectively.

It is in particular important to confer the specific legal powers upon WUAs in connection with the recovery of outstanding costs. If a WUA is required to rely on the ordinary civil courts it will typically be required to: (a) prove that the participant is indeed a participant; (b) prove that the relevant service was provided; (c) prove that the debt is due; and (d) prove that the debt remains outstanding. And all of this simply to obtain a judgment against the debtor. Court proceedings are invariably time consuming and expensive. If WUAs can only rely on civil recovery procedures they will likely fail. Consequently WUA legislation typically confers one or more specific powers on WUAs to facilitate cost recovery.

These can include the right, without a court order, to:

- Withhold services (such as the supply of water);
- Impose a lien on the land of the debtor;
- Instruct the court bailiff to recover the debt as an executory title; and
- Make a priority claim over harvest.

A key point to note, however, is that conferring such types of power on a WUA, as well as the other types of power listed above, can really only be justified legally and politically if a WUA is established as a specific legal form that is either classified as a body of public law or upon which the necessary (public law) legal powers are conferred.

In the case of most of the transition countries, however, the issue of the legal status of WUAs raised a number of difficult questions. First of all, socialist law had little use for the concept of bodies of public law. Legal entities were either state or private. Consequently the notion of the body of

public law that is separate to a state entity is still not that well known in the former soviet countries.⁴As a result the WUAs in those countries enjoy a unique and rather specific legal status. Article 4 of the Armenian law, for example, states that WUAs are “non-profit legal entities that operate in the public interest to carry out the operation and maintenance of irrigation systems.”

If it is any consolation they are not alone in this respect. Even in the USA where WUAs are long-established, the courts in different states have struggled to define the precise legal nature of WUAs in terms of their relationship with the state.⁵

2.1.4 PARTICIPATION

As already mentioned, WUAs act for the benefit of, and are controlled by, their participants. But what is meant by participation?

There are two basic options. The first is membership. The beneficiaries of a WUA are its members. The benefits of a membership approach include the fact that membership can provide an easy to understand package of rights and duties. Possibly, the main problem with the membership approach concerns the issue of compulsory membership. Forcing people to be members of an organization against their will may be considered politically undesirable.

The other approach is simply to provide in law that a WUA has specific rights and duties against land (and thus landholders) in a given area but that the holders of such land have rights against the WUA such as voting rights as well as the rights to benefit from the services that it provides. Overall the result is largely the same. However participants in such a WUA may not be described as members.

The first question is who can be called on to participate in a WUA? The legislation typically provides that the participants of WUAs include landowners, land users (although there can be issues over short-term tenants who may not have much interest in a WUA), both natural and legal persons as well as public bodies.

The next question is how to identify the participants in a WUA? One option, which is found in the legislation of Spain and Indonesia, is to provide that they are all those who take and benefit from water from a single source (such as a single pump or water abstraction point). The other, and probably more common, approach is to define the land area that is served by the WUA as its “service area” and to provide that those who hold land within the service area are the participants.

The final question is whether participation in a WUA should be voluntary or not. But before considering that issue it is necessary to address the question as to how WUAs are to be established. Specifically are WUAs to be established voluntarily or is establishment to be compulsory?

2.1.5 WUA ESTABLISHMENT

In the case of voluntary establishment, the decision to establish a WUA is taken by the future and potential participants. However, to be effective it is clear that such a decision has to have a sufficient level of support from among the potential beneficiaries. To this end WUA legislation

⁴ The situation was a little different in East European countries where the notion of the body of public law had been recognized before the socialist period. Thus in both Albania and Romania the relevant legislation now expressly provides that WUAs are bodies of public law and thus can confer specific powers upon WUAs such as compulsory participation (Albania) and direct execution against debts to the WUA (in Romania).

⁵ Thus for example in the United States, WUAs called “irrigation districts” have been held by the courts in different states to be: (i) a quasi-governmental organization, (ii) a state agency, (iii) a public agency in which the public has an interest carrying out public business (iv) that in some respects it may be regarded as a political sub-division of the state or (v) an arm of government and that it exercises some government functions. At the same time it has frequently been held that strictly speaking irrigation districts are not municipal corporations or political subdivisions of the state. *Corpus Juris Secundum* Vol 94 1956. P265-66.

typically requires the formal decision on WUA establishment to be supported by at least 50 percent of the proposed participants (and some times also specifies that such participants must hold at least 50percent of the land contained in the proposed service area).

WUA legislation also typically describes the process for WUA establishment with key objective of making the establishment procedure as participatory or inclusive as possible. Farmers may be reluctant to participate in an organization that has been set up by others. The first step, therefore, is to define who the potential participants are by identifying the service area of the proposed WUA.

Next a procedure is necessary for the development and finalization of the draft governing document (the statute, charter, constitution depending on the jurisdiction concerned), its verification by the independent regulator to ensure compliance with the law, a formal decision among the proposed participants to establish the WUA followed by the necessary legal formalities in terms of a decision by an appropriate official and/or registration.

In the case of compulsory establishment, the cases of Spain and Indonesia have already been mentioned: a WUA must be established in cases where two or more users take water from a single source. Otherwise, legislation typically provides for the compulsory establishment of WUAs in cases where this is in the “public interest.”

In Germany, for example, Article 10 of the WUA law provides:

§ 10 Permissibility of Establishment *Ex Officio*

(1) An association may be established *ex officio* if it is in the public interest.

(2) Establishment under para. 1 is in particular allowed

1. To regulate the discharge of water, to protect against storm surges and floods or to maintain non-navigable water bodies ...
2. To dispose of waste ...
3. To carry out undertakings required for the protection of nature or the environment ...

Obviously the nature of the “public interest” will vary from country to country and will depend on the type of activity to be undertaken by the WUA.

In this connection it is noteworthy that in Germany, where there is currently an overall food surplus, irrigation has not in recent years been considered to be in the public interest in this respect. In other words the compulsory establishment of WUAs responsible for irrigation is not currently possible. Of course with the impacts of climate change the possibility cannot be ruled out that in the future irrigation will once more considered to be in the public interest.

Returning to the issue of compulsory participation this is in fact only usually provided for in cases where the legislation provides for compulsory establishment. Thus, to remain with the example of Germany, Article 9 of the WUA law provides:

§ 9 Call to Membership

Participants not having consented to the establishment are-even against their will- to be called upon as association members.

Even if, however, establishment of WUAs is entirely voluntary it is important to encourage participation from the outset not only to develop a sense of ownership but also to ensure that a new WUA is economically viable. In Estonia, for example, in accordance with the legislation at the time the first WUAs only needed six founding members even though they were established to maintain drainage schemes of more than thousand hectares, with potentially many hundreds of members. In effect, with so few members such WUAs were established only on paper.

For some kinds of activity, however, compulsory membership will invariably be necessary. A WUA charged with land drainage will drain all of the land within its service area irrespective of whether it is owned by WUA participants or not. In order to be effective, and in order to prevent abuse by “free-riders,” compulsory participation is usually necessary where a WUA undertakes this kind of activity.

Even in cases where compulsory participation is not considered necessary or politically desirable, WUA legislation typically seeks to encourage participation through, for example, providing that a WUA may levy substantially larger charges for the services it supplies to non-members. It is also necessary

For example, Article 33 of the Moldovan WUA law provides:

An Association is entitled to levy a volumetric irrigation charge against non-members in connection with the supply of irrigation water to them on a contractual basis that may be up to no more than three times as high as the average charge per cubic meter payable by Association members taking account of the level of membership fees paid over the previous three years.

2.1.6 GOVERNANCE ISSUES

As already noted, the basic contradiction at the heart of each WUA is that while WUAs are premised on the basis that mutual cooperation is beneficial, farmers may still be in competition with each other as regards both water and land. Indeed water, or the possibility to deny access to water, can be an important weapon in gaining access to additional land.

Moreover, as with any social arrangement there is a risk of free-riders. Human nature seems to be such that if people can avoid paying for something, they will, even if that thing benefits them.

It follows that the risk of conflict and disputes within WUAs is real and needs to be addressed from the outset.

One issue that arises in this respect is the need to clearly set out the rights and duties of members in law or in the governing document of the WUA. Including such provisions in a WUA law leaves no room for argument as to just what such rights and duties actually are (see **Box 1**).

Box 1 - Molodvan WUA Law - Article 8. Rights and duties of Association members

1. Members of an Association have the following rights:

- a) to receive a fair part of irrigation water distributed by the Association;
- b) to benefit from the services provided by, or through, the Association;
- c) to stand for election to the bodies of the Association providing that they have paid all requisite charges concerning the activity of the Association;
- d) to propose agenda items for discussion at General Assembly meetings;
- e) to nominate and to vote for candidates in elections to the bodies of the Association;
- f) to receive compensation if they suffer damage to their crops or land as a result of the negligence of any staff employed by the Association or as a result of operation and maintenance activities undertaken by the Association on their land;
- g) to inspect, during working hours the Association's accounting documents and records and to be provided, on request, with information regarding the Association's accounts and operation and maintenance plans of the irrigation system.

2. Members of an Association have the following duties:

- a) to observe the provisions of the Charter and any internal regulations adopted by the General Assembly;
- b) to pay within the set terms any fees and charges in accordance with the Charter and this law;
- c) to comply with the schedule of irrigation and water consumption for irrigation;
- d) to pay the repair or replacement costs of the equipment or infrastructure which is damaged as a result of the respective member's willful or negligent act or omission;
- e) to allow employees or representatives of the Association on to their land with machines and equipment in order to undertake works concerning operation and maintenance of the irrigation system;
- f) to comply with applicable technical rules concerning the reconstruction, operation and maintenance of the irrigation system....

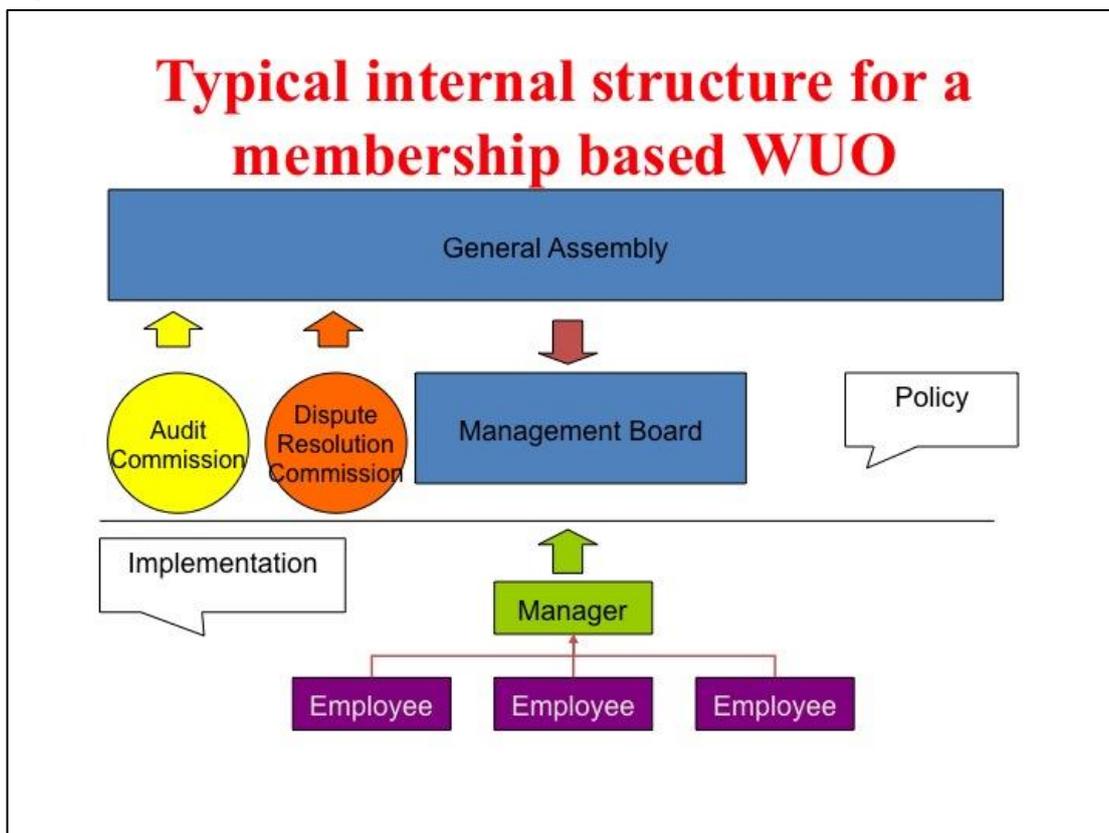
Beyond setting out the rights and duties of WUA members, WUA legislation typically also describes the roles of the various WUA management bodies in some detail. The type and nature of such bodies will be familiar to anyone involved in farmers' associations or other types of participatory organization.

In cases where participation is by membership, WUA legislation typically provides for a general assembly of all members, which typically must meet at least once a year (with the possibility to hold additional meetings when necessary). In the case of a large WUA, with more than say 100 members, it can be difficult to hold effective general assembly meetings. In such cases provision is often made for WUA members to elect representatives (by canal, by pump station, by land area) who attend the general assembly meeting on their behalf. Apart from the election of management board, other tasks of the general assembly include approving the annual accounts, the report of the management committee, the draft budget and work plan and most importantly the level of charges for service provided by the WUA.

The management board is responsible for supervising the routine operation of the WUA and for preparing the meetings of the general assembly. It typically meets every month (although again with the possibility to call additional meetings as necessary) and its members are not paid but may receive a token "seating allowance."

WUA legislation may also provide for the election of a dispute resolution committee as well as an internal audit committee.

Figure 1: WUA Structure



In any event, except for very small WUAs that can be operated by landowners directly, in order to be effective WUAs need a professional manager and workforce (although the workforce may be seasonally employed). The legislation invariably permits this.

In cases where participation in a WUA is not by participation, the structure is typically much simpler. The WUA participants elect (and as necessary remove) the management board that is charged with making the main decisions regarding the management of the WUA although more important decisions may also be put to the vote of the participants.

Another issue concerns the election of the president or chairman of the WUA. Such a person is the legal representative and chairs the meetings of the management board and general assembly. There are two basic options: 1) direct election by the WUA members, and 2) election by the management board members. The first, or “presidential,” approach confers a strong mandate on the elected candidate. However, it has disadvantages in terms of accountability. This person chairs the management board and general assembly—the bodies to which s/he is notionally accountable. The other option has the benefit of conferring an increased sense of collective responsibility upon the management board members.

2.1.7 VOTING & THE ALLOCATION OF VOTES

The next issue concerns the allocation of votes to WUA participants. In the case of membership WUAs, such votes will be exercised at the meetings of the general assembly. In the case of WUAs that are not membership based, voting will usually be limited to the election of the management board.

In both cases, though, a key question that must be determined in WUA legislation is how votes are to be allocated. The simplest approach is to allocate one vote to each member irrespective of the size of their land holding. This is the so called “one member one vote” system. While it is simple and ostensibly fair, it is only really workable if each participant uses the same amount of land and/or water.

If there are a few large owners and many small landowners it would be easy for the latter to dominate the WUA at the expense of the former. For example by setting a low step tariff.

On the other hand if votes are allocated by reference to the size of the land holding of each participant, or the size of the benefit, or the volume of water used in the case of irrigation this may in turn produce distortions in favor of larger land owners/water users. In short, there is no automatically “fair” solution.

This is of course not a purely hypothetical question in the context of land reforms where there can be significant variations in farm size. WUA legislation typically provides for this issue to be negotiated during the establishment phase on the basis of the options outlined above: after all if the potential participants of a WUA cannot agree on this issue then it will be difficult for them to effectively work together once the WUA is formed.

Moreover safeguard provisions usually restrict the maximum number of votes that an individual can hold to prevent the risk of unfair domination (usually between 15 and 40 percent of the total).

2.1.8 TARIFFS & CHARGES

Bearing in mind the fact that WUAs are self-funding, it is necessary for WUA legislation to clearly state what the sources of their income are to be. To this end it must specify how WUAs are to set tariff levels for the services they provide.

As regards irrigation there are a number of options. The simplest is to charge by reference to the volume of water delivered or the number of irrigations received. In the case of supplementary

irrigation, however, it is usually necessary to provide for a split tariff whereby each participant pays a share of the fixed costs of the WUA (for operation and maintenance) in any event as well as volumetric charge by reference to the amount of irrigation water delivered. In this way the integrity of the irrigation system can be maintained even if very little irrigation water is delivered (due to high levels of rainfall for example).

2.1.9 REGULATORY OVERSIGHT

Finally, WUA legislation invariably provides for some form of regulatory oversight by the ministry responsible for irrigation/water use. It is not realistic to assume that the ministry of justice or other agency with general responsibility for legal entities will have the knowledge or inclination to regulate WUAs in an appropriate manner.

It is to be noted, however, that this is “light touch” regulation. The regulator provides legal and economic oversight to ensure that the establishment and operation of WUAs takes place in accordance with the applicable legislation. Thus the approval of the regulator is typically required during the establishment procedure as well as if any substantive changes are proposed to the structure or tasks of the WUA. Legislation typically not only requires WUAs to prepare annual accounts but to file a copy of these, together with an annual return (a very brief report) with the regulator such that an overall picture of WUA activity is maintained at the central level.

Powers may be conferred upon a regulator to provide advice and support but it is important to emphasize that a regulator does not seek to substitute its own technical decisions for those taken by a WUA. Moreover the powers of a regulator to undertake an audit/inspection in the case of apparent wrongdoing (as evidenced from the filed accounts/report or the failure to file such accounts/report and/or a complaint from WUA participants) should be graduated and proportionate. After all WUAs are intended, as far as possible, to be autonomous bodies.⁶

2.2 RIGHTS OF WUAS TO USE IRRIGATION INFRASTRUCTURE

In order for WUAs to be able to function effectively they too need to have some form of tenure security over the irrigation systems they are responsible for.

This can be conferred through: (a) ownership rights; (b) rights created under a lease; or (c) gratuitous long-term use rights, usually contained in some form of use or concession agreement.

Particularly in the case of irrigation infrastructure constructed with public funds, option (c), the granting of secure long-term use rights is by far the more common approach. However in order to grant such rights it is necessary to have some of express legislative provision: the state cannot simply hand out state assets. Privatisation legislation may otherwise apply.

The minimum legislative requirements in this respect include:

- A clear identification of the transferor (i.e., which public body is entitled to make such an agreement);
- A description of qualified transferees (i.e., WUAs, but consideration could be given to described qualifying criteria)
- The legal nature of the transfer (in gratuitous use for example) and its scope in terms of a clear description of the infrastructure transferred;

⁶ *Legislation on Water User Organizations– A Comparative Study* FAO, Rome, Legislative Study No. 73 (2003) <http://www.fao.org/docrep/006/Y5049E/Y5049E00.HTM>

Creating legal space for water user organizations: transparency, governance and the law FAO, Rome Legislative Study No. 100 (2009) <http://www.fao.org/docrep/012/i1120e/i1120e00.htm>

- A description of the state of the infrastructure at the time of the transfer and the obligations of the transferee to maintain/improve the infrastructure;
- Mechanisms to ensure compliance;
- Procedures for extending, terminating or modifying the agreement.

In many of the countries of the former Soviet Union, however, there are added complications with regard to the rights of WUAs to use irrigation infrastructure contained within the boundaries of the former state and collective farms (the so-called “on-farm” systems).

In this connection it is necessary to consider how such irrigation infrastructure was operated in Soviet times. In most countries the so-called “inter-farm” irrigation systems that were used to supply water to more than one state or collective farm were operated by the Rayon and Oblast water departments (Rayvodkhoz/Oblvodkhoz). These were, and are, state bodies and the state was and remains the owner of the inter-farm systems.

In the case of the former state farms the state was also the owner of the on-farm infrastructure as overall owners of the farm. In such circumstances the state remained the owner of the on-farm systems and can therefore transfer them in use to WUAs again provided appropriate provision is made in the legislation.

In the case of collective farms, however, while the land was owned by the state, the infrastructure which included the on-farm irrigation systems, as well as the movable assets, were collectively owned by the former members of the farm (and had never been owned by the state). Unlike movable assets and some fixed assets (such as trees), the on-farm irrigation systems obviously could not be divided up into shares and distributed as part of the agrarian reform process.

In many former Soviet countries, the former on-farm systems entered into a kind of legal limbo with unclear land and agrarian reform laws not clearly identifying their destination. In many countries the former on-farm systems passed in practice under local government responsibility but with no clear legal basis for that: in theory, at least, they remained under the collective ownership of the former collective farm members. In such circumstances the idea of a transferring use rights to WUAs is more complex and in a sense redundant. A simpler solution is simply to provide that once a WUA is established on a former collective farm as a matter of law it acquires the rights to use the infrastructure as the consent to this is implied by the fact of its establishment (given that the WUA founders are the same former collective farm members who are the legal owners of shares in the on-farm irrigation system).

2.3 RIGHTS WUAS TO WATER

In order to be able to operate effectively, WUAs need to hold secure rights to irrigation water. There are two basic scenarios.

Under the first scenario, a WUA takes responsibility for an entire irrigation system, starting from the diversion structure from which water is abstracted from a river or stream. Such a system may comprise only a farmer built earth primary canal that can be used to irrigate say 30 hectares of land. Or it may be made up of a network of concrete canals and serve quite a large land area of more than 1,000 hectares. In either case, the position is the same: the only way for such a WUA to obtain water security is to hold a formal water abstraction right.

Under the second scenario, whereby a WUA is supplied with water by a public irrigation agency, such formal water abstraction rights will only be of indirect relevance. In such circumstances what is being provided by the irrigation agency is not simply water, or rather bulk water, but rather a service, namely the supply of that water.

Such relationships are usually described in bulk water supply contracts. In order to provide sufficient legal security to WUAs, such contracts need to be of a sufficiently long term. Annual water supply contracts for example do not provide sufficient security: a WUA may indeed be reluctant to accuse an irrigation agency of breach of contract in respect of an annual contract for fear that a new contract may not be concluded the following year.

Good international practice, therefore, provides that bulk water supply contracts for anything between 10 and 25 years. In Azerbaijan, for example, such contracts last for 10 years in accordance with article 25 of the Law on Amelioration and Irrigation. Because of natural variability in water resource availability it is not usually possible to specify a one-off volumetric figure for annual delivery. Instead long-term bulk water supply contracts typically specify a procedure for the calculation of annual volumetric allocations by reference to a fixed share of the available flow. This is reflected in an annual water delivery agreement concluded between the irrigation agency and the WUA pursuant to the long-term bulk water supply contract. The long-term bulk water supply contract also typically specifies what is to happen during abnormal conditions as a result.

To be effective, however, such contracts need to be concluded within an overall framework for irrigation water management that creates a logical framework for decision-making including as regards the development of tariffs for irrigation water supply as well as overall system management. Such legislation invariably also sets out the institutional arrangements for the irrigation sector including providing for the establishment of the bulk water supplier, usually an irrigation agency, and specifying the role of the government or relevant responsible ministry.

2.4 WUA TAX ISSUES

In terms of international practice, WUAs are generally exempt from paying a variety of taxes including profit tax, sales tax, value added tax (VAT) and property tax.

Such exemptions may result from their non-profit status and/or as appropriate to their public law status. This is an important issue, as the additional burden not only of paying taxes but also - in the case of value added and sales taxes - of calculating and accounting for them.⁷

A key point to note, though, is that the issue of the taxation or otherwise of WUAs is generally contained in tax legislation, in a unified tax code for example, rather than in WUA legislation. The reason for this is easy to understand: if tax issues are contained in a myriad of sector and sub-sector laws any tax system will rapidly become unworkable.

It follows that the question of the taxation of WUAs is ultimately a matter of tax policy. In this respect there are a number of issues to consider.

In terms of profit tax, WUAs are generally exempted entirely. The rationale for this is that WUAs do not distribute the profits to their members. However, at the same time it is important that WUAs can actually make a profit, in terms of a surplus of income over expenditure, as they will otherwise rapidly become insolvent. Specific wording is therefore useful in WUA legislation to explain the notion of WUA “profits.”

⁷ For example one advantage held by Californian WUAs established as “irrigation districts” is that they are non-taxable entities. For tax purposes, they are treated very much like a branch of the local government. This means that while they charge sales tax on the water they supply, they pay no taxes on property, and are exempt from paying taxes on vehicles and other taxable assets, including revenue derived from interest income on bank accounts and other financial instruments.

Exemptions from sales or value added tax area little more complex. WUAs are often exempted from such taxes but not always (in Spain they are not for example). The rationale for exempting WUAs from such taxes are is twofold: not only can these taxes be costly for WUAs to collect but also the services supplied by WUAs are not ordinary commercial services. Having said, if the intention is to exempt WUAs from liability to pay and collect such taxes some care is needed. Simply exempting WUAs from the need to register for value added tax and to collect input tax from their members may be counter productive if WUAs still have to pay VAT on services provided to them (such as bulk irrigation water or electricity) as they will end up having to pass on such costs to their members in full. A better solution in these circumstances is to require WUAs to levy VAT but to set the rate at zero: in this way WUAs can recover any VAT that they pay for services supplied to them without in turn levying VAT on the services that they supply (to their members).

In terms of land tax this too is a matter of tax policy. The rationale for exempting WUAs from paying land tax on the infrastructure that they use derives from the public service nature of the use of that infrastructure: a ministry of transport does not, for example, usually pay tax on land used for roads!

Finally it is important to note that whatever tax benefits may be accorded to WUAs they remain liable for paying the usual tax and national insurance charges on any employees that they may have.

3 EVALUATING THE CURRENT LEGAL FRAMEWORK FOR WUAS IN TAJIKISTAN

Having briefly described international practice, it is now necessary to turn to the legal framework for WUAs in Tajikistan. This section follows the same order as the previous section: in other words the WUA Law, the rights of WUAs to use irrigation infrastructure, the rights of WUAs to water and taxation issues.⁸

3.1 THE WUA LAW

The WUA Law comprises 25 articles contained in six chapters. In outline, it:

- Describes the legislation applicable to WUAs (Article 1);
- Sets out a number of definitions (Article 2);
- Describes the goals and objectives of WUAs (Article 3) and sets out general principles for their functioning (Article 4);
- Sets out the establishment procedure for WUAs (Article 5) and specifies the constitutive or establishment documents for this (Article 6);
- Specifies procedures for the reorganization and liquidation of WUAs (Article 7);
- Sets out the rights and duties of both WUA members and WUAs (Articles 8-11);
- Describes the management bodies of WUAs (Article 12) and their functions (Articles 13-17);
- Identifies the sources of property of WUAs (Article 18);
- Specifies how the budget is to be established and the taxation status of WUAs (Article 19);
- Provides for the filing by WUAs of activity reports (Article 20);
- Contains provisions on regulation and government support to WUAs as well as state regulation of WUAs (Articles 21-22);
- Describes the legal basis on which WUA staff are to be employed (Article 23);
- Contains provisions on responsibility for the violation of the law (Article 24); and
- Contains a commencement clause (Article 25).

In broad terms the WUA Law seems to be in line with international practice as regards its content and substance. It follows the general approach of equivalent legislation adopted in other CIS countries, including Armenia, Azerbaijan, Georgia, the Kyrgyz Republic and Moldova.

In particular it:

- Provides for the establishment of WUAs as a specific type of legal entity on the basis of specific legislation;
- States that WUAs are to be focused on a single task, non-profit and self-funding;
- Sets out the rights and duties of WUA members;
- Indicates that WUAs are to be governed on the basis of elected institutions by their members;
- States that a WUA is to be responsible for a specific irrigation system; and
- Contains a degree of flexibility in terms of the general assembly meetings.

Nevertheless there are a few important issues that need further consideration and which may require re-thinking and/or revision in terms of good international practice. These are set out below.

However, before coming to these substantive issues it is important to make the following points. First, revising or amending legislation can be much harder than drafting it in the first place. However good or bad a legislative text, it has its own internal logic: making a change to one part may have unforeseen (unforeseeable even) impacts on another part.

⁸ Responses to specific comments raised by WUA Specialist, D. Vermillion are specifically addressed in Annex B of this report and also reflected in the text.

Second, no law is perfect. All legislation emerges by way of compromise from the legislative process. Moreover everyone may have their own view as to what is a perfect law. Simply because the law could in theory be drafted in a different or better way does not necessarily mean that this should be recommended, given that this law has already been adopted by the Tajik Parliament. In other words, the urge to perfect or to make changes for the sake of change should be avoided. Changes should only be proposed to a law to the extent that these are really legally necessary at a substantive level or to avoid ambiguity.⁹

Third, as always can occur when analyzing a text in translation, ambiguities may arise out of conceptual and grammatical differences between the Tajik and English languages. All of the comments that are made below are therefore subject to the caveat that it is the Tajik wording that counts at the end of the day and that translation may have obscured the original meaning. In this connection it is also important to note that these comments are made on the basis of the unofficial translation that has been supplied.

3.1.1 THE PRECISE TASKS OF WUAS

The next point is that the basic function, described as the basic goal, of WUAs is not very clearly detailed. Article 3 states:

Water User Associations shall be established with the purpose to protect, use inter-farm shared or belonging to individuals, water facilities for fair, effective, timely distribution of water among their members and other water consumers, collection of water supply charges, resolution of disputes between members and other water consumers on distribution and use of water.

This is not incorrect as such. But it is not very clear. Moreover, it is not entirely adequate because it does not tie down the issue of where a WUA protects and uses the water facilities. In Tajikistan, WUAs are primarily concerned with irrigation and land drainage (usually arising from irrigation). The key point to note, though, is that WUAs invariably undertake their activities only within a specified or defined area.

Legally speaking, that defined area—or “service area” where a WUA provides services to its beneficiaries—is absolutely fundamental to the notion of a WUA. For a start, a WUA may only operate within its service area. At the same time, no one other than the relevant WUA may provide those services within the service area. Moreover, the service area determines who may benefit from the activities of the WUA: if you hold land within the service area you may be a member of the WUA but not otherwise.

The WUA Law does in fact contain a definition of service area in Article 2, which refers to the “**area serviced by Water User Associations** – certain geographic territory serviced by the Water User Associations.” Nonetheless, greater use needs to be made of this term including as regards the basic function of a WUA. It would also be logical to make it clearer that the service area is a legal concept and not just the description of where a WUA operates. Why not call it “Service Area” in capital letters? This issue needs to be examined further in terms of the actual Tajik wording.

Based around the concept of the service area it is suggested that a more complete description of the nature and function of WUAs be developed.

Finally, one further question arises in terms of the scope of the activities of WUAs. Some of the reports reviewed suggest that they might potentially have a role in water supply and sanitation. Amending the legislation to this end would not be contrary to international practice, although

⁹ There are also practical reasons to try and keep the number of changes to the absolute minimum necessary. In many jurisdictions the parliament procedure is shorter and easier in the case of amendments than the adoption of new laws. However if too many amendments are proposed, legislatures often require the adoption of brand new legislation. Second amending the law may de-stabilize existing WUAs, if too many amendments are introduced at a practical level unless the legislature has an ongoing program of codification it can be difficult to understand revised excessively revised texts.

ordinarily a WUA would only undertake one task at a time. In other words, the same WUA would not supply water for both irrigation and domestic purposes.

3.1.2 LEGAL STATUS

In terms of their legal status it would appear that WUAs in Tajikistan have a specific legal status as a kind of *sui generis* legal entity. This is because Article 50 of the Civil Code allows non-profit organizations to be created *inter alia* "in other forms prescribed by law."

At the same time, though, it is equally clear that WUAs are not overtly established as bodies of public law and it is therefore difficult to go very far in terms of conferring specific legal powers upon them or in providing for compulsory membership or compulsory establishment. This situation, though, is perfectly standard in other former soviet transition countries. It would nevertheless be advisable to stress the public interest function of WUAs.

3.1.3 ESTABLISHMENT PROCEDURE

Following on from the previous point as the fact that the WUA Law provides for both voluntary WUA establishment and voluntary WUA membership is in line with the practice in other transition countries. It follows that if farmers do not want a WUA then it will not be set up. But, in the absence of compulsory membership, the question then arises as to how to ensure that there is sufficient support not only for the establishment of a WUA but also for its subsequent operation. In other words, how to promote the support of WUAs once they are established?

As noted above, the best way of ensuring participation in WUAs is to encourage wide participation in the establishment process. The WUA Law goes some way in this respect in that it does seek to require representatives from each part of the service area of the proposed WUA (although the language is not very clear here) to be part of the "initiative committee."

However, the WUA Law does not specify any kind of minimum threshold of support for WUA establishment. In other words, as was the case in Estonia, a WUA with a service area of say 1000 ha could be established by half a dozen people. Even if other farmers are entitled to join subsequently, and the WUA Law is not entirely clear on this point, by that stage the main decisions will already have been taken. Consequently it would be appropriate to indicate a minimum threshold of support for WUA establishment such as at least 50 percent of the potential members or, if there are disparities in the size of land holdings, 50 percent of the potential members holding at least 50 percent of the land located within the service area. Of course this makes it more difficult to formally establish a WUA. On the other hand a WUA established on paper with no genuine support is also difficult to operate. Moreover, given that the establishment or otherwise of a WUA within a given irrigation system has implications for all land holders it is only democratically fair that all of those potentially affected agree to the move.

Another issue that is not addressed in the WUA Law is the technical feasibility of proposed WUAs. There is, for example, no guidance as to how a WUA service area is to be defined, a simple rule specifying hydraulic unity or to prevent two or more WUAs being set up on the same system perhaps with overlapping service areas. The WUA Law needs to provide some guidance here. Moreover the WUA Law does not provide for any technical evaluation of the paperwork of a proposed WUA before a vote is taken at the foundation meeting. Of course the state registration entity may be expected to check and verify the constitutive documents (described in Article 6), but this will only be from a narrow legal angle.

For this reason it would be appropriate to provide for the prior approval of the constitutive documents by the WUA supervisory body, an issue that is considered in more detail below.

3.1.4 MEMBERSHIP ISSUES

In terms of the question as to who may be a WUA member, the WUA Law seeks to address this issue in Article 2 which sets out a number of “basic concepts” or definitions. Article 2 states:

Members of Water User Associations – individual entrepreneurs and legal entities with the right to use land for agricultural production, located within the territory serviced by the Water User Associations that acknowledge the charter of the Water User Associations, that voluntarily joined the Associations;

Generally speaking, it is never a good idea from a drafting perspective to set out substantive legal rules in a definition. And of course the question of who may or may not be a member of a WUA is most definitely a substantive rule.

More specifically, the WUA Law needs to expressly state that any person who holds land within a WUA service area has the right to become a member of the WUA. But what type of land holding is sufficient? The WUA Law simply refers to those with a right to use land, but this is probably not a good solution. Short-term land users (by tenancy or otherwise) may lack sufficient interest in seeing the creation of sustainable WUAs and if there are frequent changes in the identity of land users this can destabilize a WUA as well as place it under an increased administrative burden.

For this reason, WUA legislation typically specifies that those with long-term user rights (of, say, more than three years) have an automatic right to participate, usually through membership, while others can only participate with the approval of the land owner. This is probably justified on the basis that if the WUA operates well the landowner benefits in the long term.

For the sake of legal certainty, in cases where participation is through membership it can also be advisable to specify that:

- in the case of rented land, the land and tenant cannot simultaneously both be members in respect to the same plot;
- if land is held by more than two or more people, they should nominate one of their number to exercise the joint membership rights;
- a purchaser of land may only join the WUA in place of a previous member when he/she is liable to discharge any debts owed by that former member; and
- following the death of a member, that person’s successor may accede to membership provided any debts owed by the deceased are first paid off.

Next, the WUA Law needs to specify the procedure whereby a new member can join a WUA. This is usually by written application and legislation typically also specifies the grounds on which membership may be denied, such as where the applicant has been expelled from the WUA within a specific previous period, say five years, and has failed to pay off any outstanding debts to the WUA. The WUA Law provides that such decisions are to be made by the General Meeting and there is no real need to alter this.

Usually WUA Laws also specify that an applicant may not join a WUA until the end of the irrigation season, although an exception can be made in the case of successor to a member who was a natural person. Once the General Meeting has determined an application is accepted, the applicant should be notified and the member’s name should be entered into a register of WUA members (an issue that is returned to below).

Given that membership is not compulsory, the WUA Law should also specify how membership can be lost or given up. First of all it should specify that if a person ceases to hold land within the service area, that person must resign and inform the Board. Accordingly, if one fails to notify the Board the General Meeting may terminate that person’s membership *ex officio* by erasing that person’s name from the register of WUA members.

What happens though if a WUA has incurred specific expenditures, for example, as a result of upgrading part of an irrigation system that passes through the land of such a member? In that case it would be appropriate to specify that if a WUA has incurred specific expenditures relating to the design, construction, reconstruction, operation or maintenance of an irrigation system, the person wishing to resign must first reimburse the WUA the amount equivalent to that expenditure before being entitled to do so.

Second, WUA legislation typically also provides that a WUA member may be expelled on the decision of, say, the General Meeting on various specified grounds such as:

- systematic non-compliance with the provisions of the charter or internal resolutions of the WUA;
- refusal to pay charges or liabilities due to the WUA;
- unjustified refusal to pay the costs to repair the damages caused to the WUA equipment or infrastructure caused by a willful or negligent act or omission; or
- illegal water use or repeated refusal to comply with water distribution schedules.

Provision is also typically made that such a decision may be appealed to the courts.

3.1.5 THE RIGHT TO WATER

The main reason why any farmer would join a WUA is to secure a right to water. Curiously the WUA Law does not explicitly recognize this. Article 8 states that WUA members have the right to “request” a supply of water. But a right to request something is obviously not the same as a right to something. Unless this is simply a matter of translation, it is suggested that this article be revised.

3.1.6 THE GENERAL MEETING

Two comments need to be made about the provisions in the WUA Law on the General Meeting.

First of all the provisions on the Meeting of Representatives are not clear. Specifically, the wording suggests that a WUA may have both a General Meeting and a Representative Assembly.

In other CIS countries WUA legislation generally provides that a WUA is to have either a General Meeting in which all members can participate or a Representative Assembly in which only elected representatives participate. This is because if a WUA has more than, say, 200 members it can be difficult to hold an effective meeting of the general assembly – simply finding a suitable location can be difficult.

The solution to this kind of problem is to sub-divide the WUA service area into a series of “zones” or “divisions” with each such zone or division electing one or more representatives to the Representative Assembly which in turn starts to look more like a parliament. An alternative approach is simply to provide that the participants at the General Meetings are elected representatives and not all of the members of a WUA.

Second, the provisions on voting at General Meetings provide only for single votes to be allocated to participants, the one member one vote system. As described in section 2.1.6 above, this is not necessarily a fair system—especially in countries like Tajikistan where there are significant differences in farm size. The solution, as also noted above, is to provide for alternative vote allocation systems during the establishment phase. Options include allocating vote by reference to: (a) the land area served; (b) the volume of water used during the previous irrigation season; (c) the amount of fees paid to the WUA during the previous season; or (d) some other fair combination of the above. As noted, it is appropriate to set a maximum number of votes that may be held by any one member (from 15 to 40 percent, say).

3.1.7 THE BOARD AND THE CHAIRMAN

The WUA Law provides for the direct election of the Chairman by the General Meeting. The problem with this approach is that as the WUA members elect the Chairman, s/he has a mandate that is as strong, if not stronger, than that of the Board.

The basic problem is that this approach has the effect of reducing the importance and role of the Board, given that the body is also chaired by the Chairman. Instead it is suggested that the notion of the collective responsibility of the Board would be enhanced if the Chairman were elected by and from among the board members.

Another concern with the current provisions regarding the Board and Chairman is that there is no restriction in the WUA Law regarding the maximum term of these officers, given that this matter is left to the charter of each WUA. In theory a charter could provide for excessively long terms. Hence, it would be advisable to specify term limits in the WUA Law. In that event, it may also be appropriate to provide for the rotation of Board members so that they are not all obliged to stand for election at the same time.

3.1.8 DISPUTE RESOLUTION COMMISSION

The WUA Law in its current form provides for the creation of ad hoc dispute resolution commissions. It may be more useful to provide instead for the optional establishment of a permanent commission.

3.1.9 COMMON PROVISIONS ON ELECTED WUA OFFICERS

Another omission in the WUA Law is that it does not address issues that should apply to all elected WUA officers.

For example, the WUA Law does not specify that such officers are not to be WUA employees and that they do not receive salary payment for their work. Moreover, the law should also specifically provide that a person cannot at the same time serve as an WUA officer and be an employee. However, the WUA Law should provide for them to be reimbursed the reasonable costs incurred by them in the discharge of their duties and could provide for them to be paid a token "sitting allowance" if this is provided for in the governing document and in the budget. Evidently the payment of such allowances will impact on the financial situation of the WUA.

It would also be advisable for the WUA Law to provide that the same person may not simultaneously serve in more than one body. In other words the same person cannot at the same time serve on the management board and, say, the dispute resolution commission. Finally the grounds for removing members of the Board as well as the other officers should be specified in the law. These should include:

- A persistent failure without good reason to attend meetings;
- Failure to discharge tasks effectively;
- Breach of the wua charter and internal resolutions; and
- Conviction of a criminal offence.

3.1.10 WUA EMPLOYEES

That WUAs are to employ staff responsible for their day to day operations is implied in the WUA Law but not stated explicitly. Article 15 simply states that the "(f)unctions of executive bodies shall be regulated by the charter of the WUA" while Article 23 on "Labour relationships within the WUA" provides that such relationships are to be regulated by the Labour Code and that WUA employees benefit from applicable social insurance and social protection legislation.

3.1.11 RELATIONSHIP WITH NON-MEMBERS

As mentioned above, in order to encourage non-members to join, WUA legislation in a number of countries allows WUAs to charge higher fees to non-members, but usually sets a limit on this (by requiring them to be not more than 25 percent higher, for example). Otherwise it is important for the

legislation to make it clear that WUAs have a complete discretion as to the level of such charges payable by participants and non-members alike.¹⁰

3.1.12 FEES AND TARIFFS

Curiously the WUA Law does not include the payment of fees and tariffs due to the WUA among the list of obligations of WUA members in Article 9. This may, of course, be indirectly implied through the duty on WUA members to comply with the WUA charter and internal resolutions. Nevertheless its omission is surprising.

Other references to fees are contained in Article 2 which includes the definition "membership fee funds – funds collected upon the decision of the General Meeting from the Water User Association members and used to operate and maintain water facilities, and ensure operation of Water User Associations" which is not subsequently used in the law and Article 13 which specifies that "membership fees" are to be determined by the General Meeting. Otherwise, Article 18, which is headed "Property belonging to the Water User Association," lists a number of sources of WUA "property," including "the funds of the members of the WUA" (which is presumably a translation mistake, as WUAs are legally separate to their members) but does not otherwise contain express reference to fees and their structure. Given the importance of this issue, as noted in section 2.1.8, WUA legislation typically contains express provisions on WUA fees.

In terms of setting and collecting fees, the simplest option is for each WUA to levy a water supply charge—on a volumetric basis in those cases where the quantity of water delivered can be measured, or based on the number of irrigations (and the area irrigated if there is a wide variety in land parcel sizes).

This approach can work satisfactorily in places where irrigation is essential. However, particularly in the case of supplemental irrigation, there can often be a good policy case for the law to distinguish between the income necessary for operation and that for maintenance. The risk with supplemental irrigation is that if it rains and irrigation is unnecessary then if a WUA's income is entirely dependent on the volume of water actually delivered it may have insufficient funds to prepare the system for the next irrigation season.

The problem is that if farmers take the same "wait and see" attitude to irrigation the following year, it is usually too late to undertake the necessary pre-season maintenance if the rains fail. In such circumstances it can be advisable for the legislation to specify that, say an area-based irrigation service fee should be payable by all WUA participants before the start of the irrigation season so that the system can be prepared.

Subsequently WUA participants who choose to irrigate should pay a water supply charge calculated on a volumetric basis (or equivalent). As such the payment of the irrigation service fee can be seen as a kind of insurance premium: if it rains irrigation is not necessary, but if it does not rain, then the irrigation system is at least ready to be operated.

Similar considerations apply in the case of pumped irrigation. All members should be required to pay an area based charge to cover the costs of maintaining the irrigation system as well as a volumetric water supply charge, which will include the costs of electricity for pumping. As noted above, in order to encourage WUA membership it will be appropriate to charge non-members at a higher rate. Such a rate should be calculated in a manner such that it takes into account both the volumetric water supply charge and the area based irrigation service fee.

¹⁰ In this connection it is important to ensure that irrigation WUAs as effective monopoly suppliers of irrigation water are not subject to anti-monopoly legislation, requiring the approval of tariff rates by a special central commission, as was the case in Azerbaijan before the WUA law was adopted.

Apart from specifying that a WUA is to operate on a non-profit basis, it can also be useful to require each WUA to set up a reserve or emergency fund and to require all surplus income to be transferred into that fund. Apart from the fact that such a fund is likely to be objectively necessary, it may make it easier to argue that WUAs should be subject to more favorable tax treatment than other types of organizations.

3.1.13 INTERNAL RECORDS AND REGISTERS

The WUA Law contains minimum reference to the accounts, records and registers that a WUA needs to maintain if it is to operate effectively.

First of all the WUA Law should specifically require each WUA to prepare annual accounts (at present there is only an obligation that annual reports and balance sheets be submitted to tax bodies and state statistical bodies).

At a minimum these should be approved by the General Meeting (or Meeting of Representatives) and ideally they should be verified or audited by an external source as well as by the audit commission (an issue that is returned to below). In this connection, as Article 13 refers only to approval of the balance sheet and report by the General Meeting, it would be appropriate to specify that the profit and loss account should be attached to that report.

In the name of transparency and good book-keeping the WUA Law should require WUAs to maintain a series of records such as:

- A register of participants that should be periodically updated;
- Minutes of the meetings of the General Assembly, management board, audit commission and dispute resolution commission if there is one;
- A register showing the quantities of water received and supplied; and
- Copies of contracts entered into by the WUA.

WUA members should have the right to inspect these records.

3.1.14 REGULATORY OVERSIGHT

The regulatory oversight of WUAs is an extremely important yet potentially delicate matter. On the one hand, some form of legal and financial oversight by the state of all forms of legal person is justified on a range of public interest grounds. The public interest functions of WUAs make it particularly important that they are subject to appropriate supervision in order to ensure as far as possible that they do not fail. The main objective of oversight is, after all, to ensure effective and lawful WUA governance. In order to ensure that WUA oversight takes place in a clear and transparent manner, and to ensure that oversight is genuine oversight rather than interference (potentially or in practice), it is necessary to have quite detailed provisions on WUA oversight.

The first task of WUA legislation is to identify the oversight body. This is typically a ministry or a special unit established by law but located within a ministry. In countries where the ministry responsible for irrigation and land drainage is not also responsible for agriculture it can be appropriate to set up a statutory committee. The provisions in the WUA Law indicate that the identity of the “body regulating and supporting WUAs” is to be specified by the Government. Given that Government’s organs are subject to periodic restructuring, this is probably appropriate. However it should not be the case that anyone employed by the relevant ministry can undertake WUA oversight activities. To that end it is appropriate to create a specific unit within that the relevant ministry or agency and to confer legal powers only that unit and its officials.

Moreover the powers of the body regulating and supporting WUAs, as described in Article 21, go way beyond WUA supervision:

- Maintain the Register of Water User Associations;

- Provide recommendations and support to the Water User Association on legal, financial, and technical issues;
- Approve the rules of using water resources, preventing contamination, reduction and drying, prevention and elimination of harmful impact of water;
- Approve plans on the use of all water resources and their protection, water resource balances, implement state control over the use and protection of water resources, monitor quality of water and contamination of water facilities;
- Plan measures to use and protect water, prevent and eliminate harmful impact;
- Resolve other issues requiring state regulation and support to the Water User Association.

Instead, provisions on WUA oversight need to be much focused on...WUA oversight. For example, it is correct that the WUA Law indicates that the oversight body should maintain a register of WUAs. However, it needs to go further and set out a mechanism for this by requiring, for example, that WUAs file an annual return so that the supervisory body has an up to date record of WUAs in the country.

The next question is how is the oversight body to actually fulfill the task of supervising WUAs. Simply saying that “regulation” is undertaken by a body nominated by the Government is way too vague.

At the very minimum, the oversight body needs to have up to date information about all WUAs operating within the jurisdiction. The first requirement is therefore for WUAs to file an annual report or return providing up to date details of the WUA, including the composition of its management board. Such a report or return should be accompanied by a copy of the WUA’s most recent accounts.

In an ideal world such accounts would be audited, but in practice this is often not practical in the context of WUAs in rural areas. Consequently the oversight body should have the legal power to undertake random audits of the WUAs that it is responsible for. In any event, the filed accounts should be reviewed by the oversight body along with the report or return for obvious examples of wrongdoing.

What happens if things go wrong? First of all the oversight body should have the power to routinely request copies of documents. Furthermore it should be entitled to inspect the accounts and records of a WUA: (a) where this is directly requested in writing by a percentage of the participants in a given WUA; or (b) where following an audit or on the basis of an inspection of the accounts or annual return there is prima facie evidence of wrongdoing. In order to undertake such an inspection the oversight body, or more specifically one of its authorized officers, will need the necessary “police” powers, including powers of access, inspection as well as a right to require the provision of information by WUA officials and employees.

What if an inspection takes place and evidence of wrongdoing is found? One option would simply be to give the oversight body the power to order the necessary action to be undertaken to remedy the situation. Such an approach may, however, have the negative effect of disempowering the WUA and its membership. An alternative approach is to confer the necessary power on the oversight body to require the management board to call an extraordinary meeting of the general assembly to which its findings can be presented. If the management board refuses to do so, then the oversight body should have the power to dismiss the management board and to call a meeting itself and to appoint a temporary “interim manager” until such time as new elections can be arranged.

In order to prevent excessive or undue interference, it is particularly important that the WUA legislation carefully sets out the circumstances in which the oversight body can intervene in the activities of a WUA. In the present context, the WUA Law should make it clear that the supervisory body is not entitled to substitute its own judgment for that of the WUA and its rights of intervention

as set out in the law are exhaustive. In other words, it should be entitled to intervene in the operation of a WUA only if there is *prima facie* evidence of wrongdoing or illegality.

3.1.15 WUA FEDERATION

It is understood that steps are being taken to establish WUA Federations in Tajikistan that will take responsibility of inter-farm infrastructure. The only reference to WUA Federations in the WUA Law, however, is contained in Article 10 on the rights of WUAs where it is stated that they have the right to “create a federation of the Water User Associations acting pursuant to the approved charter in order to coordinate fulfilment of charter obligations.”

This reference in itself is clearly insufficient. So what should the WUA Law say? There are basically two options. One is for the law to provide that Federations are a new separate type of organization. In this case, though, quite detailed provisions on Federations would be necessary. This approach has been undertaken in a number of the transition countries. In Armenia, for example, the full name of the WUA law is actually the “Law of the Republic of Armenia on Water User Associations and Federations of Water User Associations.” Extensive provisions on Federations are also contained in the Romanian law.

An alternative approach, as seen in Germany, is to provide that a Federation is effectively a type of WUA, albeit a WUA whose members are also WUAs.

3.2 THE RIGHTS OF WUAS TO USE IRRIGATION INFRASTRUCTURE

In terms of the rights of WUAs to use infrastructure, the provisions in the WUA Law are not particularly clear or extensive.

Article 18 provides:

The Water User Association shall accept fixed assets of the water facilities located in the service area in its balance sheet for operation and maintenance upon the consent of the owner.

The Water User Association shall not have the right to sell or lease fixed assets of water facilities for operation to other organizations. When the Water User Association is liquidated, these assets shall be returned to original owners.

But this article does not really specify how or why such water facilities (which are former on-farm irrigation systems) should be on the balance sheet of a WUA, or for that matter the legal basis for this. Moreover there is no provision in the WUA Law for the transfer of inter-farm systems, or parts of inter-farm systems, to WUAs or WUA federations.

Considering that the situation in Tajikistan is the same as in the other former Soviet countries, there are two basic options for ownership of former on-farm systems: either these are owned by the state (in the case of former state farms or in the case of former collective farms if those systems have been transferred to the state on one basis or another) or they remain under the ownership of the former collective farm members on a share basis.

In the first case the state can transfer the right to use the former on-farm systems, either on the basis of formal transfer agreements, or as a matter of law through appropriate wording in a revision to the WUA Law. In the second case, as the members of a WUA are effectively the owners of the former on-farm system operated by that WUA (as they were the members of the former collective farm and own on a share basis the system owned and operated by that collective farm), they can be deemed to transfer the right to use that system to the WUA that have established. Suggested possible wording for these scenarios is suggested in Annex C. As regards the inter-farm systems,

wording is suggested in Annex C to enable these to be transferred in whole or in part, as appropriate to WUAs and WUA Federations.

3.3 THE RIGHTS OF WUAS TO USE WATER

Although the WUA Law is effectively silent as to the rights of WUAs to use irrigation water this is not necessarily an omission as such. Such issues are seldom addressed in laws such as the WUA Law which are concerned primarily with the establishment and operation of WUAs as a specific type of legal entity.

Instead, as regards the bulk supply of irrigation water to a WUA, such issues are typically addressed either in a specific irrigation law (which may or may not also contain provisions on WUAs) or a basic water law or water code. In fact the Tajik Water Code does contain a reference to this issue, in Article 68, but the provisions are very brief and in that sense inadequate in terms of creating an appropriate legal framework to regulate the issue of the bulk supply of irrigation water. Article 68 simply states:

Water use in irrigation systems, river systems, main canals, subsoil reservoirs and other water bodies shall be implemented according to the agreements, internal economic (associations) and general systemic plans (schedules) of water use.

In the water use agreements, departments on irrigation and agricultural water supply systems shall clarify terms of water use, as well as mutual rights and obligations of the parties.

In other words, these provisions give little guidance as to the form or content of water use agreements. It is not known whether subordinate legislation has been adopted to give effect to Article 68.

As regards the scenario whereby WUAs have direct access to a water source, this kind of use is classified in the Water Code a special use of water and the topic is addressed in Article 74 of the Water Code which states:

Associations of water users and other public societies can use water bodies for irrigation on the basis of license issued by special authorized state body on regulation of use and protection of water and according to an agreement with the local water supply organization which is responsible for the delivering of water.

However, as can be seen, this article seems to require a WUA to hold both a license and an agreement with the relevant local water supply organization, which seems a little excessive. Again, it is not clear from the documents provided whether or not subordinate legislation has been adopted to develop the rather brief contents of Article 74.

3.4 TAX ASPECTS UNDER THE WUA LAW

The only references to tax issues in the WUA Law are contained in Article 19 which states:

The Water User Association as a non-profit organization shall be subject to taxation pursuant to the terms and requirements fixed by the Tax Code of the Republic of Tajikistan.

These provisions probably go as far as they can and as such are totally normal in terms of international practice. As noted above, tax aspects of WUAs are generally addressed in tax laws/codes and not in WUA legislation.

4 THINKING ABOUT LEGISLATIVE REFORMS

In terms of legislative reform a number of weaknesses or issues that would potentially require reform in connection with the parts of the WUA Law that are concerned with the establishment and operation of WUAs have been identified above. Possible wording for recommended revisions to the WUA Law is set out in an amended draft attached as Annex C.

With respect to the rights of WUAs to use the former on-farm infrastructure, the current provisions in the WUA Law are vague and inadequate. However, as described above there are basically two options: either the infrastructure is owned by the state, or former collective farm members own it on a share-basis. In the first case, the state can, through the law, authorize the relevant WUA to manage, operate and maintain the infrastructure. In the second case, as the owners of the infrastructure are the members, or future members of the WUA, there is no reason why they cannot by majority decision authorize the WUA to manage, operate and maintain the infrastructure on their behalf. Again, this can be addressed in the WUA Law and wording to this effect is suggested in Annex C.

As regards the possibility of transferring parts of the former inter-farm systems to WUA Federations, the main problem here is the fact that reforms in terms of the establishment of MIROB organizations as independent agencies are ongoing. The key point to note is that such irrigation agencies will invariably have a key role to play as regards this topic the transferors of infrastructure or in ensuring that such infrastructure is correctly operated and/or maintained. Ideally, provisions on the transfer of state-owned infrastructure to WUAs and WUA Federations should be included in the legislation regulating the establishment of the new irrigation agencies. In the meantime, suggested possible wording is detailed in Annex C.

Similar observations apply as regards provisions on bulk water supply by such agencies: the agencies need first to be established before the legislation can be further developed.

This raises a separate question: will be the provisions on the irrigation agencies be included in revisions to the Water Code or in a separate irrigation law? Both approaches are perfectly reasonable in terms of international practice (including in other transition countries). If a decision were to be taken to address these issues in a separate irrigation law (or equivalent), then a further option would be to include the contents of the current WUA Law in such text. If, however, they are to be addressed in a revised Water Code such an approach (i.e., including provisions on WUAs) would not be advisable. Not only would such a text become very bulky, the “organizational” nature of provisions on WUAs would not sit easily with the regulatory approach of the remainder of the text.

With regard to taxation issues, as already noted, this is an issue that is correctly addressed in tax policy and tax legislation. However, amendments to the existing WUA Law could usefully be made to clarify the non-profit nature of WUAs.

5 CONCLUSIONS

As described in this report, WUAs are long-established in many countries around the world and function on the basis of specific and detailed legislation. Although WUAs are a new concept for Tajikistan, the existing WUA Law is broadly in line with best international practice.

Nevertheless, there are a number of legal issues that arise in connection with the existing WUA Law that call for reform. On the basis of the analysis contained in this report, a set of recommended amendments to the WUA Law are set out in Annex C. The next step will be to carefully discuss the findings of this report so as to ensure that the proposed set of amendments are truly adapted to the current needs of Tajikistan so that they can in turn contribute to the creation of strong WUAs and successful irrigated agriculture in the country.

In terms of the scope of the recommended amendments, it is to be noted that they focus on those aspects of the overall framework that can appropriately be addressed in the WUA Law. And finally, of course, while the legislative framework for WUAs is extremely important, it is but one of the factors that affects WUA performance. Long-term technical support and assistance to WUAs from the Government will be most important in this respect.

ANNEX A - DOCUMENTS REVIEWED

1. WUA Law;
2. Water Code;
3. Report by Ismailov Shvakat, “Legal and Regulatory Aspects of Water User Association sub-sector”;
4. Report by Doug Vermillion: “Legal and administrative issues for amending the WUA Law in Tajikistan Or for supplementing the Law with subsequent items lower in the legal/administrative hierarchy, such as decrees, regulations, instructions, and/or guidelines”;
5. Draft Water Sector Reforms Strategy of the Republic of Tajikistan.

ANNEX B - RECOMMENDED AMENDMENTS TO THE WUA LAW

On the Water User Association

This Law regulates the legal framework of the organization, activities and management of Water User Associations as non-profit organization for operation and maintenance of irrigation system in the public interest.

CHAPTER 1. GENERAL PROVISIONS

Article 1. Legislation of the Republic of Tajikistan on the Water User Association

The Legislation of the Republic of Tajikistan on Water User Associations is based on the Constitution of the Republic of Tajikistan and comprises this Law, other normative and legal acts of the Republic of Tajikistan, as well as international legal acts recognized by the Republic of Tajikistan.

Article 2. Basic Concepts

The following concepts shall be used in this Law:

- **Water User Association** – a special form of non-profit organization established pursuant to this law by legal entities with the right to use land for agricultural production and commercial organizations to manage, operate and maintain an on-farm irrigation system within a defined Service Area.
- **irrigation system** — a network of irrigation and drainage structures including, pipelines, canals, reservoirs, hydraulic structures, pump stations and wells, electricity lines and communication lines, roads, bridges, buildings and other water economy infrastructure.
- **on-farm irrigation system** - an irrigation system built within the territory of a former collective farm or state farm to irrigate the land used by that farm.
- **hydrotechnical structures** – dams, buildings of hydropower stations, water outlet, catchment and discharge structures, tunnels, canals, pump stations, additional structure for flood protection, destruction of riverbanks, reservoir and river bed, structure for protecting storehouses of liquid garbage of industrial and agricultural enterprises, equipment for prevention of canal cracks as well as other structures provided for water resources use and prevention of negative impact of water and liquid garbage.
- **inventorization of fixed assets** – registration of the results of dimension changes and assessment of technical condition of irrigation systems continuously in certain period and in the form of special tables.
- **hydrogeographic unit** – an area located within the boundary of irrigation and drainage system which is irrigated from one source.
- **Water user group** – owners of specific land plots provided with water from one canal, pumping station or collecting system, dam or water-distribution facilities. Such plots may belong to dehqan farms, production cooperatives, enterprises regardless of the property form, and other farms.
- **Members of Water User Associations** – individual entrepreneurs and legal entities with the right to use land for agricultural production, located within the territory serviced by the Water User Associations that acknowledge the charter of the Water User Associations, that voluntarily joined the Associations;
- **Representative area** – part of the area serviced by the Association of water users and land users, who are members of Water User Associations and select one or several representatives to the meeting of representatives;
- **Membership fee funds** – funds collected upon the decision of the General Meeting from the Water

User Association members and used to operate and maintain the irrigation system, and ensure operation of Water User Associations;

- **Funds for payment of water supply services** – funds collected from Association members and other water consumers to pay for water supplied by state water control management bodies in the areas serviced by the Water User Associations;
- **Department for land reclamation and irrigation** ~~Water control management bodies~~ – state organizations in charge of water supply from sources to satisfy demands of various national economy branches, delivery and distribution to consumers;
- ~~Area serviced by Water User Associations~~ **Service Area** – a defined certain geographic territory serviced by the a Water User Associations;
- **Water User Association Regulation and Support Body** means the body appointed by the Government of the Republic of Tajikistan to regulate and support Water User Associations pursuant to article 21 of this law
- **Federation of Water User Associations** – a special form of non-profit organization established pursuant to this law by two or more Water User Associations to provide services of common interest to those Water User Associations.

Article 3. Goals and Objectives of the Water User Associations

~~Water User Associations shall be established with the purpose to protect, use inter-farm shared or belonging to individuals, water facilities for fair, effective, timely distribution of water among their members and other water consumers, collection of water supply charges, resolution of disputes between members and other water consumers on distribution and use of water.~~

A Water User Association is established in accordance with the provisions of this law as a special form of independent, democratic and self-funding non-profit organization to manage, operate and maintain the on-farm irrigation system within its Service Area in the interests of its members and in the public interest. A Water User Association does not distribute derived profits, incomes or compensation between its members.

The following shall be the main objectives of Water User Associations:

- **conduct inventory of fixed assets and take on-farm irrigation systems within service area to its balance for long-term period**
- entering contracts with water control bodies to ensure irrigation water supply to the areas serviced by the Water User Associations from sources;
- on-farm irrigation system management in the Service Area ~~areas serviced by Water User Associations~~ and distribution of water on contractual basis between the Association members and those, who are not Water User Association members;
- operation, maintenance, rehabilitation, repairs, and improvement of on-farm irrigation systems in the ~~areas serviced by the~~ Service Area of the Water User Associations, and, if necessary, construction works;
- **acquisition, installation, replacement, maintenance of hydraulic equipment in the sService aArea; preparation of crop planting and water use plan in Water Users Association's Service Area and its submission to state authorized water users associations regulation and support body**
- recording the volume and quality of consumed water, waste water, financial activity, condition of irrigation structures, condition of lands and providing statistical reports on them to authorized government bodies in charge of regulation and use support of water users associations;
- protection and prevention of water from contamination in the Service aArea serviced by of the Water User Associations;
- performing events on effective use, protection, and improvement of ameliorative land constitution;
- training of Association members and other water consumers in water-efficient irrigation and applying modern irrigation techniques and technology;
- resolution of disputes emerging during the periods when water was used by Association members

and other users, as well as during storage and use of on-farm irrigation network and in other cases related to water use.

Water User Associations can be involved in other types of activities envisaged in the charter necessary to fulfill their goals (function).

Article 4. General Principles of Water User Associations Functioning

Water User Associations shall act based on the following principles:

- involving Water User Association members in operations, repairs and rehabilitation of the irrigation system;
- observance of principles of fairness, equality;
- taking into account opinions and proposals of Water User Association members;
- resolution of proposed issues based on democratic principles and legislation of the Republic of Tajikistan;
- guarantee and ensure transparent information on the current issues and financial operations of the Water User Associations and communicating such information to the Association members and state authorized water users associations regulation and support body;
- ensure fair and equal distribution of water between the Water User Association members ~~and other water consumers~~ in accordance with the irrigation norms and water use schedules;
- ensure efficient and effective use of water aimed at saving water, prevention of contamination, water logging, and salinization of land;
- ensure protection of rights, interests and supporting acceptable ideas of Water User Association users;
- ensure transparency in the decision making and other processes of Water User Associations.

CHAPTER 2. ESTABLISHMENT AND LIQUIDATION OF WATER USER ASSOCIATIONS

Article 5. Establishment of Water User Associations

Water User Associations shall be established pursuant to the decision of founders.

Founders of Water User Associations can be ~~legal entities, individual entrepreneurs, and commercial enterprises~~ natural and legal persons holding rights to use having plots of irrigated land within the proposed Service Area of the Water User Association. One representative from each area shall be delegated to the initiative committee, electing founders and other water consumers.

The initiative committee of the Water User Association shall determine the proposed Service Area, quantity and distribution of water user groups, quantity of required information, clarify goals, objectives and principles of the organization, objectives and liabilities of Water User Association members during official and informal meetings. In the process of the initiative committee activities, during non-official meetings of water users, a working group for drafting the charter shall be established comprising representatives from water user areas. The working group shall arrange the development of draft charter ~~Constitutive Documents of the Water User Association, specified in article 6 of this law~~, of Water Users Association and its discussion in representative areas, and shall then finalize the draft charters ~~submit it to the General Assembly for discussion and adoption~~.

In proposing the Service Area the initiative group shall ensure that the proposed Service Area comprises one or more hydrogeographic units. and for the purpose of this law the term 'hydraulic unit' means a discrete are of land area that can be supplied from a single water source.

The working group shall arrange for preparation of the draft Constitutive Documents of the Water User Association, specified in article 6 of this law, and its discussion in the representative areas, and then submit

the draft to the General Meeting of founders for consideration and approval. shall send a file with all these documents, including the analysis of the comments, to the Water User Association Regulation and Support Body.

The Water User Association Regulation and Support Body may refuse to approve the Constitutive Documents specified in article 6 of this law, only if they are not in line with the provisions of the present law or if the proposed Service Area does not comprise one or more hydrographic units.

Within six weeks from the date on which the file with all draft documents is approved by the Water User Association Regulation and Support Body, the working group shall convene the Foundation Meeting and all potential members of the proposed Water User Association will be invited to this meeting to analyze and approve the draft constitutive documents. The Chairman of the Working Group shall chair the Foundation Meeting.

The constitutive documents shall be considered to be approved if at least 50% plus one of potential members of the proposed Water User Association vote for its approval, if they hold in ownership or use at least 50% plus one of the land plots encompassed in the proposed Service Area.

If the constitutive documents are not approved due to lack of the necessary number of votes, the Foundation Meeting shall be appointed for a subsequent date. If the constitutive documents are not approved at the repeated meeting, the Foundation Working Group shall stop its activity, and the Association establishment procedure shall be considered a failure.

The Foundation Meeting will elect the Board of the Water User Association, which shall operate until its first General Meeting the date of which shall be set by the Foundation Meeting.

After the constitutive documents are approved by the Foundation Meeting the Board will be responsible for applying to register the Water User Association.

Water User Associations shall act as legal entities from the moment of state registration pursuant to the procedures established by the Law of the Republic of Tajikistan "On the State Registration of Legal Entities". (Law of the Republic of Tajikistan dated 25.03.11 No. 706)

The members of the initiative committee and working group shall be entitled to request the reimbursement from the Water User Association of all reasonable costs incurred during the establishment procedure, and such costs shall be included in the draft budget of the Water User Association.

Article 6. Constitutive Documents of the Water User Associations

Incorporation Documents of the Water User Association shall be the constitutive agreement signed by its members, and the charter.

Articles of incorporation of the Water User Association shall contain the following information:

- agreement on establishment of Water User Association with the approval of the name of the Water User Association;
- the main objective of the Water User Association;
- procedure for development of financing sources and property of the Water User Association;
- main documents regulating the work of Water User Associations;
- established rules of relationships between the Water User Associations with government administration bodies;

- conditions for acceptance and amending the founding documents, accepting new members, liquidation and reorganization of Water User Associations.

Water User Association charter shall be approved by all founders.

Water User Association charter shall contain the following information:

- name of the Water User Association which shall include the words 'Water User Association';
- goals and objectives of the Water User Association;
- location of the Water User Association and a description and plan of its Service Area;
- management form of the Water User Association;
- rights and obligations of the Water User Association;
- rights and obligations of members of the Water User Association;
- membership rules and withdrawal conditions and of the Water User Association;
- sources of financing and property of the Water User Association;
- procedures for amending the charter of the Water User Association;
- structure, procedure for establishment and competence of Water User Association management bodies, as well as decision making;
- procedure of organization, registration, re-registration, and liquidation of the Water User Association;
- procedure and organization of financing sources to cover losses incurred by the Water User Association to its members, farms, farm members and their land;
- main principles of Water User Association activities;
- requirements on records management and maintaining register of Water User Associations;
- executive bodies of Water User Associations, their structure, objectives and obligations.

The charter of a Water User Association can contain other provisions that do not contradict the Constitution of the Republic of Tajikistan and the legislation of the Republic of Tajikistan.

The charter of a Water User Association may envisage responsibility of Water User Association members for failure to observe provisions of the charter and decisions of the supreme management body. Water User Associations in existence at the date of entry into force of this law should align their charters with the provisions of this law.

Article 7. Reorganization and Liquidation of the Water User Association

Water User Associations can be reorganized or liquidated voluntarily upon the decision of the General Meeting of members on the following grounds:

- the insolvency of the Water User Association;
- the Water User Association is no longer reasonably able to fulfill its goal;
- the Water User Association is no longer necessary for some other objective reason.

At reorganizing the Water User Association commissioning act or act on writing off the balance sheet of mechanisms and irrigation facilities, reflecting procedure of transferring liabilities of the reorganized Water User Association to other creditors and debtors.

Commissioning act or act on writing off the balance sheet of mechanisms and irrigation facilities shall be approved by the General Meeting of Water User Association that took a decision on reorganization, and submitted for the state registration along with other incorporation documents of the reorganized Association.

During the liquidation of Water User Association and withdrawal from the management bodies and Association membership a liquidation commission shall be appointed to work in accordance with the legislation of the Republic of Tajikistan. Funds and assets in the customer account of the Water User Association shall be allocated pursuant to the decision of the liquidation commission only after the payment

of all debts between the Water User Association members.

Water User Association shall be considered liquidated only in the event and at the time when its name is excluded from the state register of legal entities.

CHAPTER 3. LEGAL STATUS OF THE WATER USER ASSOCIATION

Article 7¹. Water User Association Membership

Any natural or legal person who owns land situated within the Service Area of a Water User Association or holds a lease right or other right of use for a period of three years or more over a plot of land situated that Service Area has the right to become a member of that Water User Association.

A natural or legal person who holds lease rights or any other right of use for the land situated within the Service Area of a Water User Association for a period less than three years, may become a member of that Association only on the written consent of the landowner or after presenting the lease contract which contains permissive provisions to this effect.

In the event that land is owned or leased by more than one person, the persons concerned shall notify the Water User Association which person will represent them in dealing with the Water User Association save that if that person is absent his or her spouse shall have the automatic right to take his or her place.

A natural or legal person who meets the conditions for membership of a Water User Association may apply in writing to the Board of that Water User Association which shall admit the applicant into the Water User Association at the end of the irrigation season unless the applicant has been expelled from the Water User Association within the previous three years.

The Board shall notify an applicant of his or her admission into the Water User Association and shall forthwith amend the register of members of the Water User Association.

A Water User Association member who ceases to own or use land within the Service Area of that Water User Association, and thereby becomes ineligible for membership must resign from the Water User Association and shall promptly provide written notice to the Board accordingly failing which the Board may determine to terminate that person's membership *ex officio* by erasing that person's name from the Register of Water User Association Members.

If a Water User Association has incurred specific expenditure relating to the design, construction, reconstruction, operation or maintenance of the irrigation system within the Service Area, such a person must reimburse the Water User Association the amount equivalent their share of that expenditure before being entitled to exercise their right to resign.

A member may be expelled from a Water User Association by a decision of the General Meeting, on the proposal of the Board, in the case of:

- systematic non-compliance with the provisions of the charter and internal resolutions and regulations of the Water User Association or applicable technical rules;
- refusal to pay charges or liabilities due to the Water User Association;
- unjustified refusal to pay the costs to repair the damages caused to the Water User Association equipment or infrastructure caused by a willful or negligent act or omission;
- illegal water use or repeated refusal to comply with water distribution schedules.

A decision of a Water User Association to expel a member may be contested in the court within three months from the date of the decision.

Article 8. Rights of the Water User Association Members

Members of Water User Association shall have the following rights:

- ~~request Water User Associations to supply water to a fair share of water received by the Water User Association for irrigation purposes pursuant to the water consumption requirements and schedule;~~
- use the services of the Water User Associations on provision of water pursuant to accepted requirements;
- pursuant to the charter, directly participate in the decision making process;
- participate in the General Meeting or meetings of area representatives, make proposals to the agenda of the meetings;
- propose their own nominations and nominate other members to the management bodies;
- protect their rights pursuant to the legislation of the Republic of Tajikistan and the charter of the Water User Association;
- in the event of failure to perform agreements, incur damage to land and agricultural crops, demand Water User Associations to compensate incurred damage pursuant to the legislation of the Republic of Tajikistan;
- familiarize with the accounts and reports of the Water User Association;
- ~~withdraw from the Association upon completion of financial year pursuant to the legislation of the Republic of Tajikistan.~~

Article 9. Obligations of the Water User Association Members

Water User Association members shall be obliged to:

- follow provisions of the Water User Association charter and other internal resolutions and regulations adopted by the General Meeting or the meeting of representatives;
- submit crop planting plan and water use schedule to Water Users Association for approval;
- pursuant to the charter and the agreement, make timely payments;
- observe the requirements of the water distribution plan of the Water User Association;
- guarantee normal maintenance of the irrigation systems and ameliorative status of irrigated lands in own territories;
- compensate losses incurred to the property of the Water User Association;
- provide the Water User Association with the information on the current and planned use of land and water;
- allow Water User Association to access land plots, on which the irrigation system are located, for their operation and repairs, without incurring damage to land and agricultural crops.

Article 10. Rights of the Water User Associations

Water User Association shall have the following rights:

- acquire necessary property, property and non-property rights;
- sign agreements with state water management departments and water consumers; and agricultural crops. water; of representatives of Tajikistan
- acquire necessary funds for timely preparation of the irrigation system to irrigation period;
- request water consumers to pay for water supply services and other fixed payments;
- in necessary cases use land for canals, drains and roads, in case of incurred damage compensate land consumers pursuant to the Land Code of the Republic of Tajikistan;
- enter contracts for import of property to the Republic of Tajikistan to ensure operations;
- create a federation of the Water User Associations acting pursuant to the approved charter in order to coordinate fulfillment of charter obligations;
- to fulfill its functions in an independent manner in accordance with its own decision-making procedures without direction from public officials except as explicitly provided for in this law;
- to supply on an exclusive basis irrigation water to its members and to other persons holding rights to use land located its Service Area;

- the right to sanction non-compliance with the rules of the Water User Association including withholding the supply of irrigation water;
- implement other activities not contradicting the legislation of the Republic of Tajikistan.

Article 11. Obligations of Water User Association

Water User Association shall be obliged:

- maintain working state of the irrigation system and, when necessary, build new constructions;
- implement fair distribution and control over effective use of water pursuant to agro engineering and melioration standards among the Association members ~~and other water consumers;~~
- undertake measures to protect environment, prevent and eliminate consequences of natural disasters, salinization, swamping of land, make proposals to the government administration bodies;
- coordinate irrigation works in the areas serviced with water consumers;
- support acceptable views and proposals of members;
- pay water management organizations for water supply services according to the actual volumes of water **received and agreed to;**
- consider and resolve disputes and conflicts between the Water User Association members during water consumption process;
- implement other works to improve water supply, ameliorative state of irrigated water, efficient use of water and land in the service area.

Water User Association shall not be responsible for the other obligations of its members.

CHAPTER 4. WATER USER ASSOCIATION MANAGEMENT

Article 12. Management Bodies of Water User Associations

Management bodies of Water User Associations shall be:

- the General Meeting of Water User Association members;
- the Board of the Water User Association;
- the Audit Commission of the Water User Association.

Water User Association can also establish a commission for resolution of disputes and other bodies pursuant to this Law.

The same person cannot be the member of the Board, of the Audit Commission, and the dispute resolution commission at the same time.

Article 13. The General Meeting of Water User Association Members

The General Meeting shall be the supreme management body for the Water User Association.

The following issues shall be within the exclusive competence of the general meeting:

- adoption and amendment of the charter of the Water User Association;
- to adopt internal resolutions and regulations necessary for the practical functioning of the Water User Association that shall be binding on Water User Association members;
- acceptance and withdrawal of Water User Association members;
- determining procedure of voting and selection of the Board members, chairman of the Water User Association, members of the Audit Commission, and the dispute resolution commission;
- approval of the decisions of the Board, Audit Commission, and the dispute resolution commission;
- determining membership fees;
- fixing wages of hired workers of the Water User Association;
- approval of yearly plans and budgets of the Water User Association;
- development of the management structure of the Water User Association and termination of its powers;
- approval of the annual report and the balance sheet of the Water User Association;

- consideration and approval of the report of Board, commission, and the committee of the Water User Association;
- acceptance and approval of regulations, instructions and internal procedures of the Water User Association;
- ~~constituting representatives' meeting;~~
- decision on the establishment and liquidation of the Water User Association.

The General Meeting shall be considered competent when two thirds of the Water User Association members or their representatives attend such meetings.

The Charter may provide the right of a member of a Water User Association to vote at a meeting of the General Meeting is dependent on that member having paid all of their liabilities to the Water User Association.

Within its competence the General Meeting shall take decisions on reviewed issues by the majority of votes of water Association members, and ensure their implementation.

Procedure to convene and hold regular and extraordinary general meetings shall be determined by the charter of the Water User Association.

Extraordinary general meetings shall be convened at the initiative of the Board of the Water User Association, Audit Commission and as required by at least 10 percent of the Association members.

The Board of the Association shall inform Water User Association members on holding of an extraordinary meeting 7 days before the meeting, provide an agenda with the indication of the date, venue and time.

Article 14. Representation at the General Meeting of the Water User Association

If the large number of members of a Water User Association or proposed Water User Association mean that it would be impractical for all members to attend and participate in meetings of the General Meeting, the charter of such a Water User Association may provide that it should have a Representative Assembly in place of a General Meeting in accordance with the provisions of this article.

A Representative Assembly shall exercise all of the powers of the General Meeting as set out in the present law and all references to the General Meeting shall also apply to meetings of the Representative Assembly.

In the case of a Water User Association with a Representative Assembly, the charter shall provide that the Service Area is divided into Representative Zones and that Water User Association members who own or use land plots within each Representative Zone shall elect one or more Zonal Representative to represent them at the meetings of the Representative Assembly. The Representative Zones of a Water User Association shall be clearly indicated on the plan of the Service Area.

The charter shall specify the terms and conditions of office of each Zonal Representative, the number of Zonal Representatives in respect of each Representative Zone, and the procedures for their election, and shall specify the number of votes each Zonal Representative is to exercise at meetings of the Representative Assembly.

The charter may provide that the right of a member to vote in the election of a Zonal

Representative is to be conditional upon that member having paid all outstanding fees to the Water User Association.

Members of a Water User Association who are not Zonal Representatives shall have the right to attend meetings of the Representative Assembly but shall not have the right to vote.

~~With regard to the real state of the water facilities and its branches, settlements in the areas serviced by the Water User Association, the Water User Association shall constitute the meeting of Water User Association representatives and define representation norms in the meeting of representatives from representation areas.~~

~~Powers envisaged by this Law and the Charter of the Water User Association related to the General Meeting shall apply to the Meeting of Representatives as well.~~

~~Representatives shall be selected in open or secret voting pursuant to the charter of the Water User Association at the meeting of area representatives.~~

Article 14¹. Allocation of votes at meetings of the General Meeting

The charter shall specify the number of votes each Water User Association member is to have when taking decisions at meetings of the General Meeting on the basis of one of the following principles:

- each member is to have one vote irrespective of the size of their land plot within the Water User Association Service Area; or that
- each member is to be allocated with votes in proportion to the size of that member's land plot within the Water User Association Service area; or that
- each member is to be allocated with votes in proportion to the amount of fees paid to the Water User Association during the previous year.

Each Water User Association member shall have a minimum of one vote and no member shall hold more than one quarter of the total amount of votes.

Article 15. The Board of the Water User Association

Current management of activities of the Water User Association is carried out by the Board of the Association.

~~The Water User Association shall be headed by the chairman of the Board elected by the General Meeting of the Water User Association members.~~

Board Members of Water User Association shall be elected from Water User Association members at the General Meeting or at the Meeting of Representatives to serve for a term of no more than five years, which may be extended once. Terms should be staggered so that no more than three terms expire in any single year.

The ~~N~~numbers of members of the Board and ~~election period~~ shall be determined by the charter of Water User Association.

The Board shall elect a Chairman and a deputy Chairman from among its members and the Chairman of the Board shall at the same time be the Chairman of the Water User Association.

Meetings of the Board shall be held pursuant to the charter of Water User Association.

Competencies of the Board shall include all issues related to the activities of Water User Association that are not envisaged in this Law and in the Charter of the Water User Association as exclusive competence of the General Meeting or the meeting of representatives.

The Board shall take decisions at its meetings.

The meeting of the Board shall be considered legally qualified when no less than two thirds of the Board members attend the meeting.

~~The Board decisions shall be adopted with support of not less than two thirds of the votes of the Board members present at the meeting.~~

The Board decisions shall be taken by consensus but if that is not possible by a majority ~~vote no less than two thirds of the votes~~ of the Board members present at the meeting.

Chairman of the Board shall have the following powers:

- act on behalf of the Water User Association without the power of attorney;
- chair the General Meeting and the meeting of the Board of the Water User Association;
- manage the property of the Water User Association on its behalf and issue the Power of Attorney;
- open settlement accounts with banks and other credit institutions;
- sign the Board resolutions;
- recruit and dismiss employees based on the Board resolution;
- issue decrees within his/her authority;
- create a dispute resolution commission based on the resolution of the Board;
- call extraordinary general meetings of the Water User Association to resolve urgent problems that are not under his/her competence.

Management of current activities of the Water User Association, implementing of the resolutions of the Board general meetings shall be imposed on the executive bodies of the Water User Association.

~~Functions of the executive bodies shall be regulated by the charter of the Water User Association.~~

The Chairman of the Water User Association shall bear the responsibility for untimely submission of the report, payment of taxes or forgery pursuant to the legislation of the Republic of Tajikistan.

Article 16. Audit Commission

The General Meeting or the meeting of Association representative members shall elect an Audit Commission comprising no less than three persons to control financial and economic activity of the Water User Association.

Members of the Audit Commission shall elect the Chairman of the Commission.

The Audit Commission shall audit financial status of the Water User Association based on the financial activity during the year.

Extraordinary audits of financial and economic performance of the Water User Association shall be conducted upon the decision of the General Meeting or the Meeting of Representatives and as required by no less than ten percent of the Association members.

The Audit Commission shall report to the General Meeting or the Meeting of Representatives, and submit proposals on the results of the audit to these bodies.

To resolve urgent problems that are not under its competence the Audit Commission shall call an extraordinary General Meeting of the Association.

Article 17. The Dispute Resolution Commission

A Water User Association may establish a Dispute Resolution Commission that shall consist of three persons elected by the General Meeting for a four-year term. The members of the Dispute Resolution Commission shall elect one of their members to be the Chairman of the Commission.

The Dispute Resolution Commission shall deal with disputes concerning water use and distribution between members of the Association.

A member of a Water User Association member who alleges that another member has violated the Association's charter, an internal regulation may lodge a written complaint with the Chairman of the Dispute Resolution Commission.

The Chairman shall call a hearing of the Dispute Resolution Commission within 10 days of receipt of the complaint shall be held in public and which shall attended by the parties to the dispute.

~~The Board shall take a decision to set a commission comprising no less than three persons for resolution of disputes between the Association members and other water consumers in the process of water distribution or use, as well as other problems.~~

The results of the Dispute Resolution Commission work shall be reflected in the Act signed by its members, which shall be submitted to relevant bodies of the Water User Association for execution.

~~When disputes are not resolved by the Commission, then they shall be resolved by the court. Activities of the Commission shall be completed after consideration of the disputes.~~

Article 17¹. Common provisions on elected officials

The members of the Board, the Audit Commission and the Dispute Resolution Commission are not employees of a Water User Association and do not receive a salary but shall be entitled to be reimbursed reasonable expenses arising from the fulfillment of their functions and may, in accordance with the Water User Association's budget, be paid a nominal allowance, according to the provisions of the charter.

Members of the Board, Audit Commission and Dispute Resolution Commission may be removed from office pursuant to a decision of the General Meeting on the grounds of:

- serious dereliction of duty;
- repeated failure to attend scheduled meetings;
- conviction of a criminal offence.

In the event that an elected official of a Water User Association is removed from office at a

meeting of the General Meeting, that meeting shall also elect a replacement for the vacant position.

Article 17². Executive Body

The Water User Association shall hire a Manager and other executive staff on a temporary or permanent basis as needed.

The Manager shall be appointed on a competitive basis by the Board and shall be a person who has suitable qualifications in irrigation field and/or agriculture.

The Manager shall report to the Board and shall attend its meetings when so requested, but shall not be entitled to participate in decision making or to vote.

The Board may authorize the Manager to sign contracts up to a specified value, the limits of which may be established in the charter or the internal regulations of the Water User Association.

The Chief Accountant shall be appointed on a competitive basis by the Board.

An employee of a Water User Association may not at the same time serve as a Sector Representative or an elected official of that Water User Association.

Article 18. Property Belonging to the Water User Association

Property belonging to the Water User Association shall be formed from the following sources:

- the funds of the members of the Water User Association;
- deposits with banks;
- humanitarian assistance from legal entities and individuals;
- other sources allowed by the legislation.

The Water User Association shall have the right to be the owner of different types of personal property.

The Water User Association shall accept fixed assets of the water facilities located in the service area in its balance sheet for operation and maintenance upon the consent of the owner.

The Water User Association shall not have the right to sell or lease fixed assets of water facilities for operation to other organizations. When the Water User Association is liquidated, these assets shall be returned to original owners.

~~The Water User Association shall accept fixed assets of the water facilities located in the service area in its balance sheet for operation and maintenance upon the consent of the owner.~~

~~The Water User Association shall not have the right to sell or lease fixed assets of water facilities for operation to other organizations. When the Water User Association is liquidated, these assets shall be returned to original owners.~~

A Water User Association shall establish a reserve fund, into which all surplus of income over expenditure shall be paid, which shall be used to pay for emergency repairs, to make improvements to the irrigation system used by the Water User Association or to cover the long term costs of replacing or rehabilitating those facilities. Such reserve fund must be deposited in an interest-bearing bank account until such time as the funds are required.

Article 18¹. Membership fee funds

A Water User Association shall levy an annual membership fee to cover its fixed costs and other expenses related to its activity which shall be payable by its members on or before a date that must be specified in internal regulation.

The amount of the annual membership fee payable by each member shall be calculated by reference to the size of the land plot of that member in proportion to the total size of the Service Area as a fraction of the following total expenses:

- the total costs of undertaking annual maintenance of the on-farm irrigation system located within the Service Area and preparing it for the forthcoming following irrigation season, including the costs of cleaning using any drainage ditches;
- the Water User Association's obligation to pay charges to any other physical and juridical person based on a contract in respect of the operation of the on-farm irrigation facilities systems and/or the abstraction of water;
- salaries of permanent staff and other fixed costs of the Water User Association;
- the need to make provision to the Water User Association's reserve fund.

Article 18². Water delivery fee

Water User Association members shall pay water delivery fees in a specified order depending on the volume of the water to be used for irrigation that is supplied to them by the Water User Association.

The Water delivery fee per unit shall be calculated by reference to the Water User Association's costs of operating the irrigation system and delivering irrigation water, including funds for payment of water supply services, including any electricity costs payable by the Water User Association in connection with the supply of water and other associated costs and taxes.

Article 18³. Irrigation charges payable by non-members

A Water User Association may levy a volumetric irrigation charge against non-members in connection with the supply of irrigation water to them on a contractual basis that may be up to no more than three times as high as the average charge per cubic meter payable by Water User Association members taking account of the level of membership fees paid over the previous three years.

Article 19. The Budget of the Water User Association

The budget of the Water User Association shall be used to pay wages to hired employees, repairs of the irrigation system, and improvement of ameliorative state of land, payment of unscheduled costs incurred by service areas, as well as in emergency cases.

The Water User Association as a non-profit organization shall be subject to taxation pursuant to the terms and requirements fixed by the Tax Code of the Republic of Tajikistan.

CHAPTER 5¹. FEDERATION OF WATER USER ASSOCIATIONS

Article 19¹. Federation of Water User Associations

A Federation of Water User Associations may be established on a voluntary basis by two or more Water User Associations in accordance with this law to undertake activities of common interest to its members. Only Water User Associations may be members of a Federation of Water User Associations.

The principal tasks of a Federation of Water User Association are:

- to provide advocacy, representation and support to its members;
 - to resolve disputes between its members;
 - to provide technical support to its members with regard to maintenance and rehabilitation
 - organize maintenance and rehabilitation services for its members;
 - to help coordinate the distribution of irrigation water and the activities of its members;
 - to procure, substitute, operate and maintain irrigation equipment on behalf of its members;
 - to support its members in the provision of training.
 - to manage, operate and maintain an irrigation system that has been transferred in use to the Federation in order to supply irrigation water to its members and to undertake rehabilitation, improvement, construction and reconstruction works to such system as necessary;
- to establish internal regulations for water use and to collect fees from its members in respect of services provided to them;

If an irrigation system identified by State Water Users Associations Regulation and Support Body has been or is planned to be transferred to a Federation of Water User Associations, every Water User Association that can receive water from that irrigation system must be a member of that Federation of Water User Associations.

A Federation of Water User Associations shall not supply irrigation water to anyone other than its members and shall not undertake any activities within the Service Area of one of its members except at the request of that member.

Article 19². Name, legal status and structure

Every Federation of Water User Associations shall have its own unique name which shall be the name of the place where it operates or some other distinctive name and which shall include the words "Federation of Water User Associations".

A Federation of Water User Associations shall have the same legal status as a WUA and, subject to the provisions of this Chapter, the provisions of this law that apply to WUAs shall also apply to Federations.

The charter of a Federation of Water User Associations may provide that that Federation of Water User Associations shall not have a General Meeting but that each member of the Federation of Water User Associations is to appoint a specified number of members to the Board of the Federation of Water User Associations which shall also assume the functions of the General Meeting.

CHAPTER 5². USE OF IRRIGATION SYSTEMS

Article 19.³ Use of formerly collectively owned on-farm irrigation system by a Water User Association

A decision to establish a Water User Association shall imply a decision by the majority of the

owners of the formerly collectively owned on-farm irrigation system located within the Service Area of that Water User Association that the Water User Association shall be entitled an indefinite right to use those facilities on behalf of its members.

A Water User Association shall have the right to use, manage, operate and maintain the on-farm irrigation system located within it Service Area.

The owners and users of land within the Service Area of a Water User Association shall in respect of collectively owned on-farm irrigation system situated on such land:

- not impede the flow of irrigation water;
- allow free temporary access of the employees or representatives of the Water User Association to that land for the purpose of maintaining or repairing such irrigation system subject to the right to compensation if they suffer damage to their crops or to the land.

Article 19.⁴ Use of state-owned irrigation system by a Water User Association or Federation of Water User Associations

After the WUA has legally been established, it shall have the legal right to manage, operate and maintain on-farm irrigation systems owned by state and located in its service area for an indefinite period on behalf of its members.

A Federation of Water User Associations may request the transfer to it in use of part of an irrigation system that can be used to supply water exclusively to its members. Such a request shall be submitted in writing to the Department for Land Reclamation & Irrigation.

The department shall consider each request from a Federation of Water User Associations by reference to published criteria that shall include the technical and economic aspects of the part of the irrigation system in question, the economic performance of the Federation of Water User Associations and its members and other relevant factors.

If the Department for Land Reclamation & Irrigation decides to accept a request from a Federation of Water User Associations for the transfer to it in use of part of an irrigation system it shall conclude a twenty year use agreement with that Federation that shall provide that the Federation is entirely responsible for the management, operation and maintenance of that irrigation system, including as regards financial aspects, for the period of the agreement.

Each agreement of transfer into use, concluded in accordance with this article, shall be in the approved form and shall include:

- a detailed description of the part of the irrigation system to be transmitted into use and the condition of such irrigation system;
- the rights and obligations of the parties to the agreement;
- the procedures, if any, to be followed in terms of the sequencing of the transmission into use;
- provisions concerning the termination of the agreement which shall provide that the agreement may only be terminated by the a competent court in the case of *force majeure* or serious breach of the agreement.

CHAPTER 6. FINAL PROVISIONS

Article 19⁵. Accounts and record keeping

In addition to maintaining its accounts in format approved by the body authorized by the Government to regulate and support Water User Associations, each Water User Association shall maintain:

- a cadastral plan showing the Service Area;
- a register of that Water User Association's members, which shall contain a description of the surface and location of each member's landholding, and which should be updated every three months if necessary;
- a register of the quantities of water, received by the Water User Association;
- a record of the distributed quantities of water or of the number of irrigations;
- a register of charges paid and for payment;
- a register of contracts with non-members;
- a register of inspections and surveys of the irrigation facilities within the Service Area of the Water User Association;
- accounting records;
- an inventory of fixed assets;
- register containing the minutes of the meetings of the General Meeting, the Board and the Audit Commission.

Article 20. Reporting of the Water User Association

~~The Water User Association shall be obliged to provide activity reports to the government bodies pursuant to the provisions of the legislation.~~

Annual reports and bookkeeping balance sheets of the Water User Association audited by the Audit Commission shall be approved by the General Meeting or the Meeting of Representatives and submitted to the tax bodies, and state statistical bodies and state authorized water users associations regulation and support body within the fixed deadlines.

The Association shall within 60 days of the end of its financial year submit an annual report to the body authorized by the Government to regulate and support Water User Associations, together with a copy of its financial reports, in the established way.

Article 21. Regulation and Government Support to the Water User Association

Regulation and government support to the Water User Association shall be ensured by the body authorized by the Government of the Republic of Tajikistan to regulate and support the Water User Association.

The body authorized by the Government to regulate and support Water User Associations shall ~~have the following rights performing its functions:~~

- maintain the State Register of Water User Associations;
- provide recommendations and support to the Water User Association on legal, financial, and technical issues;
- assist Water User Associations established before the entry into to force of this law to align their charters with the provisions of this law;
- review the draft constitutive documents of each proposed Water User Association prior to its establishment as well as any proposal to modify the charter of a Water User Association to ensure compliance with the provisions of this law ~~approve the rules of using water resources, preventing contamination, reduction and drying, prevention and elimination of harmful impact of water;~~
- supervise the activities of Water User Associations in accordance with the provisions of this law

- ~~approve plans on the use of all water resources and their protection, water resource balances, implement state control over the use and protection of water resources, monitor quality of water and contamination of water facilities;~~
- ~~- plan measures to use and protect water, prevent and eliminate harmful impact;~~
 - resolve other issues requiring state regulation and support to the Water User Association.

Article 22. Legal and Financial Supervision of Water User Associations

The body authorized by the Government to regulate and support Water User Associations may inspect the records of a Water User Association:

- on the written request of, at least 10% of members of that Water User Association who allege impropriety in its functioning;
- if, having reviewed the annual report or of the financial reports of that Association, there is prima facie evidence of legal or financial malpractice.

If after inspecting the records of a Water User Association, the body authorized by the Government to regulate and support Water User Associations considers that it is necessary to undertake an audit of that Water User Association, it will engage an accredited auditing firm to undertake such an audit.

If following an inspection and or an audit, the body authorized by the Government to regulate and support Water User Associations finds evidence of financial malpractice or that the Water User Association has not been operating in accordance with the provisions of this law, it may require the Board of that Water User Association to call an extraordinary meeting of the General Meeting where the findings of the body authorized by the Government to regulate and support Water User Associations can be presented to the members.

If the Board fails to call a meeting of the General Meeting within 30 days, the body authorized by the Government to regulate and support Water User Associations may call such a meeting itself.

Article 22. State Regulation of the Water User Association Activities

~~State regulation of the Water User Association activities shall be implemented pursuant to the legislation of the Republic of Tajikistan.~~

~~Water shall be used based on the agreements, internal plans (schedules) of the Water User Association. These plans shall be coordinated with the water supplying organizations and approved by the local executive authorities.~~

Article 23. Labor Relationships within the Water User Association

Labor relationships in the Water User Association shall be implemented pursuant to the Labor Code of the Republic of Tajikistan.

The employees of the Water User Association shall have the right of social insurance and social protection pursuant to the legislation of the Republic of Tajikistan.

Article 24. Responsibility for the Violation of this Law

Individuals and legal entities shall bear responsibility for the violation of this Law pursuant to the procedures defined in the legislation of the Republic of Tajikistan.

Article 25. Procedure to Implement this Law

This Law shall be implemented upon its official publication.

President Republic of Tajikistan
E. Rahmonov

ANNEX C - COMMENTARY ON THE RECOMMENDED AMENDMENTS TO THE WUA LAW

The recommended amendments to the WUA Law are based on the comments and recommendations provided at a series of stakeholder meetings as well as on the basis of international practice.

As noted earlier, the changes proposed are those that are considered legally necessary. In other words they are not of a stylistic nature and what is proposed here is not a re-write of the law itself.

The commentary that follows takes an article by article approach.

Article 1 – unchanged.

Article 2 – a number of amendments are suggested for article 2 which is entitled ‘Basic concepts’.

Definition of WUA – this amendment is proposed to make it clear that: (1) a WUA is a special type of non-profit organization (in other words it is different to non-profit organizations that serve other purposes); (2) that WUAs are established on the basis of the WUA law and not on the basis of other legislation; and (3) that the purpose of a WUA is to manage, operate and maintain water facilities within a defined service area. This last point is important as it has the effect of constraining the activities of a WUA to a defined place. In other words a WUA can only operate within its own service area, just as, say, a municipality only has legal powers within its own boundaries. In this new version the identity of the founders is no longer described. It is a relatively important issue but, it is suggested, less important than the three points mentioned above.

Service Area This may be more of an issue of translation but it is important to create a term ‘service area’ rather than a mere legal description of ‘area served by a WUA’ because the Service Area has legal consequences. Land inside the Service Area is subject to the jurisdiction of a WUA and land outside is not.

Water User Association Regulation and Support Body Because there are references to this entity in several articles it is appropriate to include a definition in article 2.

Federation of Water User Associations Although this term is used mostly in Chapter 5 it may nevertheless be appropriate to include a definition in article 2.

Article 3 - This amendment makes it clear that WUAs are established on the basis of the WUA law as a specific form of legal entity, in line with international practice. In other words a WUA is legally different to other types of non-profit organizations. The second sentence of the first paragraph is based on the language of article 24 of the Tax Code to make it as clear as possible that a WUA falls within the category of non-profit organization.

The remaining amendments to this article relate mainly to the notion of the ‘Service Area’ in order to ensure consistent usage.

Finally the last sentence is amended to make it clear that while a WUA may undertake other types of activities, beyond those listed in the article, these are limited to those necessary to achieve the basic function or objective of the WUA. In other words, a WUA may for example hire an excavator in order to undertake repair works to water facilities as this is necessary to enable it to fulfill its basic

function. However a WUA may not undertake other business activities that are not related to the core function (such as providing general construction services for example).

Article 4 - A minor amendment is proposed to paragraph five: the duty of a WUA is to its members and not those people who do not wish to support it. In the case of limited water available WUA members should have priority access.

Article 5 - It is recommended that this article be substantially amended to provide a clearer procedure for WUA establishment. This includes specifying that each Service Area should be determined on the basis of hydraulic boundaries.

Given that each WUA will also enjoy exclusive rights within its Service Area it is also appropriate to ensure that the process is subject to formal oversight by the Water User Association Regulation and Support Body. Moreover as each WUA will have an effective monopoly over irrigation water supply within its Service Area it is appropriate to ensure that its establishment has a sufficient level of support. Taking account differences in the size of land holdings a 'safe' majority of 50% of the potential members holding at least 50% of the proposed Service Area should provide a sufficient level of support. Other amendments proposed are largely self explanatory and seek to address the practical aspects of WUA establishment.

Article 6 – Two minor but important amendments are proposed for article 6. First of all the name of each WUA must include the words 'WUA' and secondly that a description and plan of the Service Area must be included in the charter.

Article 7 – it is suggested that this article be amended by specifying the legal grounds on which a WUA may be re-organised or liquidated.

Article 7 A – This new article is proposed to clarify exactly who may become a member of a WUA and how membership may be acquired. It also specifies how membership may be lost. These are very important issues and merit the degree of detail proposed.

While in principle all land users should be WUA members it is important to distinguish between those who hold long-term leases of more than three years and those who hold short-term leases of less than three years. Those who hold long-term leases should be entitled to membership as of right. However in the case of short-term leases there is a significant risk that short-term tenants may have little interest in the overall sustainability of the WUA. For that reason it is appropriate to also implicate the owner of the land in the issue of WUA membership.

Next it is important to clarify that if land is owned by a number of people they are not each entitled to a vote and to represent separately as this would otherwise distort the voting process. At the same time, though, due to the high number of absentee owners it would be appropriate to set out specific provisions such that the remaining spouse can participate.

Next the procedures for acquiring WUA membership are specified namely through an application procedure resulting in consideration by the Board. It is strongly suggested that new members are only admitted at the end of the irrigation season to prevent the need to re-adjust irrigation schedules. The restriction on re-admitting former members within three years is to ensure that WUA dismissal can be an effective sanction. Obviously if a dismissed member could simply re-apply it would not!

Finally it is necessary to specify how WUA membership is to be lost. Obviously if the person ceases to hold land in the Service Area that person should no longer be a member but it is also appropriate to provide that a person may lose their membership through expulsion by way of a sanction. Such a decision should be subject to review by the courts if so requested.

Article 8 - A minor but important amendment to this article is to provide that each WUA member has the legal right to a fair share of the irrigation water received by the WUA and not just the right to request water.

Article 9 – A minor amendments is proposed for this article, based on one of the comments received during the stakeholder consultations to require WUA members to provide information about planned uses of land and water.

Article 10 – Three new items are proposed for article 10 in connection with the rights of WUAs. These include the right to act independently (except as provided for in the law itself), the exclusive right to supply irrigation water within the Service Area and the legal right to sanction non-compliance with its rules by its members.

Article 11 – No changes are proposed.

Article 12 – No changes are proposed.

Article 13 – Two amendments are proposed here. The first is to explicitly provide that WUAs may adopt their own internal regulations that are binding against their members and the second is to provide that the right to vote is dependent on all debts to the WUA being cleared.

Article 14 – This article is expanded to clarify how a representative system should work.

Article 14A – This article sets out how votes can be allocated in accordance with the charter of each WUA. There are three options namely ‘one member one vote’ or that votes should be allocated on the basis of the size of the landholding or on the basis of the amount of fees paid (and thus the volume of water consumed) during the previous year. This implies a certain degree of negotiation between WUA members during the establishment phase but if they cannot agree on this then it is difficult to see how they will be able to work together in any event. The final sentence also contains a safeguard to prevent any one single member acquiring too many votes.

Article 15 – A number of amendments are proposed for this article to encourage the notion of the collective responsibility of the Board in order to improve transparency and accountability. Moreover term limits are set along with a provision that will enable the rotation of board positions.

Article 16 – No changes proposed.

Article 17 – The amendments proposed to this article are intended simply to make the provisions on the dispute resolution commission more practical and implementable.

Article 17A - This new article sets out common provisions on the elected officials of each WUA including as regards their legal status (as officers and not employees) and also the grounds on which they may be removed from office.

Article 17B – This new article provides for an employed manager for each WUA, the Director, and other staff as necessary.

Article 18 – The existing provisions on fixed assets are too brief and are therefore deleted here. The second amendment seeks to reinforce the non-profit notion of WUAs.

Articles 18A & B – The purpose of these articles is to distinguish between the fixed costs of WUAs that are necessary to keep the irrigation system in working order, which are to come from the membership fee and the variable costs of the water delivery fee to WUAs and their members which will depend on the quantity of water received and delivered.

Article 18C – This article confers powers on WUAs to charge non-members a higher price for water supply that takes account of the membership fee and the water delivery fee

Article 18D – This proposed new article may require further discussion but its objective is to facilitate the recovery of outstanding fees and charges by WUAs.

Article 19 – No change is proposed to this article.

Articles 19 A & B – These articles seek to create a concise legal basis for the creation of unions or 'federations' of WUAs. The key point to note is that such unions will have the same legal status as WUAs and therefore generally speaking the same provisions can apply to them save as necessary to take account of the slightly different nature of federations.

Article 19 C – This new article seeks to create a legal basis for WUAs to continue to use the irrigation infrastructure of former *kolkhozes*.

Article 19 D – This new article creates a legal basis for the transfer in use of publicly owned irrigation infrastructure to WUAs and WUA Federations on the basis of a use agreement.

Article 19E – This new article sets out the minimum books and records that each WUA should maintain.

Article 20 – This article is amended so as to specify a deadline for the submitting of annual reports by WUAs.

Article 21 – The purpose of these proposed amendments is to concretize the nature of the tasks of the supervisory body. It will also allow existing WUAs to modify their charters to bring them into line with the revised law.

Article 22 – The amendments proposed to this article seek to specify how the supervision of WUAs is to take place.

Article 23 – No amendment is proposed to this article.

Article 24 – No amendment is proposed to this article.

Article 25 – No amendment is proposed to this article.