

TRAINING AND DEVELOPMENT CENTER FOR AFRICA INTERNATIONAL, INC.

MEMORANDUM

PRIVATE SECTOR DEVELOPMENT CONTRACT

Albanian Water and Wastewater Legislation Project

Prepared for

United States Agency for International Development
Bureau for Europe and New Independent States
Office of Energy, Environment and Urban Development
Urban Development and Housing Division
Washington, DC

Prepared by

PADCO, Inc.
1012 N Street, NW
Washington, DC 20001

Contract No. EUR-0034-C-00-2032-00, RFS 50

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Abstract

Presently, there is no national legislation nor statute regarding the use, protection, management, operation, or ownership of water resources nor the governance of water supply and distribution entities in Albania. The objective of this Memorandum is to provide the Government of Albania with a draft statute on the ownership, management, investment, and protection of water resources, systems, and assets. The draft law has been prepared in accordance with recent and executive decrees and is complementary to nascent pieces of legislation/ implementing procedures on regulation of the water sector and a national law on concessions. Also included are an "Outline on Recommendations for Implementation of the Draft Water Resources Law" (written by Vangel Perroy) and "Comments on the Draft Water Law of Albania" (written by Yohannes Kassahun) that correspond with the national law/act on water. The first serves as a companion document to the Draft Law as submitted to the Ministry of Construction, Housing and Territory Adjustment in Tirana for the purpose of assisting the drafter of the supporting regulations. The second provides comments and revisions on the water law. An "Outline for Preparing a Regulatory Framework to Implement the Water Law of Albania" (written by Kassahun) is incorporated as it relates to private participation in the water sector.

**REPUBLIC OF ALBANIA PEOPLE'S ASSEMBLY
DRAFT LAW ON WATER RESOURCES**

REPUBLIC OF ALBANIA PEOPLE'S ASSEMBLY
DRAFT LAW ON WATER RESOURCES

October 17, 1994

In conformity with Article 16 of Law nr. 7491, dated 29 April 1991 on "Main Constitutional Provisions," proposed by the Council of Ministers, the People's Assembly of the Republic of Albania

DECIDED:

PREAMBLE

Water is vital to the health and well being of every member of society and to the economic success of almost every commercial endeavor. Therefore, it is incumbent upon the Government to protect and administer this resource on behalf of the people and in a manner consistent with the public interest. In this regard, no distinction is made between surface or underground water resources or between inland or coastal waters. Government policy must seek to balance current and future social and economic demands for water resources with the natural hydrologic cycle that affects every water basin area throughout the country. In this manner, the Government can best protect the quality of water resources while ensuring that water is available in sufficient quantities to satisfy the needs of current and future domestic, agricultural, urban, commercial, and industrial users. Finally, the foregoing objectives should be accomplished in accordance with existing and future environmental laws and in such manner as will best ensure equitable treatment of affected persons while minimizing socio-economic costs. For these reasons this law has been enacted.

SECTION 1

General Dispositions

Article 1

The purpose of this Law is:

- a. to recognize and codify the ownership by the State of the water resources of Albania.
- b. to maintain, restore, and improve the physical, chemical, and biological integrity and quality of the waters of Albania in order to provide for the health, welfare, safety, and enjoyment of the people.
- c. to ensure and provide for an adequate water supply to meet present as well as future needs and to support commercial and industrial development in accordance with sound water resource management.
- d. to promote the harmonious and efficient operation and coordination of regulatory activities as they relate to water resources.

Article 2

When interpreting this Law:

- 1) An "Authorization" means written permission by the Government, as provided in this Law, for the holder to conduct and carry out research, study, exploration, or other such activities where the usage and discharge of water resources is peripheral to the purpose of the Authorization.
- 2) The "bed or bottom of lakes and ponds" is the area covered by the water at such times as it reaches the maximum normal level.
- 3) The "bed or bottom of a surface reservoir" is the area covered by the water when it reaches the maximum level as a result of the normal flood of the rivers or watercourses flowing into it.
- 4) A "Concession" means written permission by the Government, as provided in this Law, for the holder to enjoy an exclusive right to the usage and discharge of the water resources as provided in the terms of the Concession. Usage and discharge of water resources shall require the holder of the Concession to secure a License for the activities contemplated under the Concession.
- 5) "Discharge" means any disposal, injection, depositing, or flushing of waste, waste water, chemical and industrial products and by-products, or other substances irrespective of their nature, directly or indirectly, on or into the water resources, land, sub-soil, or excavations.
- 6) A "drainage basin" is the area of land over which water flows into a common terminus through a network of secondary and tertiary watercourses which converge on a single main course, together with other associated surface and underground water resources, the geographical boundaries of which shall constitute a basic unit for the purposes of water resources management.

- 7) “Embankments” are the lateral strips of land adjacent to streams, rivers, and other watercourses and the encircling strips of land adjacent to lakes, ponds, and surface reservoirs and are subject at a minimum along their length:
- a. to an easement area of a width of five meters inward from the water’s edge, for public use to be regulated by specific implementing regulations.
 - b. to a controlled area, with a width of 100 meters inward from the water’s edge, in which the land and any activities conducted thereon shall be subject to conditioned use as may be directed in the public interest.

The width of both areas as provided herein may be increased by special directive or by implementing regulations in those cases where the topographical or water resources conditions of the riverbeds and riverbanks make it necessary for the safety of persons or property.

- 8) In the case of any irrigation channel or waterway, the bed, the channel itself, and the banks shall be deemed as part of the estate or building to which the water flows or, in the case of discharge, the estate or building from which it originates.
- 9) A “License” means written permission by the Government, as provided in this Law, for the holder to conduct and carry out activities involving the usage or discharge of water resources.
- 10) The “National Water Strategy” means the collective methods to: (i) promote national development objectives through an appropriate balance of water supply and demand management measures, (ii) address institutional structures that will sustain the strategy to include legal and regulatory issues, institutional assignments, and coordinating mechanisms, and (iii) identify priority programs and projects to implement the strategy in the short, medium, and long term.
- 11) The “natural bed of a continuous or discontinuous stream or watercourse” is the land covered by the waters up to the highest level of ordinary flood.
- 12) “Streambeds” along which rainwaters occasionally flow shall be determined by the average area occupied over the course of an annual seasonal rainfall.
- 13) “Users” means any District, Municipality, Village, Commune, Water Users’ Association, enterprise, whether publicly or privately owned, natural person, or other juridical entity(ies) or person(s) involved in the production, use, or discharge of water resources.
- 14) “Water resources” means all inland, coastal, surface, and underground waters, aquifers, and other hydro-geological formations under the jurisdiction and control of The Republic of Albania.

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SECTION II

State Domain over Waters

Article 3

The State's domain over water resources includes:

- a. Inland waters to include surface and underground waters and geological formations through which underground waters flow whether or not affected by the natural hydrologic cycle and whether or not said waters are located on, under, or are surrounded by privately owned land(s).
- b. The beds of natural, continuous or discontinuous, streams or rivers or other watercourses.
- c. The beds of lakes and ponds and of any other surface reservoir.
- d. Coastal or bordering waters within the territorial boundaries of The Republic of Albania.

Article 4

The natural hydrologic cycle may only be affected or altered by decision of the National Water Council under authority granted in Article 9 or upon its prior written authorization.

Article 5

Temporary protective activities may be carried out by private persons or Water Users' Associations or other juridical persons on embankments in the event of urgent need or emergency. After the need for the temporary protective activities has ended, the protective activities shall cease and any alterations or construction shall be removed. Those who conduct protective activities shall be liable for any damages or costs that might result therefrom and shall submit a report, as required by the implementing regulations, as to any such activities and repairs.

Article 6

Land that might be flooded during ordinary flood of lakes, ponds, reservoirs, rivers, streams, or other watercourses shall maintain its previous legal characterization and ownership status except that the National Water Council by means of an official directive or other Governmental action, as appropriate to the circumstances, may establish any limitations on the use of flooded areas deemed necessary to ensure the safety of persons or property.

Article 7

Legal situations resulting from the natural alterations of riverbeds or other watercourses shall be subject to relevant legislation and recourse in the civil courts. Those arising from alterations brought about by legally authorized works shall be subject to the provisions of the relevant License, Authorization, or Concession. Alterations of riverbeds or other watercourses shall not be carried out without a License, Authorization, or Concession.

SECTION III

Public Administration of the Water

Article 8

1. The following principles shall govern the exercise of the public domain over the waters:
 - a. Unity of management, comprehensive treatment, water allocation, centralized authority, coordination, and efficiency.
 - b. Respect for the integrity of the water basin as a unit of action taking into account socioeconomic demands on water resources while protecting the quality and adequacy of these resources for future generations.
 - c. Integration of Government control over water resources with territorial planning and social and economic development projects at the National, District, and Local levels.
 - d. Regulated usage and discharge of water resources by all users.
 - e. Protection of the environment and natural areas.
2. The administration of the public domain over the waters shall be carried out by the National Water Council (NWC), the Technical Secretariat as provided in Article 11, the Drainage Basin Councils (DBC) as provided in Article 12, and such other agencies, bodies, or other entities as the NWC shall appoint.

Article 9

The National Water Council is hereby created as the highest decision-making body responsible for the management and administration of water resources. The members of the NWC shall be appointed by the Council of Ministers. The Prime Minister shall be the Chairman.

Article 10

1. The NWC shall have the following functions:
 - a. To approve the National Water Strategy concerning water resources in the form of a National Water Resources Plan (NWRP).
 - b. To direct the preparation of Drainage Basin Water Resources Plans (DBWRPs) by the DBCs for each drainage basin designated by the NWC, and to review and approve the draft plans.
 - c. To direct the preparation of regulations, for approval by the Council of Ministers as appropriate, to be applied throughout the country relating to the administration, management, conservation, and protection of water resources and to issue directives and carry out other actions necessary and proper for implementation of the NWRP and for the implementation of this Law.
 - d. To review and approve plans and projects of general interest in the areas of agriculture, zoning, industrial, territorial, and municipal development to the extent such

plans and projects affect water resources planning or have an impact on water resources in the form of usage, discharge, supply, or quality.

- e. To propose and provide study and research guidance and direction for the development of technical innovations concerning the use, discovery, acquisition, conservation, recycling, treatment, protection, management, and efficient use of water resources. In this regard, the NWC shall be empowered to task Government ministries, agencies, committees, institutes, departments, and other Government entities to provide information, data, analyses, or other advisory or technical support as necessary to assist the NWC in the preparation of the National Water Strategy and the NWRP.
 - f. To designate the territorial scope and boundaries of the respective drainage basin areas throughout the country and to designate the municipality or city in which the Water Register and the meeting place for the DBC will be located.
 - g. To appoint Executive Councils and other administrative bodies or organizational entities subordinate to the Council as it may deem necessary and proper to facilitate the administration and implementation of this Law.
 - h. To propose and adopt measures as appropriate to implement any international treaties and conventions on water resources to which The Republic of Albania is a party or signatory.
2. The NWC shall carry out other functions as may be specified by special decisions and regulations of the Council of Ministers.
 3. The operating and maintenance budget of the NWC shall be provided from a budget allocation in the State budget.

Article 11

The Technical Secretariat is the executive unit of the NWC. The membership and functions of the Technical Secretariat shall be as specified in regulations approved by the NWC.

Article 12

1. The Drainage Basin Council(s) is (are) the regional authority(ies) responsible for the administration of water resources in one or more drainage basins.
2. The membership and functions of the DBC shall be as specified in regulations approved by the NWC.

SECTION IV

Water Resources Planning

Article 13

1. The National Water Strategy shall consist of ongoing efforts, decisions, and planning to satisfy water demand, to balance and coordinate national, regional, and sectoral development taking into account the availability of water resources and the impact of such development on those resources, to increase the availability of the resource, to protect its quality, and to save and rationalize its uses in harmony with the environment and other natural resources.
2. The NWRP and the DBWRPs shall provide a detailed explanation of the plans, decisions, and policies adopted by the NWC for the purpose of carrying out the National Water Strategy. The Water Resources Plans shall be drawn up taking into account other planning schemes that affect them. The territorial scope and implementation provisions of each Water Resources Plan shall be determined by appropriate regulations.
3. The Water Resources Plans shall be made public and shall be binding without prejudice to periodic updating and revision as appropriate and necessary. The Water Resources Plans shall not create any rights upon private parties and, therefore, no indemnities shall be payable due to any amendments without prejudice to the provisions contained in Section XIII.

Article 14

The NWC shall approve the DBWRP under the terms it deems appropriate and in accordance with the public interest. In this regard, the elaboration and revision of draft DBWRPs shall be carried out by the affected DBC in accordance with directives and guidance provided by the NWC.

Article 15

1. In accordance with national legislation, certain areas, basins, parts of basins, water-courses, rivers, and bodies of water may be declared subject to special protection due to their natural features or ecological interest. The Basin Water Resources Plan will take into account the status of these areas, as well as the specific conditions established for their protection.
2. Zoning plans and programs shall take into account the provisions of the Basin and National Water Resources Plans.

Article 16

3. Approval of the NWRP by the NWC shall result in the respective DBWRPs being conformed as appropriate and necessary to insure consistency.

SECTION V

Statutory Easements

Article 17

1. The following statutory easements are created:
 - a. The owners of lowlands shall not interfere with the flow of waters that naturally and without human intervention or interference descend from adjacent upland(s), as well as the earth or stones that wash down with such waters. The owner of the lowland may not carry out works that interfere with this right nor may the owner of the upland carry out works that aggravate the burden on the lowland.
 - b. Should waters originate in a well or from other waterworks constructed by the upland owner and cause damages to the lowland or should their quality have been artificially altered, the owner of the lowland burdened by the waters may prevent its reception and claim compensation for damages from the upland owner, unless an easement in this connection shall have been established by agreement.

Article 18

1. DBCs may impose a compulsory waterway easement required in the public interest for the use or discharge of water resources as may be provided in the Civil Code and consistent with the implementing regulations of this Law.
2. DBCs may impose water withdrawal and livestock watering easements, as well as entry easements when necessary to ensure or facilitate access to water resources for particular purposes, including sporting and recreational activities as may be provided in the Civil Code and consistent with the implementing regulations of this Law.

Article 19

1. The title establishing the easement must reduce to the extent possible the burden on the servient tenement.
2. Compensation may be paid to the owner of the servient tenement burdened by the easement for loss of use or enjoyment in an amount determined by the respective DBC and as appropriate to the circumstances. In cases involving excavations for the purpose of laying in underground water or sewer pipes, the only obligation on the Government as to the affected land shall be the restoration of the surface contour to its original grade and to replace or repair, at its option, improvements removed, destroyed, or damaged in the course of the work performed.
3. Any change in circumstances from those existing at the time of establishment of the easement shall entitle the burdened landowner to request an amendment of the existing rights through the DBC. Review proceedings by the DBC shall be subject to the same procedures stipulated for establishing an easement.

SECTION VI Public and Private Uses

Article 20

1. Every person can, without any prior administrative License or Authorization and in accordance with applicable Laws, Regulations, and the applicable DBWRP, make use of surface waters while they flow along their natural beds or contact the coastline, or while the surface waters are contained in lakes, ponds, reservoirs, or other open containment areas for personal drinking, bathing, and other domestic needs, as well as for livestock watering.
2. These public uses must be carried out in such a manner that no alteration occurs in the quality or volume of the waters and with the minimum necessary burden on any servient tenement. In the case of surface waters surrounded by land belonging to private landowners, the private landowner(s) shall have the right to designate adequate and reasonable access routes to be traveled to and from the surface waters in order to protect their lands from excessive or unnecessary waste and damage. Disputes concerning usage and access as referenced in this Article shall be referred to the appropriate local authorities for resolution.
 - a. In the case of waters that flow along artificial channels, their use shall also be subject to applicable Laws and Regulations. In no case shall waters be directed from their natural or artificial channels or beds without proper License, Authorization, or Concession, or except in compliance with the statutes and regulations of a Water User's Association itself entitled to the subject waters under License, Authorization, or Concession.
 - b. In the case of surface waters contained in lakes, ponds, reservoirs, or other open containment areas, no waters shall be directed away by means of channels, ditches, pipes, tubes, pumping, or other construction or as a result of any modification to the embankment area that affects the containment of the waters without a License or Authorization, or except in compliance with the statutes and regulations of a Water User's Association itself entitled to the subject waters under License, Authorization, or Concession.
3. A private land owner shall obtain a License before he may dig, drill, or bore a vertical well on his land and the work must be carried out in accordance with the provisions of his License. Such wells shall be permitted for the purpose of bringing water to the surface for the landowner's use for drinking, bathing, and other domestic purposes, as well as for watering his own livestock and for the irrigation of his own land. No extraction of water in excess of the amount provided for in the License or for purposes other than those specified in this paragraph shall be permitted unless the private landowner also shall apply for and be granted a Concession for the additional volume of water to be extracted and for the use(s) specified in the Concession.
4. The private land owner may use the waters which flow naturally to the surface of his own land or the rainwater that flows or accumulates within the boundaries of his land without License for drinking, bathing, and other domestic purposes, as well as for

watering his own livestock, but without prejudice to the right of others to avail themselves of the same such rights. The use of such waters for irrigation purposes upon the land of the private owner shall require a License or Authorization if the natural course or flow of the waters are altered, affected, or reduced.

Article 21

The protection, use, and exploitation of fishery resources in inland, coastal, and bordering waters, as well as programs concerning the replenishment of fishery resources shall be governed by the general environmental legislation and any specific legislation thereon.

Article 22

This Law does not abide or protect any abuse of rights in the use of waters or the wasting or misuse of water resources.

Article 23

The following special common uses shall require National Water Council Authorization:

- a. Navigation and floating.
- b. Ferryboats and the construction of piers therefor.
- c. Any other use not included in Article 1 and which does not exclude the use of the resource by third parties.

Article 24

1. The right to exclusive use of the water, whether for consumption purposes or otherwise, is acquired by License, Authorization, or the grant of a Concession.
2. The right to the private use of water resources may not be acquired by prescription.

SECTION VII

Licenses, Authorizations, and Concessions

Article 25

1. All private uses of water which are not included in Section 6, Article 1, require prior granting of a License, Authorization, or Concession.
2. Permission for the private or exclusive use of water resources to include the exploitation of riverbeds or fixtures located in the riverbed shall comply with the principles of publicity and competition. Preference shall be given, all other conditions being equal, to those applicants that offer the most rational use of water and greater environmental and ecological protection.
3. The granting of a License, Authorization, or Concession does not guarantee the availability of the volumes of water granted nor does it guarantee the chemical, mineral, or bacteriological quality or the clarity or other physical properties of the waters which are the subject of the permission granted.
4. If a License, Authorization, or Concession contains provisions which require improvements or alterations be made to the works which are the subject of the original grant, the failure of the holder to make the directed improvements or alterations within the time allowed shall be considered and treated as a *de facto* renunciation of the License, Authorization, or Concession by the holder unless due to *force majeure* or circumstances beyond the control of the holder as demonstrated to the Government.
5. Licenses, Authorizations, or Concessions involving water resources shall be granted pursuant to the provisions of the Water Resources Plans as approved, procedures established by regulations, and as provided in applicable provisions on Concessions for a limited term as follows:
 - a. Licenses for individual users or dischargers — Up to a limit of five (5) years.
 - b. Licenses for users and dischargers in a Water User's Association — Up to a limit of ten (10) years.
 - c. Licenses for well drilling operators — Up to a limit of two (2) years.
 - d. Authorizations — As appropriate to complete the research, study, exploration, or other activity up to a limit of three (3) years.
 - e. Concessions — As appropriate to the type of Concession granted up to a limit of twenty-five (25) years.
 - i. If, during the period specified it becomes absolutely necessary to carry out certain additional works, the cost of which cannot be amortized within the time remaining until the Concession expires, the Concession may be extended once by the relevant authority for the period necessary to permit the amortization up to a limit of ten (10) years.
 - ii. In order to qualify for the extension, the works which are the subject of the amortization must have been constructed in accordance with the applicable Water Resources Plan(s), must have been carried out in order to conform to changed requirements of the applicable Water Resources Plan(s) from those

contained in the original Plan(s) in effect at the time the License, Authorization, or Concession was granted, and the holder of the Concession must prove the damages he would sustain if the extension were not granted.

The cost of obtaining a License, Authorization, and Concession shall be as fixed by regulation.

6. For the purposes of granting a License, Authorization, or Concession the following order generally shall be observed:
 - 1st Municipal, Village, and Commune supply to include the requirements of industries which are connected to their water supply, are situated inside the yellow line, and which have a low level of water consumption.
 - 2nd Irrigated land and agricultural uses.
 - 3rd Industrial uses for electricity production.
 - 4th Other industrial uses not included in the above categories to include mining uses.
 - 5th Aquiculture to include the fishery and its infrastructure.
 - 6th Water transportation.
 - 7th Sailing and recreation uses.
 - 8th Other uses.
7. In the event of conflict between applications submitted by different users within the same category, preference shall be given to the granting of those Licenses, Authorizations, or Concessions that are deemed more useful and productive from a public or general perspective and to those which utilize technological improvements to promote greater efficiency and reduced water consumption.
8. For the purposes of granting a License, Authorization, and Concession, the issuing authority shall consider the potential adverse ecological and environmental impact. This consideration shall apply especially to the exploitation of sand, gravel and stone, pastures, designated vegetation zones, construction of bridges or piers, and public bathing facilities. The terms of the License, Authorization, and Concession shall contain appropriate guarantees for the restoration of the affected location.
9. Authorizations for recreational boating or sailing on reservoirs shall be limited taking into account the intended use of the water, ensuring the preservation of its quality, and restricting the access to diversion or drainage areas in accordance with applicable regulations.
10. The Council of Ministers shall designate the Government authority responsible for establishing the minimum standards and requirements applicable to the type of activity to be carried out by the holder of the License, Authorization, or Concession.

Article 26

1. All Licenses, Authorizations, and Concessions shall be granted without prejudice to third parties' rights.

2. The water resources under License, Authorization, or Concession shall be used only as provided for in the provisions of the grant and may not be applied to any other use nor may it be used on different land(s), if for irrigation purposes, than those specified in the grant.
3. The issuing authority may require as a condition of the License, Authorization, or Concession that all or part of the water volume granted in the Concession be replaced, at the Concession holder's expense, by water from a different source in order to ensure the rational use of Drainage Basin water resources.
4. Upon the expiration of a Concession for water resources which:
 - a. by its terms, results in the reversion of works or improvements built within the public property to the Government, such works or improvements shall revert, free of charge and liens and encumbrances, to the Government which shall be free to transfer them to the new Concession holder.
 - b. by its terms, does not provide for reversion of the works or improvements to the Government and the works and improvements are such that they affect the supply or discharge of waters to the public, the transfer shall be for an agreed consideration as between the holder of the expiring Concession and the new Concession holder. In the event the parties cannot agree on the consideration to be paid, the amount shall be determined and fixed by an arbitration proceeding as agreed by the parties. If the parties can not agree as to arbitration the parties shall settle their dispute through the civil court system. The supply of water to the public or other users shall not be affected or interrupted by the current holder of the facilities which are the subject of the Concession pending resolution of the dispute.
 - c. resulted from rights having been acquired or conferred by operation of the Law, such rights shall be extinguished as provided in the applicable laws and, in the absence of such provisions, as provided in legal provisions of the same rank, force and effect.
5. In the case of water reserved or included in Water Resources Plans as not being subject to immediate use, interim Licenses, Authorizations, or Concessions may be granted, however, they shall not entitle the holder to any right whatsoever or give rise to compensation if the relevant authority reduces the volume or revokes the License, Authorization, or Concession.
6. In the event that the availability of water to existing holders of Licenses, Authorizations, and Concessions is affected by the issuance of a new Concession, the holder of the new Concession shall indemnify any actual damages that might be caused to existing users as a result of adapting works, installation, and equipment as necessary to realize the availability of water under their respective Licenses, Authorizations, and Concessions.

Article 27

The transfer of any rights created as a result of the granting of a License, Authorization, or Concession or the creation of liens or encumbrances thereon shall require prior Government approval.

Article 28

Any amendment to the provisions contained in a License, Authorization, and Concession shall require prior administrative approval from the same authority that granted it. In this regard, Licenses, Authorizations, and Concessions may be revised:

- a. If the supporting facts or grounds have changed.
- b. In cases of *force majeure*.
- c. If necessary in order to conform to provisions of the Water Resources Plans.

Article 29

1. Licenses, Authorizations, and Concessions may be cancelled for failure to comply with any of the conditions or deadlines established therein.
2. Concessions, due to their involving an exclusive right to the use of the designated water resources, regardless of the legal basis thereof, may be cancelled by the relevant authorities in the event of continuous interruption in normal services imputable to the holder of the right for a period of at least two (2) consecutive months except in cases in which the Concession involves the supply of water to municipalities, villages, communes, or Water User's Associations or the treatment of waste water therefrom, in which cases the applicable period of continuous interruption in normal services shall be at least ten (10) days unless, in every case, the interruption shall be due to *force majeure* or to events beyond the reasonable ability of the Concession holder to control and is so demonstrated to the relevant authority.
3. In the case of interruption in normal services involving the supply of water to municipalities, villages, communes, or Water Users' Associations for domestic use and to commercial establishments or enterprises within their boundaries, the holder of the License or Concession shall be responsible: first, for the emergency provision of safe and potable water in sufficient quantity to ensure the health and well being of domestic users normally served and, second, to supply the minimum requirements of affected commercial establishments after meeting domestic requirements.

Article 30

1. The issuing authority may grant Authorizations for the exploration of underground waters on State or privately owned lands to determine the existence of exploitable resources upon prior competition.
2. Should the exploration prove successful, and should the terms of the Authorization so provide, the interested party may, within a period of three (3) months from the discovery, submit an application for a License or Concession which will not be subject to competition. Upon the expiration of the three-month period or notification from the

interested party that an application for Concession will not be submitted, whichever occurs first, the relevant authority may pursue a free and open competition.

3. If the holder of the Concession is not the owner of the land on which some or all of the works will be located and no private agreement with the land owner has been effected and the Concession has been conferred to serve a public interest purpose, compensation shall be paid to the property owner for any damages' including loss of use of the land in accordance with existing legislation.

Article 31

1. Applications for Licenses, Authorizations, and Concessions which affect the public domain over the waters and which might involve ecological or environmental risks shall be accompanied by an Environmental Impact Assessment if requested by the NWC or DBC or as required by applicable Laws and regulations.
2. Well drillers shall comply with all regulations relating to exploitation for water resources and shall submit a drilling report to the appropriate DBC detailing the results of the drilling activity. The DBC will forward a copy of all such reports to the Executive Director of the Technical Secretariat for inclusion in the registry of water resources.

SECTION VIII

Water Users' Associations

Article 32

1. All water users, consistent with the usage rights enumerated in Section VI, who take the water from a single source of water supply or whose rights derive from the issuing authority's decision to grant a single License, Authorization, or Concession to cover the water use may form a Water Users' Association. In this regard, the Water Users' Association may be formed voluntarily by the members themselves or as the result of an Administrative Directive by the relevant authority as provided herein for the purpose of insuring proper and efficient use and management of water resources.
2. Water Users' Associations shall take into account the geo-physical boundaries of the members and the primary purpose of the intended collective use of the water:
 - a. In the case of associations whose primary purpose is the provision and discharge of water resources relative to domestic uses, the association shall be known by the name of the municipality, village, or commune served (e.g., "Kukes Water Users' Association"). In the event more than one association is located in the same served area, the respective associations shall be designated by the addition of a numerical suffix ("-- 1, 2, etc.") to prevent confusion.
 - b. In the case of associations whose primary purposes relate to the provision of water resources for irrigation, the drainage of waters, and flood protection, the association shall be known by such name as the members of the association or the District Directorates of Agriculture and Food may designate.

Article 33

1. The National Water Council shall direct and oversee, as it may deem necessary, the preparation of model Statutes and Regulations to govern the establishment and activity of Water Users' Associations. After adopting their Statutes, the associations shall submit them for administrative approval:
 - a. to the DBC in the case of associations whose primary purpose is the provision and discharge of waters for domestic use.
 - b. to the District Directorates of Agriculture and Food in the case of associations whose primary purposes relate to irrigation, drainage, and flood protection.

Administrative approval of the Statutes may not be refused without prior consultation with the NWC and the Ministry of Agriculture as appropriate. In cases in which the Statutes, as submitted for approval, depart from the model Statutes and Regulations provided by the relevant authority for the purpose stated in a. above, the Statutes must be submitted to the relevant authority for approval.

2. Upon approval, the Water Users' Association shall register its Statutes in the Water Register maintained by the respective DBC and at the competent Court to establish juridical status.

3. The Water Users' Associations shall be deemed to be public corporations subject to review by the DBC to help assure compliance with Statutes and proper use under the License, Authorization, or Concession as granted.
4. The Statutes of the associations shall include at a minimum:
 - a. name.
 - b. territorial scope by written description and as designated on a map of appropriate scale.
 - c. purpose(s) and objectives.
 - d. authority and functions.
 - e. membership procedures and members' obligations and rights.
 - f. pro-rata scheme for contributions for expenses.
 - g. provisions for general meetings, elections, and functions of an Executive Committee, Directive Council, or other such body and for the establishment of juries.
 - h. provisions to address dues, costs, fees, charges, fines, and other applicable financial issues.
 - i. administrative provisions as to recordkeeping, accounts, duration, dissolution, liquidation, and amendment.
 - j. other provisions uniquely relevant to the respective association.

Article 34

In cases in which the users in a given area are to form a Water Users' Association, whether by voluntary agreement of the members or in response to an Administrative Directive from the relevant authority or the District Directorate of Agriculture and Food, and the required Statutes as provided herein have not been submitted for approval within six (6) months of the effective date of the general agreement or the Administrative Directive, the respective DBC, or District Directorate of Agriculture and Food shall have the authority and right to prepare the Statutes and Regulations for the Water Users' Association and to seek and carry out any and all administrative actions as may be appropriate and necessary to realize the purposes of the association.

Article 35

Resolutions of the associations that impose an obligation on the members to do some action or to pay amounts shall be self-executing and enforceable against the users.

Article 36

The associations shall be the beneficiaries of condemnations and easements to the extent they are required by the water uses and the fulfillment of the purposes of the association.

Article 37

Associations must implement works and installations as required by the Government to prevent the misuse of the waters or the degradation of the public domain over the waters. The DBC shall be empowered to suspend the water utilization until such works have been completed.

Article 38

The claims of associations for administrative, maintenance, cleaning, and improvement expenses, as well as any other debt arising out of the administration and distribution of water, shall be charged to the individual users, property, enterprise, or entity which receives such services.

Article 39

The cost of any administrative or court costs to recover moneys owed by users to the association and/or to the Government and for any necessary association or Government expenses for construction resulting from the failure of the user to take directed actions shall be assessed against the user in the case of an action brought by the association, and against the association in the case of an action brought by the Government without prejudice to the association to seek indemnification from the responsible user. In this regard, the assessment shall be recorded in the Water Register and the interruption of water supply to the user by the association without consultation, or to the association upon the Order of the Drainage Basin Council after consultation with the NWC, shall be authorized.

Article 40

The transfer of any property rights by a delinquent user shall be without legal effect unless and until full payment of the delinquency is made whether by the delinquent user or his proposed successor. In accordance with Government Administrative Procedures legislation, the delinquent user's property shall be subject to seizure as necessary to satisfy the delinquency. Delinquent users shall not be authorized to obtain Licenses, Authorizations, and Concessions for the use or discharge of water resources until the delinquency shall be satisfied.

Article 41

The association juries' duties will be to hear and resolve disputes that may arise among the users within the scope of the Statutes and to impose the relevant sanctions on offenders, as well as to determine the compensation to be paid to injured parties and any obligations that may arise from the violation.

Article 42

Subject to the provisions in Section VIII, Municipalities, Villages, Communes, enterprises, public or private entities, or other natural or juridical persons that discharge sewerage or waste water may form an association as provided herein to study, construct, use, or improve sewers, purifying stations, and common elements that may allow them to make the discharges in the most suitable place and under the best technical and economic conditions, taking into account ecological concerns and the need to protect the environment.

SECTION IX

Waste Discharge

Article 43

1. Activities that might pollute or degrade the quality of water resources to include the discharge of sewerage or waste water or the discharge of liquid, solid, or gaseous wastes, whether by public or private entities, or by natural or juridical persons shall require the prior issuance of a License, Authorization, or Concession. Where a number of domestic dischargers use a collective sewerage system, the responsible party shall be the entity responsible for the management and operation of the sewerage system. Individual domestic dischargers shall be exempt from the requirements of this Section providing they are not in violation of this Article due to unsanitary practices involving the disposal of sewerage, waste water, or other wastes.
2. The Council of Ministers shall designate the Government authority responsible for establishing the minimum standards and requirements applicable to the type of discharge activity to be carried out by the holder of the License, Authorization, or Concession.

Article 44

1. Discharge Licenses, Authorizations, and Concessions shall set forth in detail the requirements to be met by the discharger as provided in the applicable regulations to include a description of the purification plant or facility and the monitoring devices and procedures to ensure their correct functioning, as well as any restrictions placed on the contents of the effluent.
2. The discharge License, Authorization, or Concession may provide for a delay to enable the discharger to conform the characteristics of the discharge to the limits imposed therein.

Article 45

1. Discharge Licenses, Authorizations, and Concessions for discharge activities that might give rise to the infiltration or accumulation over time of substances in aquifers or underground waters will only be granted if a hydrogeological study completed within one (1) year of the date of application is provided by a qualified and certified enterprise and the study confirms that no degradation in the quality of water resources will occur.
2. The reuse of sewerage or waste water shall be subject to such restrictions as may be established by the responsible Government authority designated by the Council of Ministers and based on purification processes to be employed and the intended uses of the water.

Article 46

Administrative permits for the setting-up, alteration, or transfer of enterprises or industries that produce or might produce waste discharges shall be granted subject to the condition that the proper discharge License, Authorization, or Concession is obtained.

Article 47

The issuing authority may refuse to grant discharge Licenses, Authorizations, and Concessions for activities or industrial processes the effluent from which, despite treatment or reprocessing, might pose a serious risk of pollution to water resources, the ecological system, or the environment either in the normal course of the activities contemplated or in the event of any foreseeable exceptional circumstances.

Article 48

The relevant authority shall be empowered to impose a fine and/or revoke a discharge License, Authorization, or Concession in case of breach of any of the conditions thereof. In such case, the respective DBC shall provide its recommendation to the relevant authority for its consideration on the matter. When the breach of the conditions thereof is of an especially egregious nature and results in serious damage to the ecological system, environment, or water resources, the cancellation of the discharge License or Authorization shall also entail forthwith the termination of any applicable water Concession without any right to compensation.

Article 49

The DBC shall make a recommendation to the relevant authority concerning the temporary or permanent suspension or amendment of a License, Authorization, or Concession if the circumstances on which the permission was based change or if new circumstances occur which, if they had existed at the time of application, would have resulted in a refusal of the permission or the issuance of the permission with different conditions or terms. The affected Holder shall have the right of administrative appeal as provided by regulation and to recourse in the civil courts after exhausting administrative remedies.

Article 50

The NWC and the DBC shall be empowered to order the immediate cessation of all activities that result in the production of any unauthorized discharge as appropriate and necessary in the public interest.

Article 51

The NWC may direct the DBC to take over responsibility for the operation of sewage treatment plants, directly or indirectly, in those cases where the holder of the License, Authorization, or Concession is incapable or unwilling to comply with the conditions of authorized directives, amendments, or the subject License, Authorization, or Concession. In such cases, the DBC will request from the holder, including by means of civil court proceedings if required, sums owed to the Government for:

- a. amounts necessary to correct or modify the plant as specified in the License, Authorization, or Concession.
- b. uncompensated expenses resulting from the use, maintenance, and upkeep of the plant.

Article 52

Waste treatment or processing enterprises and companies may be established by Government or private initiative for the purposes of treating, transporting, and disposing of sewerage wastes or for the clean-up of pollution produced by third parties. Discharge Licenses, Authorizations, or Concessions granted to such companies shall include, in addition to those conditions normally required for the establishment of a company:

- a. a detailed report with supporting technical information as to the type of waste to be handled.
- b. proposed fees and the procedures for their calculation and periodical revision.
- c. compulsory submission of a bond in an amount determined by the Government consistent with the type of activity to be performed.

Article 53

The NWC shall establish regulations for the direct reutilization of water based on the purification processes, quality, and intended uses of the water. Should the reuse be carried out by a different user than the first user of the water, the two uses shall be considered independent and subject to different Licenses, Authorizations, or Concessions.

Article 54

The NWC shall be empowered to solicit and evaluate bids and to procure services as necessary and proper to the implementation of the National Water Strategy and to award grants, subject to the availability of funds set aside for such purposes in the State budget, for studies, research, recycling of waste water, improving operational practices, and the application of technology to reduce the use or waste of water resources, and to decrease the amount of pollutants being introduced at the source of water use.

SECTION X Wetlands

Article 55

1. Marshlands or areas subject to flooding, including those created artificially, shall be considered wetlands.
2. The delimitation of wetlands shall be as provided in the applicable DBWRP or in specific legislation.
3. All activities affecting such areas shall require the prior issuance of a License, Authorization, or Concession.

Article 56

DBC's and the appropriate environmental bodies shall coordinate their efforts to properly protect certain wetlands deemed to be of special interest for ecological or aesthetic reasons by designating them "Special Interest Zones" in the DBWRP.

Article 57

Upon the recommendation of the appropriate health and environmental bodies, the DBC shall submit a proposal to the NWC for draining those wetlands declared to be unhealthy to the populace or when such action would be in the public interest.

SECTION XI

Financial Considerations

Article 58

The occupation or use of any of the water resources subject to public domain referred to in Section II and which requires prior License, Authorization, or Concession shall be subject to the payment of fees as may be determined by the NWC, the DBC, and by legislation and regulation.

Article 59

Discharge activities which require a License, Authorization, or Concession in accordance with Section IX, shall be subject to the payment of fees as may be determined by the NWC, DBC, and by applicable legislation and regulation.

Article 60

Fees paid for Licenses, Authorizations, and Concessions, as well as for fines and penalties, shall be collected on behalf of the State by the DBC which shall retain a percentage of such fees, fines, and penalties as designated by the Council of Ministers. The DBC shall withhold sixty percent (60%) of such retained moneys for the purpose of establishing and maintaining a Drainage Basin Water Resources Fund to protect and improve water resources throughout the drainage basin and shall provide forty percent (40%) of such retained moneys to the Technical Secretariat for the purpose of establishing and maintaining a National Water Resources Fund to improve water resource management throughout the country. The majority percentage of the fees collected for Licenses, Authorizations, and Concessions and for fines and penalties of seventy percent (70%) shall be periodically reported and moneys submitted to the Ministry of Finance in the manner determined by the latter.

Article 61

1. Those who benefit from works to effect the use or discharge of surface or underground waters and which are constructed or carried out, totally or partially with State financing, shall pay a fee to compensate the State's contribution and to cover the cost of the use and maintenance of such works as may be determined by the NWC, the DBC, and by applicable legislation and regulation.
2. Those who benefit from other specific hydraulic works carried out, totally or partially with State financing, including work done in order to correct degradation of the public domain over the waters, shall pay, in return for the availability or use of the water, a fee intended to compensate the State's contribution and to cover the cost of use and maintenance of such works as may be determined by the NWC, the DBC, and by applicable legislation and regulation.
3. The distributive share of the total amount owed by all those who benefit from the works shall be determined by legislation and regulation.
4. In cases where the provision or treatment of waters is effected by private works, the served users shall be obligated to pay a fee in relation to their consumption or usage as

determined by the owner/operator of the private works subject to Government regulation and oversight.

Article 62

Any appeals filed in connection with the assessment or settlement of fees or other costs shall not prejudice any applicable regulations or suspend the relevant acts and payment shall be owed and enforceable against the user or discharger by executory proceeding or in the civil court. In this regard, failure of the user or discharger to pay the obligated amount shall result in the suspension or loss of the right to use or exploit the public domain over the waters whether by License, Authorization, or Concession.

SECTION XII

Violations, Penalties, and Dispute Resolution

Article 63

The following shall be deemed administrative violations:

- a. Actions that cause damage or degradation to water resources.
- b. Diverting water from its bed and/or extracting underground waters without License, Authorization, or Concession.
- c. Failure to comply with the conditions imposed in Licenses, administrative Authorizations, and Concessions provided in this Law, without prejudice to their automatic termination, cancellation, or suspension.
- d. Carrying out works, sowing, or planting in public streambeds or riverbeds or in areas legally subject to any kind of restriction regarding their use, without proper License, Authorization, or Concession.
- e. Occupation of streambeds or riverbeds or extraction of stones and gravel therefrom without proper License, Authorization, or Concession.
- f. Waste discharge activities that might deteriorate the quality of the water or the drainage conditions of the bed into which the waste is discharged, without proper License, Authorization, or Concession.
- g. Failure to permit entry of an inspector upon the land or premises upon proper notice of authority for the purpose of conducting an inspection to determine compliance with the provisions contained in this Law.
- h. Failure to submit a well drilling report to the DBC.
- i. Tampering with or disconnecting any installed water meter or impairing or otherwise degrading the proper operation of a licensed water works.
- j. Failure to observe the prohibitions or carry out the acts or to comply with the provisions contained in this Law.

Article 64

The aforementioned violations shall be legally classified as minor, less serious, serious, and very serious taking into account their impact on the order and use of the public domain over the waters, their importance regarding the safety of persons and property, and the circumstances of the responsible party, degree of malice, participation, and benefits obtained, as well as the degradation of the quality of the water resources. In this regard, the following fines may be imposed:

- a. Minor violations shall be punished with fines of up to 10,000. Leks.
- b. Less serious violations shall be punished with fines between 10,000. and 100,000. Leks.
- c. Serious violations shall be punished with fines between 100,000. and 1,000,000. Leks.

- d. Very serious violations shall be punished with fines between 1,000,000. and 100,000,000. Leks.

Article 65

The monitoring of the use and discharge of water throughout the drainage basin(s) shall be accomplished by means of self reporting by the holder of the License, Authorization, or Concession as required by regulation and by means of inspections of the holder's facility and operations by government appointed inspectors. In this regard:

- a. Monitoring shall be conducted so as to ensure compliance by water users and dischargers with the provisions of their License, Authorization, or Concession as granted by the NWC and to detect usage and discharge activities being carried out without a License, Authorization, or Concession when such activities require one.
- b. When a Government inspector, whether appointed by the DBC or by another Government agency or a Ministry, discovers non-compliant activity, the inspector shall file a "Report of Non-Compliance" with the DBC and shall provide the violator with a copy of the Report and a written order to cease the non-compliant activity and to correct the condition causing the non-compliant activity within a period of time commensurate with the type of activity observed.
- c. The DBC may assess a fine upon the User or Discharger or other responsible person up to the limits specified in this Section for minor or less serious violations. Failure to correct the non-compliant activity within the time period set by the inspector and affirmed by the DBC shall require a decision by the DBC as to whether a recommendation should be made to the NWC to assess additional fines and penalties and/or to amend or revoke the violator's License, permit, or Authorization. Prior to rendering its decision on the matter, the DBC shall conduct an administrative hearing at which the holder of the affected License or Authorization may present his arguments in writing or in person.
- d. If the DBC renders a decision to recommend to the NWC the assessment of additional fines and penalties or the amendment or revocation of the License, Authorization, or Concession, it shall forward the "Report of Non-Compliant Activity" together with any and all supporting documentation, to the Executive Director of the Technical Secretariat for subsequent decision by the NWC.
- e. The NWC shall review the "Report of Non-Compliant Activity" together with the supporting documentation and shall render a decision on the matter. The decision of the NWC, together with all supporting documentation, shall be forwarded to the Executive Director of the Technical Secretariat who shall maintain a registry of all actions relating to "Reports of Non-Compliant Activity." A copy of the NWC's decision shall be sent by the Executive Director to the affected DBC which shall in turn advise the holder of the License, Authorization, or Concession as to the decision rendered by the NWC.
- f. The affected holder shall have the right to file a Petition for Review with the Executive Director of the Technical Secretariat to seek reconsideration of the matter

by the NWC. The NWC shall reserve the right either to review the case or to refuse reconsideration. In either case, the Executive Director shall notify the holder of the License or Authorization of the NWC's final disposition of the Petition and shall enter the decision in the registry.

- g. The holder of the License or Authorization shall be free to appeal the decision of the NWC through the civil court system after all administrative hearing rights and remedies have been exhausted.

Article 66

The DBC shall be responsible for assessing and collecting fines for minor and less serious violations. In cases of serious or very serious violations, the DBC shall be responsible for ensuring that the final decision of the NWC is implemented and that all assessed fines are collected on behalf of the State.

Article 67

Without prejudice to the imposition of fines, the DBC may direct violators to repair any damages caused to the water resources, the ecological system, or the environment, as well as to effect restoration as deemed appropriate to the situation.

Article 68

The NWC may impose punitive fines as provided in applicable legislation. The amount of each fine shall never exceed twenty percent (20%) of the maximum fine stipulated for the violation committed.

Article 69

In the event the violation might constitute a criminal offense, the Government shall refer the case to the competent jurisdiction and shall refrain from continuing the sanctioning procedures until the Courts have rendered a decision. The Court's sanction shall deduct the administrative fines. Should no criminal offense be found to exist, the Government may continue with the sanctioning proceedings on the basis of the facts the Courts found proved.

Article 70

Any claims arising in connection with acts or resolutions of any body or agency relating to the public domain over the waters subject to civil law shall be brought before the Civil Courts after first exhausting all administrative rights of appeal and relief.

SECTION XIII

Transition Provisions

Article 71

1. Natural or juridical persons exercising control over water resources subject to an administrative concession or other Government authorization granted prior to the enactment of this Law and providing such authorization is not inconsistent with the public interest as determined by the relevant authority may continue to exercise their rights for the period specified in the authorization and in accordance with the provisions contained therein. The holders of such authorizations shall be required to register them in the Water Register administered by the DBC in the affected Drainage Basin within sixty (60) days of the establishment of the Register.
2. In such cases where the relevant authority shall determine that a Concession or an Authorization granted prior to the enactment of this Law is contrary to the public interest, the Concession or Authorization shall be subject to termination as may be deemed proper by the relevant authority without prejudice to the holder's right to judicial review.
3. Any increase in the total volume of usage above that provided in the prior Concession or Authorization, as well as any change in the conditions or legal status of the use, shall require the submission of a new application to support the use sought.
4. All water uses referred to or affected by these Transition Provisions shall be subject to the regulations governing the over exploitation of aquifers, restrictions on the use of water in the event of serious drought or urgent need, and, generally, those relating to the degradation and restriction of use of the public domain over the waters.

SECTION XIV Closing Provisions

Article 72

The following legal provisions are hereby abrogated:

(TO BE PROVIDED IF APPROPRIATE)

Article 73

The following legal provisions are hereby amended:

(TO BE PROVIDED IF APPROPRIATE)

Article 74

The NWC and the Council of Ministers are charged to endorse the relevant acts and regulations as appropriate for the implementation of this Law.

Article 75

This Law comes into force fifteen (15) days after its announcement in the "Government Gazette."

Tirana, __. __. 1994

Law nr. _____

CHAIRMAN OF PARLIAMENT

Pjeter Arbneri

**THE MINISTRY OF
CONSTRUCTION, HOUSING AND TERRITORIES
ADJUSTMENT OF THE
GOVERNMENT OF ALBANIA**

**AN OUTLINE ON RECOMMENDATIONS FOR
IMPLEMENTATION OF THE
DRAFT WATER RESOURCES LAW**

AN OUTLINE ON RECOMMENDATIONS FOR IMPLEMENTATION OF THE DRAFT WATER RESOURCES LAW

Overview

The regulatory framework for the implementation of the Law on Water Resources is critical to realizing the objectives and benefits of the Law itself. This is especially true in view of the fact that the administrative structure established by the Law is both new and (at Albanian request) structured in a vertical manner from the National Water Council (NWC) in Tirana directly down to the Drainage Basin Committees (DBC's) at the regional level.

The practical result is that the NWC must necessarily rely on governmental representatives and officials at the regional and local levels to carry out the day-to-day supervisory and regulatory functions required under the Law and implementing regulations. The regulations must, therefore, serve as a bridge between the central authority resting in the NWC and the regional and local administration of the Law by the DBC's.

This outline serves as a companion document to the Draft Law as submitted to the Minister of Construction, Housing and Territory Adjustment in Tirana for the purpose of assisting the drafter of the supporting regulations. It incorporates certain comments provided by Mr. Yohannes Kassahun, Esquire, in an outline on the same issue which has been provided under separate cover to PADCO. However, it does not repeat the input of Mr. Kassahun to avoid needless duplication. Taken together, these outlines should help focus the work in drafting the supporting regulations.

The structure of this outline follows the structure of the Draft Law for reference purposes only, since the ultimate regulatory framework must, of necessity, conform to the requirement of public utility regulation in general and to applicable provisions concerning privatization and concession laws and regulations.

The following inputs reference provisions of the Draft Law on Water Resources, dated October 1, 1994.

I. Section I. General Provisions

- A. Regulations should contain additional definitions as needed to further elaborate the concepts contained in both the Law and the regulations themselves, as well as to address technical provisions.
 - 1. Appropriate definitions or references to definitions and standards in regulations governing health standards, environmental requirements, etc.
 - 2. Review of Civil Code (unavailable at time of drafting) to determine consistency of Draft Law and regulatory definitions with those contained in the Code.

II. Section II. State Domain over Waters

- A. Implementing regulations must clearly differentiate between State ownership of water resources as compared with the limited concept of the natural or juridical person's right to use water resources by License, Authorization, and Concession.
- B. Regulations should provide for the types of temporary protective activities to be permitted, how they may be carried out, etc. (Article 5)
- C. The types of limitations on the use of flooded areas should be specified. (Article 7)

III. Section III. Public Administration of the Water

- A. Regulations should address activities and operational procedures relating to the National Water Council. At a minimum, the regulations should include the following:
 - 1. Specifics as to how often and under what conditions/situations the NWC shall meet.
 - 2. Rules governing the NWC's proceedings and delegatory procedures in assigning tasks or setting up new executive agencies/bodies under the authority provided by the Law. (Common in the U.S. and other Western countries, but a new concept for Albania and, as such, potentially objectionable.)
 - 3. Timetables for submission and approval of the Drainage Basin Water Resources Plans and the National Water Resources Plan.
 - 4. A breakdown of how the NWC is supported by the Technical Secretariat, Drainage Basin Administration, etc.
 - 5. How plans and projects are to be submitted for review by the NWC.
 - 6. Delineation of other governmental entities' responsibilities to support the NWC's work.
- B. The activities of the DBC must also be addressed as applicable in items 1-6 above. In addition, the regulations should include at a minimum:
 - 1. Procedures governing the appointment of staff and inspectors, their authority, and detailed provisions as to how inspections are to be carried out.
 - 2. Forms, requirements, and procedures by which the DBC monitors the usage and discharge of water.
 - 3. Procedures and timetables for the submission of "Reports of Non-Compliant Activity," both to the DBC and by the DBC to the NWC through the Executive Director of the Technical Secretariat.
 - 4. Procedures for reporting recommendations and other matters required by Law to the NWC.
 - 5. Rules to be applied by the DBCs in establishing perimeters.
 - 6. Procedures relating to the maintenance of the Water Register.

7. Timetable and procedures for the operating budget and for its submission to the Executive Director of the Technical Secretariat.
- C. The activities of the Technical Secretariat should be addressed for the applicable issues listed in A.1-6 and B.1-7 above and, in addition, should include at a minimum:
1. Procedures relating to the Technical Secretariat's responsibilities in support of the NWC and relationship with the DBCs. The regulations should address how the Technical Secretariat shall review and evaluate applications submitted by the DBC in concert with concerned Ministries, institutes, and other agencies to render its recommendation.
 2. Procedures governing the provision of data to the Technical Secretariat by other Government agencies and sources for inclusion in the registry of water resources.
 3. Administrative status and relationship of the Technical Secretariat to the Ministry of Construction, Housing and Territory Adjustment.

IV. Section IV. Water Resources Planning

- A. The regulations should prescribe the relationship and boundaries of the DBCs as contained in the respective Drainage Basin Water Resources Plans and the procedures by which the plan(s) are to be implemented and by:
1. Provisions to be contained in the Drainage Basin Water Resources Plan, including but not limited to those contained in the Law.
 2. Reference as to how the Plan shall identify and provide for areas subject to special protection.
 3. Provisions to be contained in the National Water Resource Plan, including but not limited to those contained in the Law.
- B. Administrative procedures for the duplication and dissemination of the Plan.

V. Section V. Statutory Easements

- A. Regulations must provide for the Government's right to establish compulsory easements in the public interest (a kind of equivalence to the right of eminent domain in the U.S.). (Articles 18-19)
- B. Regulations in this area must be carefully checked against applicable provisions in the Civil Code for consistency.

VI. Section VI. Public and Private Uses

- A. Appropriate uses should be elaborated in the regulations. For example, a demarcation line should be established in the regulations between watering of livestock for domestic purposes and that carried out commercially — number of animals, etc. (Article 20)

- B. Procedures for designating public access routes to water sources and for handling disputes.

VII. Section VII. Licenses, Authorizations, and Concessions

- A. Procedures for making application for a License, Authorization, or Concession.
- B. Detail of the application to include (ensure conformity with pertinent regulations re: Concessions, etc.):
 - 1. Name of applicant, type entity, address, etc.
 - 2. Type of application (for License, Authorization, etc.)
 - 3. Source of supply
 - 4. Type of use (domestic, industrial, etc.)
 - 5. Technical parameters, including quantity limit, restrictions, disposition of wastewater, etc.
 - 6. Reporting requirements as applicable (voluntary self-testing for domestic users, plus subject to State inspection; mandatory reporting procedures for commercial and industrial users, plus subject to State inspection).
 - 7. Other relevant provisions as applicable.
- C. Timetable and fee schedule for the application process.
- D. Procedures governing in the event of expiration of a License, Authorization, or Concession.
- E. Appeal procedures concerning Government cancellation or amendment of an existing License, Authorization, or Concession.
- F. Procedures governing payment of compensation to private owners upon whose land water will be extracted both for access and denial of use as appropriate. (Article 31)

VIII. Section VIII. Water Users' Associations

- A. Model Statutes and Regulations for the Water Users' Association should be provided by regulation in accordance with the Law (Article 34). In this regard, the Model Statutes and Regulations already promulgated by the Ministry of Agriculture to implement the Irrigation and Drainage Law also provide additional information.
- B. Procedures for fee collection by the DBC from the Association for usage.
- C. Review of the Civil Code and Government Administrative Procedures legislation to cover delinquency procedures.

IX. Section IX. Waste Discharge

- A. Same considerations as expressed in Section VII, A-E.

- B. Provisions to implement the solicitation of bids and the procurement of services consistent with the upcoming legislation on privatization and the Concession Law.

X. Section X. Wetlands

- A. Specific technical provisions used to classify land as wetlands.
- B. Provisions governing the coordination of concerned governmental bodies.

XI. Section XI. Financial Considerations

- A. The fee schedule (and its calculation if established other than by decree) for all categories of water usage and discharge provided from Government-owned and operated and Government-owned and privately managed facilities.
- B. The calculation of the fee schedule for all categories of water usage and discharge provided from privately owned and operated facilities.
- C. The manner in which usage and discharge fees applicable to the State are to be collected by the Drainage Basin Committee for payment to the Ministry of Finance.

XII. Section XII. Violations, Penalties, and Dispute Resolution

- A. The schedule of fines by category and the procedures by which Violators shall make payment to the DBC and as to how these sums are administered for transfer to the Ministry of Finance.
- B. Procedures relating to self-monitoring and reporting. Regulations should specifically target waterworks and sewage treatment facilities which should be required to submit test results no less often than monthly to relieve the Government of this expense and burden.
- C. Procedures to be followed by inspectors in making inspections and reporting violations to the DBC.
- D. The administrative procedures to be followed by the DBC, NWC, and the Violator from the time of submission of a Report of Non-Compliance by the inspector through final disposition of the matter. Such scheme should include specific administrative hearing provisions as necessary if not provided for adequately in existing laws.
- E. Procedures relating to notice and collection of fines by the DBC and as to how repairs are to be directed by the DBC.

**THE MINISTRY OF
CONSTRUCTION, HOUSING AND TERRITORIES
ADJUSTMENT OF THE
GOVERNMENT OF ALBANIA**

**COMMENTS ON THE
DRAFT WATER LAW OF ALBANIA**

COMMENTS ON THE DRAFT LAWS ON WATER RESOURCES OF THE REPUBLIC OF ALBANIA

This comment is divided into two segments:

1. General Comment on the whole draft law.
2. Comment on specific Articles.

1. General Comment

1. The draft water law is a comprehensive outline to develop a water law that directly relates to the Albanian situation. The draft water law relies on the concept and structure of water law in a jurisdiction which has developed and operated a civil and commercial law system. In the Albanian case, the legal and institutional framework for commercial activities and other civil matters is in the process of development. The draft civil code is still under discussion and the regulation of commercial practice and of the commercial court system is developing. The application of certain rights and obligations arising from this draft water law should, therefore, be reviewed to fit the structure and current practices of the Albanian legal system. For instance, more definitions of legal terms and concepts need to be included under Article 3. Concepts of state-ownership, as distinguished from socialist principles, of central government, and of civil law under Article 8, etc. should be defined.
2. In many Articles, concepts and detailed practical implementation have been suggested. Details could normally be included in the implementing regulations. These have been noted in the comments on each Article.
3. Certain use of water has been mentioned without much detail. Some of these areas have already been regulated by other laws, for example, Article 24 on navigation and floating, Article 22 fisheries, Section 9, waste discharge, penal code procedures under Article 55, etc.
4. Some articles contain explanation or commentary on the concept behind the Article. Such commentary may be separated and presented in a separate document. For example, Article I General Disposition may be developed into a preamble.
5. The general duties of a water enterprise may be included under Section 7. The Section only outlines requirements of licensing, authorization, and concessions.

2. Specific Comments

These comments do not include any corrections on typographical, spelling mistakes, or format of the text of the draft law.

Article 1

1. The term “national treasure” indicates ownership. This term may not coincide with that provided in other codes, especially the civil code. It would be useful to use terms consistent with the civil code because courts will refer back to the basic legal sources like the civil code or the constitution for definition of these terms.
2. The discussions under Article I may well be included in a preamble.
3. The last two sentences seem to be out of place. The laws on environment and equity are provided in other laws.

Article 2

1. The regulation of the importance of water is too broad and general to be a purpose for this law. The idea behind the phrase seems to indicate the ownership title to water in general. It may be rephrased with that concept or else deleted.

Article 3

1. The term “dominion” of the Republic of Albania may not indicate the correct status of Albania because “dominion” is a word that indicates colonial or trustee relation with another region. Delete the word.
6. (a) and (b) indicating the width of an easement area and control area in the main law may cause two problems:
 - a. The width described here is not based on any study of Albanian water sources. Therefore, it is liable to change.
 - b. The proviso that says that this may be altered by “a directive” or implementing “regulation” contradicts the hierarchy of laws. A “directive” cannot change the provision of a law passed by the Parliament. Therefore, it would be appropriate to revise number 6 and put in general terms, or make sure that the width indicated is based on studies conducted in Albania.
7. A “Drainage Basin” referred to only the surface water flow into the sea. The concept of Drainage Basin Administration seems to be broader. It should include underground water, lakes, ponds, wells, etc. Therefore, that definition should expand to signify the Basin Administration structure.
8. This definition of the “user” should also include a natural person using water in various forms.

9. The definition of “discharge” should coordinate with definitions in the law on waste disposal.

Section 11 – “Public Domain over Waters”

The term “Public domain” should be defined because this may be confused with the concept of use by the public, i.e., private persons’ use of water as mentioned in other sections of this draft law.

Article 4

The State’s public domain over water resources seems to indicate ownership. It would be appropriate to use the term ownership or the definition of public domain. Delete “state’s” because it is redundant.

- e. Rewrite as “coastal or bordering waters under the territory of the Republic of Albania.”

Article 5

Define “hydrological cycle.”

“Central” Government indicates that there are autonomous federal states or autonomous regions. It is better to delete “central” and use “the government.”

Article 7

Line 107 – Delete again “Central.”

Article 8

Lines 111 and 112. In the first sentence, the term “civil law” is too broad. The sentence may mean the status of licenses or violations, while the Article contains the conditions of alteration. Therefore, delete the first sentence.

Article 9

Should include a heading “e” – “the regulated access to the use of water by natural persons.”

Article 10

The powers and duties assumed by the Water Council are both decision making and, to some extent, operational. Therefore, including in the membership officers like Head of the Hydrogeology Institute, Head of the Environment Protection and Preservation, and the Executive

Director members will be essential because they will be technical resource persons to the Council.

Considering the frequency of meetings to make operational decisions, the number of high-ranking government ministers and Committee members might make full attendance a problem. Therefore, it is useful to note that the Council may delegate duties *ad hoc* to Sub-Committees of the Council.

Article 11

- I(c) Remember one of the c's.
Line 159. The Water Council should also have power to issue directives for explaining implementation procedures of the water law.
 - (f) Lines 178 and 179. Refers to "Central Government" and "Municipal Governments." These designations may not apply to Albanian government administration structure. It would be useful to designate the Albanian government as the government and subdivisions as "districts" or "municipalities."
 - (g) Lines 184-188. As the Water Council will have the power to ask, the organizations that are requested to supply information should have the duty to provide the necessary information.
2. Line 199. The Executive Director should be appointed for a fixed term with possibility of renewal for another term. The qualifications should be specified in a regulation. The Director of Water Drainage Basin should have a similar fixed-term appointment and specified qualifications.
 3. There has been a suggestion that Drainage Basin Councils may retain a certain percentage up to 20% reserve capital from revenues collected in the National Bank. The Council may be empowered to supervise the use of such reserve capital.

Article 12

1. In line 205, the term "Drainage Basin Council" has been used interchangeably with "Drainage Basin Committee." The term "Council" may not be appropriate because it indicates the Drainage Basin as an autonomous body with certain powers as a juridical person. The administrative bodies at the level of a Water Basin serve only as a branch directly accountable to the Water Council. Therefore, the term "Drainage Basin Administration" would be more appropriate.

The first sentence in this Article speaks about the Drainage Basin Council's authority over one or more Drainage Basin areas. The Drainage Basin is an administrative unit for water and each Drainage Basin will have its own Drainage Basin Administration.

Therefore, a Drainage Basin Administration cannot have two or more Basins to administer.

2. Line 221. The daily operational management of the Drainage Basin is directed by an appointee of the Water Council. This Director seems to have a direct working relation with the Water Council. But Article 12(2) indicates that they are appointed or removed upon the proposal of the Executive Director, which means that the Executive Director will have an administrative arm on the Drainage Basin Administration. This may not coincide with the powers given to the Drainage Basin Administration. This issue must be clarified with the Albanian authorities.
- 3.b. Lines 244-251. These Articles should be under the Dispute Resolution Section.
- 3.b.5. Lines 256-265 are details which should be included in a regulation because these procedures may change very frequently.
- 3.b.6 and 7 Lines 267-276 should be moved to Dispute Resolution Section because these are part of the appeal procedures.
- 3.h. Lines 290-294 should be part of the regulation because these procedures of submitting may regularly be revised with types of cases and submission forms.
- 3.i. Lines 295-296 are too broad, giving unlimited power to the Drainage Basin Administration. If there is any temporary condition for the limiting of the use of water, they should be outlined specifically.

Lines 296-299 of the same Sub-Article are not clear.
- 3.j. Line 302. Add after the first word “disapproval,” “extra fee or regulated output.”
- 3.k. This Article is not clear. It may be redrafted to establish parameters with which new underground water licenses may be authorized.

Article 13

2. The functions of the Technical Secretariat also include providing a technical analysis upon which the Water Council makes policy decisions. Add this as Article 13(d).

Article 14

- (2) What will be the role of the Hydrogeological Institute? Can it provide technical information on the hydrological plan? The establishment regulation should be reviewed.

Article 15

At the end of this Article, add the following: “4. Details of a Drainage Basin Hydrogeological plan will be provided by regulations.” Delete Article 16, number 1, which should be in regulations and redraft Article 16(2) as 16(1), 16(3) as 16(2).

Article 17

- 1.b. Line 413. This coordination of a different Drainage Basin Hydrogeological plan should be within the powers of the Water Council.
- 3 Should be deleted because, logically, if the Council of Ministers approves, the plans should be implemented.

Article 19

Lines 446, 447, and 451. Reference to the “civil code” is not clear. The Albanian civil code is still in a draft form, not yet approved. Referring to that law may not be appropriate. Secondly, it is not clear whether the definition of easement or the other activities outlined in those two articles are provided in this manner in the civil code. Therefore, it is useful to countercheck or, alternatively, outline the details rather than referring to the civil code.

Articles 22 and 24

Reference to the laws governing fisheries, navigation, etc. should be made.

Article 25

2. I did not see any legal or practical reason why private use of water resources may not be acquired by prescription. Ownership may not be acquired but use may be acquired and claims for compensation may be made for violation of such prescriptive rights. Prescriptive rights should be registered.

Article 27

1. Refers to Chapter 6, Article I – it should be “Section.”
- 5.b. Line 575 should be redrafted as 5.c. and line 577 as 5.d.
- 5.a.bb Lines 572-576 may be elaborated with reasons for determining the 3-, 5-, and 10-year limit.
- 5.c. Line 577 should be included in the concession draft law.

6. Should be provided by a regulation.

Article 28

- 4.b. Lines 643-650. The determination of the value of compensation by the Drainage Basin authority discourages investors, and it is an unfair intrusion of the government in rights and obligations arising out of a contract freely made between parties. The government cannot be a contracting party and, at the same time, and arbiter in the dispute that may arise out of that contract. Therefore, the Article should provide that the valuation should be made by an independent expert and, if there is still disagreement, the court should give final ruling.

Section VI – Define “Licenses,” “Authorizations,” “Concessions”

Section VIII – Water Users’ Association

It would be appropriate to leave only Article 34 and put the whole section under a regulation or a directive by the National Water Council. A Water Council’s Directives will have flexibility in applying details of the Water Users’ Association by various Drainage Basin Water Users’ Associations and flexibility in revision. Secondly, the Water Users’ Association is not an organ of the Water Administration system. It may be voluntarily formed or the Water Basin Administration may encourage its establishment. Therefore, it may not be appropriate to regulate the voluntary association conduct in the basic Water Law.

Section IX

This section includes water discharge and waste management. It seems that this waste management system should be comprehensively looked into with other regulatory institutions in this area. The Water Council may regulate waste water but in most jurisdictions, since waste water is combined with waste management in general, it would be appropriate to look more broadly into how the waste water management could be combined with waste management in general and the relation between the Water Council and other regulatory agencies be defined.

Article 60

2. The fees collected will be accounted to the Ministry of Finance. However, a certain percentage may be reserved for capital development based on the accounting methods of the Ministry of Finance. This will help the Water Council have access to funds for expansions or urgent capital allocations. It may gradually also lead to more self-administered water enterprises.

Article 65

- a.b.c-d. Include fines for violations. These fines should be counterchecked against the procedures in the penal code and also be balanced against the weight of the violations committed.

**AN OUTLINE FOR PREPARING A
REGULATORY FRAMEWORK TO IMPLEMENT THE
WATER LAW OF ALBANIA**

Abstract

The Albanian Government has examined the problems in providing efficient water services to municipal, agricultural, and industrial sectors. The existing regulations on water services are deficient in providing an appropriate administrative structure and standards of management to water enterprises, in defining water ownership and use rights, in setting guidelines for determining appropriate tariffs and collection systems, and in defining methods of private involvement in providing the services. To overcome these deficiencies, the Government has decided to issue a comprehensive water law and regulatory framework.

This study outlines major issues that should be addressed when drafting regulations of water law. On many issues, principles are discussed to examine the practical application, without losing the underlying jurisprudential basis.

A new administrative structure of a National Water Council, chaired by the Prime Minister, assisted by an Executive Director and six Drainage Basin Administrations, is planned. This structure will be responsible to administer water as a national property by the states, compile comprehensive data on water resources, define boundaries of water drainage basins, provide licenses for developers, provide water services, and contract out to private firms.

The question of state ownership of water and how this affects investment and modalities of use, legal framework for the use of water, and the method of acquiring the right, and the legal procedures to recognize existing water rights are outlined.

The existing water enterprise system will be superseded by the Drainage Basin Administration. The Water Basin Administration will coordinate activities of water enterprises with other regulatory agencies to ensure environmental protection and preservation standards, address issues like labor and revenue, and solve disputes that arise in water services transactions.

Proposals for setting the basis for tariff rate and collection method are outlined.

Finally, procedures for solving disputes between water enterprises and regulatory institutions, third parties, and the National Water Council are provided in the outline.

The study does not follow the scheme of the draft water law. Relevant Articles of the draft water law are noted at the beginning of each section of the study.

**AN OUTLINE FOR PREPARING A
REGULATORY FRAMEWORK TO IMPLEMENT
THE WATER LAW OF ALBANIA**

1 Water Ownership

The ownership of surface and underground waters, streams, wells, aquifer resources, reservoirs, coastal waters, and desalination plants is deemed to be the property of the people of Albania. The term "people" is represented by the State. The right to ownership of water by the State is provided in the water law. Any law decision or regulation that is contrary to this ownership right is superseded by the water law.

The draft water law presumably refers to water ownership by the State as a "national treasure" under "public domain." The term "national treasure" may not fully express the meaning of ownership as a concept used in the draft Civil Code. It is useful to adopt a definition similar to that of the draft Civil Code, since courts will base their rulings on those concepts in solving disputes that may arise on questions of ownership or use rights.

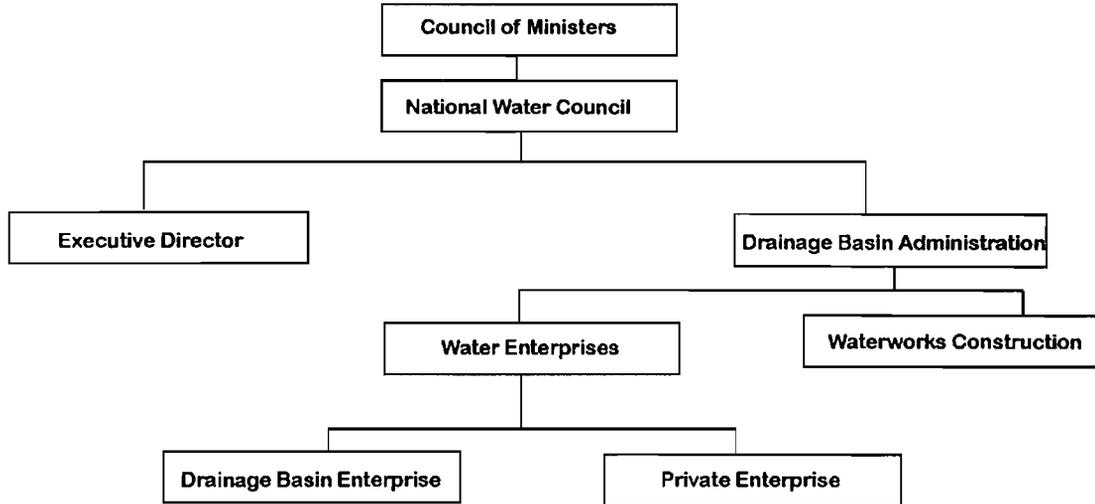
The rationale for retaining the property right in water resources by the State is that water is deemed to benefit every person who needs it as a free national resource. The Government has responsibility to facilitate the provision of clean water and easy access for the people and their activities, charging a price for the services. While this principle may be conceptually plausible, in practice the ability of the state to create efficient water provision facilities and services is questioned. Experience of some countries indicates that private water entrepreneurs are licensed to develop and own water facilities and provide commercial services.

The concept of state ownership, therefore, will have an impact on how the state appropriates and develops the water resources, on incentives for entrepreneurs to invest in water development, on riparian ownership rights, and on private development and use of water on land. Regulatory implication of state ownership of water must be elaborated further in relation to concepts provided in the draft Civil Code and the proposed "Constitution," with respect to items such as private ownership of water on private property, riparian rights, long-term possession, and prescription rights.

In the Albanian draft water law, the legal right of a natural or legal person to water is limited to the right of use. There are several methods of appropriating this right by a regulation of the National Water Council.

2 Water Administration

2.1 Organizational Chart



2.2 The National Water Council

The objectives of the National Water Council are:

- to provide a system of coordinated policy strategy for the water sector;
- to coordinate strategy design for sources, use, and development of water resources;
- to eliminate structural and responsibility overlap between Ministries, Departments, Agencies, etc. that are concerned with water; and
- to create efficient appropriation of available water resources.

There are several laws that allow various governmental organizations to regulate water resources and services. These include the Environment Protection and Preservation Act of 1993, powers of the Ministry of Health under the Sanitary Services Decree of 1992, powers of the Ministry of Agriculture and Food, powers of the Ministry of Construction, Housing and Territorial Adjustment, powers of the Institute of Hydrogeology, and powers of the Land Reclamation. These organizations will remain functioning in the area of water resource management in the foreseeable future according to the current policy trend. Therefore, the Water Council membership should include at least these organizations. The retention of Directors of Hydrogeology, Environment and power in the membership of the Water Council is essential for their respective technical resources.

Currently, the Water Council is established by Decision of the Council of Ministers N° 125 of February 2, 1994. The Water Council is comprised of the Prime Minister, the Minister of

Construction, Housing and Territorial Adjustment, the Minister of Agriculture and Food, the Chairman of the Environmental Committee, the Director of Kesh (power), the Director of the Institute for Land Reclamation, and the Director of Hydrogeology. The Ministry of Industry and Trade and the Ministry of Transportation should be included in the Water Council membership because of major use of water in the industrial and transport sectors.

The Water Council has assumed both the policy and some operational decision-making powers according to the draft water law, considering that some of the high-level Council members cannot always attend the frequent meetings. The Water Council's regulation may, therefore, include:

- a meeting of the Council every three months;
- power to the Prime Minister to convene the Water Council meeting for decisions on questions he believes urgent;
- a meeting convened upon request of at least three members of the Council;
- the quorum for the regular Water Council meeting will be the majority of members present;
- in case of a tie, the Chairman will have a casting vote;
- power of the Council to delegate a member organization or a Committee to decide and execute matters following within the powers or expertise of that organization; and
- other rules that govern the Council's proceedings, including procedures for decisions to be submitted to the Council of Ministers, for decisions to be enacted as regulations or Directives of the Council, for decisions to be implemented by the Executive Director, and for decisions to establish appropriate executory agencies and decisions on revenue and annual budget.

The Council will have powers to implement its objectives by establishing appropriate executory agencies and by setting criteria for licensing public and private water enterprises that are able to provide efficient water services. It will regulate the use of water in water basin sources.

2.3 Departmental Functions

The Water Council has policy making powers, including preparing national water strategy, deciding on hydrologic plans for delimiting water basin boundaries, and issuing directives. It also reserves certain operational powers, including license, directing the collection of and research on technical information, and approving construction. To implement these policies and operational powers, the National Water Council will appoint an Executive Director to execute other functions. The National Water Council may be assisted by three other branches:

- the Technical Directorate;
- the Drainage Basin Administration; and
- the Water Work Construction Directorate.

These three bodies should be established by regulations of the Water Council directed by the Executive Director.

2.3.1 The Technical Directorate

The Directorate is an information tank, a research and administrative arm of the Water Council. It will be directed by the Executive Director, appointed by the Water Council for a fixed period. The Executive Director shall be responsible to provide the Water Council with all information, research, data, technical and scientific analysis, and administrative recommendations that will assist the decision making regarding policy and operational matters. The functions of the Directorate are:

- to ensure the implementation of the decisions of the National Water Council;
- to collect all information on source quality and usage of water supply and prepare official Water Registers with technical and scientific information pertaining to each source and prepare an inventory of water resources and a national master plan of current or potential water use
- to study the technical, economic, environmental, geologic, and climatic impact of diversion of water source, reallocation of uses, or granting of new license in coordination with concerned ministries or agencies and submit to the Council for decision;
- to evaluate projects in cooperation with concerned ministries and agencies and ensure compliance with national water policy and strategy and submit for the Council's decision
- to submit an annual budget proposal to the Water Council for approval.

2.3.2 The Drainage Basin Administration

- Establishment
 - ▶ There shall be six Drainage Basin Administrations.
 - ▶ The name, area of operation, and headquarters are described in the prescribed schedule. Sample:

Schedule I
List of Water Basin Administrations

Column 1 Name of Administration	Column 2 Area of Operation	Column 3 Headquarters
1) Tirana City	Whole of Tirana City and the adjacent counties that are drained by Tirana City Water Basin	Tirana
2) -----	-----	-----

- ▶ Each Water Drainage Administration will be a body corporate and may sue and be sued.
- Membership of the Water Drainage Basin Administration will consist of a Chairman and six other members appointed by the Water Council. These include a general manager and five representatives of Ministries and district administrations enumerated in the Water Law.
- A general manager shall hold office for a period of five years and shall be eligible for reappointment for a further five-year term. His/her qualifications include ____ years of experience in water services administration and management; a university degree in _____; and knowledge and practice in the respective drainage basin administration geographic area.
- The Water Basin Administration will meet once a month. The quorum of meetings will consist of the majority of members of the Water Basin Drainage Administration. Decisions at each meeting will pass by a majority of those members present. The Chairman will have a casting vote in the case of a tie. The decisions will be binding on all members.

Comments: A Drainage Basin Administration can be structured on a river, ground water, or other surface water jurisdiction. A river basin administration will be responsible to cater for the proper licensing, use, and maintenance of the quality of the river from its source up to the sea into which it drains. The river administration basin may not coincide with political administration subdivisions. A river basin administration may cut across several administrative districts.

A ground water basin is water that supplies a geologically interlinked geographic area. Thus, a ground water basin may serve one or more municipalities or districts. This structure is useful for determining the effect of water drilling in a given geographic area.

A sea/lake/reservoir basin can be identified as a source of water supply and use. The coastal area, for instance, may have a different basin administration for water used in domestic, agricultural, and industrial purposes, and for sea water used for navigation management and use of aquatic resources.

2.3.2.1 Financial Arrangements

Background

The water basin structure requires accurate data collection, filming, and use on each water source. It requires skilled human resources, equipments, and facilities. The existing water enterprises are organized on a municipal or village and district basis. The regulation will transfer all the personnel, equipment, facilities, and other assets of the water enterprises to a Water Basin Administration. When a Water Basin Administration combines water enterprises in two or more municipalities, villages, or counties, the assets of all will be consolidated under one Water Basin Administration.

Before the transfer of the assets occurs, the proper value of all equipment, water main and pipes, and construction equipment and the value of the enterprise as a going concern under the current market should be determined by the Water Basin Administration. This value will be the basis of the property in implementing privatization programs.

Budget

The Water Basin Administration prepares an ordinary and capital budget estimate for each succeeding year (in accordance with regulation of the Ministry of Finance) and submits it to the Water Council.

Other Sources

The possibility of maintaining a percentage (20%) of revenue to build up a fund for capital expenses, repairs, new studies, etc. may be explored. Each Administration submits a yearly financial report after audits by the state auditors.

2.3.2.2 Functions of the Drainage Basin Administration

A Drainage Basin Administration is an operational arm of the Water Council. Its functions, as defined in the draft water law, will be implemented as follows:

- Ensures the implementation of the decisions of the National Water Council;
- Monitors that the water suppliers perform in accordance with the terms of licensing or contractual agreement or statutory delegation of duties:
 - ▶ develops “Activity” Report Forms to be submitted by each water enterprise on the amount of sale, equipment repair, violations, etc. (every three months);
 - ▶ makes periodic on-site reviews;
 - ▶ develops “Non-Compliance Report Forms” to receive violation report on the environment, sanitary conditions, revenue, labor questions, etc. from respective agencies and affected individuals. The report should include:
 - the name of the violator
 - the license number
 - the location
 - the description of the violation
 - the estimated damage, etc.
 - ▶ gives written notice to the violator. In case of repeated violations or a one-time violation causing serious economic or health damage to the users, which may lead to suspension or revocation of license, the Administration will collect the required data and submit it to the National Water Council with recommendations;
- Ensures that the interests of consumers to a prescribed standard of water supply are observed by public or private water enterprises:
 - ▶ initiates Water Consumers’ Association and assists in developing criteria for economic monitoring;

- ▶ develops consumer complaint channelling through the Water Association to the Water Basin Administration;
- Secures water enterprises to manage or distribute to develop a source of water supply system;
 - ▶ re-establishes a current water distribution system within the boundaries of the Water Basin Administration;
 - ▶ identifies areas of private participation in areas of water enterprise management, distribution management, and collection management;
- Receives all applications from public or private enterprises for licenses to develop or for concession supply water; coordinates with concerned ministries or agencies; identifies required technical, managerial and environmental standards, and submits to the Water Council for decision to issue a license;
- Develops criteria for the procurement of services and equipment in the Water Basin Administration and for the procurement on national and international sources through competitive bidding;
- Studies and implements conditions of creating appropriate administrative structure at basin level and town, village, and agricultural district levels. In this capacity, it coordinates the activities of the Ministry of Health for sanitary and environmental standards, the Ministry of Agriculture for the agricultural water utility, and municipalities and the District Administration in the Water Basin Area;
- In regards to the staff of the Water Drainage Basin:
 - ▶ The Water Basin Administration will use personnel of the existing water enterprises. Staff positions will be assigned on the basis of competence, academic level, and other criteria in conformity with the Civil Service Administration regulations.
 - ▶ The Water Council may approve the creation of new posts upon recommendation of the Drainage Basin Administration.

2.3.3 The Water Works Construction Directorate

A Drainage Basin Administration will maintain a Water Works Construction Department, which will be responsible for all water construction works and the monitoring of construction by other enterprises in the Water Basin Administration.

The functions should include construction, operation, and maintenance of water works, including laying water main and pipes and constructing deep water wells, dams, irrigation works, drainages, reclamations, river diversions, and other water supply systems.

The Department will closely collaborate with the Ministry of Construction and other public or private enterprises to receive technical or material assistance.

As per the law, "Construction, Administration, Maintenance and Operation of Irrigation and Drainage Works," the statutory duties of the Ministry of Construction should be reviewed in preparing the regulatory status of the Drainage Basin Administration.

The Drainage Basin Administration should be able to operate flexibly where it may administer several villages or a major town. Water enterprises (public and private) may be delegated broad power to enhance development and efficiency of water services.

(N.B. In many jurisdictions, autonomous water agencies have been responsible for the discovery, construction, and distribution of water sources and have achieved excellent results.)

In Tirana, the fast growing population is already creating several "informal" settlements in many of the outskirt locations of the city, which may require such an autonomous city water agency to cope with the fast pace of development. A "City Water Agency" should be within the structure of the Water Basin Administration and should be responsible for initiating discovery, construction with appropriate offices and for distribution, quality and quantity control of water supply, and the determination and the collection of water fees. It should be able to enter public/private partnerships in the name of the Water Basin Administration.

3 Right to Use Water

The State owns water resources. The manner of use of water by individuals or organizations should, therefore, be defined in a regulation. The appropriation and use of right in water is determined by the powers of the Water Council. Details of the right to use water will be outlined in regulation issued by the Water Council.

3.1 Scope of the Right

Every person shall have the right to access and use the surface water in its natural bed or flow without a license for leisure, domestic purposes, non-commercial irrigation, domestic livestock, or other animal watering. A district administration in cooperation with the Drainage Basin Administration ensures access to water use.

The right to use water exists on conditions that laws on sanitary conditions and environment protection and preservation, rights of other users, and rights of licensed users are observed.

Denial of the right to use may raise claims for compensation for tangible economic damage that may be caused because of lack of an alternative source.

Licensed or long-term commercial and semi-commercial use may raise claim to possessory use right. The definition of possessory use right should be based on the "civil code" possessory right concept, which may arise by prescription or out of a contractual arrangement.

A prescriptive right or easement to water use may arise by adverse, notorious, and continuous use for a period prescribed by the law. The prescriptive claim to the use of water must be “registered” and “licensed” by the Water Council, especially in the case of riparians along surface streams, water catchments, lakes, and seas. The claimant shall register at the Drainage Basin Administration headquarters. The Drainage Basin Administration shall register details of the prescriptive right upon receiving a ruling about the existence of the right by the court that has jurisdiction over the area where the water claim arose. The Water Basin Administration will then send these details to the Executive Director for entry into the National Water Register.

A contractual right arises where the National Water Council or its administrative arm licenses District, Municipality, or Water Users’ Association, publicly or privately owned enterprises, or other juridical or natural persons to have the right to use, explore, develop, produce, and distribute water.

3.2 Basis of Determining Water Use Rights

Water appropriation will be based on the Drainage Basin Administration. A drainage basin contains a quantity of surface water, streams, lakes, sea, reservoirs, ground water, wells, or aquifers within the administrative boundary. The National Water Council is the sole power to determine the use and abstraction for commercial and semi-commercial purpose. The basis of use rights are from prescription, contractual arrangement, and developing water wells, ponds, and catchment on private property.

3.2.1 Prescription

In Albania, property ownership in water remains in the State. Therefore, long-term riparian or other types of prescriptive use can only be easement or limited use rights that should be elaborated by the regulation according to principles of the Civil Code of Albania. The following points should be carefully examined:

- Methods of recognizing existing use rights by registration and licensing according to the procedures outlined under the scope of use in this section; and
- In the case of streams, defining the quantity and quality of use by up and down stream users at a given period of the year at the time of registration. Determining the potential increase in the use of the water by various licensees and public works to define the amount of license use in a given period.

3.2.2 Contractual Allocation

Water use right arising from contractual arrangement may develop to be a major means of acquiring use, development, and distribution of water services according to Albanian authorities’ policy forecast. Private participation by contracts or privatization scheme should be considered in conjunction with the existence and effectiveness of other laws including company, commercial, court system, tax, labor, and accounting standards.

The main elements to be considered are:

- Procurement method: This must follow Government Procurement Rules. Various models may be reviewed, including the EEC, GATT, and UNCITRAL. The main objective is to have transparency, accountability in procuring efficient, and cost-effective services. Current models emphasize the international and local competitive bidding.
- Defining the appropriation method during yearly climatic variations.
- Methods of providing bulk purchase (for example, if a Drainage Basin Administration lacks capacity, methods by which, for instance, an industrial plant, could receive from adjoining Drainage Basin or whether this shortage may cause denial of license). This creates a tri-partite contractual arrangement.
- Determining methods of compensating the economic loss of the right in case of resettling users, for instance, for agricultural, industrial, or city zoning purposes, but not flooding or other natural disasters. The compensation should be based on the present market value of future use of the water as may be determined by an independent valuator.

3.2.3 International Waters

In the case of international waters, examine the Decree of the President N° 441 of January 26, 1993, on "The Ratification of the Convention for the Protection and Usage of the Inter-Frontier Waters and International Lakes," and the policy of Albania regarding other international conventions concerning usage of international rivers and sea. This will be the basis for determining:

- navigation in the economic zone as an extension to the national regulation on inland and coastal water use; and
- use of aquatic resources.

Both these topics will be regulated by the respective authorities within the context of the National Water Law.

3.2.4 Ground Water

The consequences of removing ground water without replenishment methods at the rate of removal from aquifers may have various consequences, including reducing the quantity to other users and affecting the geological structure, such as the movement of the earth and the effect on foundations. Various approaches may be adopted to reduce the damage.

- licensing the production and use (as in Mexico);
- fixing price for use of water to keep desirable level of ground water (as in Israel); and
- temporary prohibition.

The Executive Director's scientific data on drainage basin sources and ground water level will determine the conditions to be attached to every license to be issued by the Water Council for development of ground water. Therefore, licensing of existing and future

development of use of ground water by private or public companies should take this into consideration.

Private land owners are entitled to use water developed or flowing from or through their land for non-commercial domestic purpose. For all other uses, the normal requirement of registering and licensing will apply.

3.2.5 The Drainage Basin Administration boundary may not coincide with the current 36 administrative districts. A water basin administration may comprise one or more of the administrative districts or towns. The overlap may create conflict with current structure of services by relevant ministries, including agricultural extension, sanitary services, and environmental protection. Coordination of the relevant government agencies will be the responsibility of the Drainage Administration management. This power should be defined in the Regulation.

3.3 Types of Use

The person (juridical or natural) who applies for registration must define the type of use. This may include use for domestic, agricultural, industrial, in-land water navigation, aquaculture, or hydropower generation purposes. The responsible line authority (a Ministry or statutory agency) will approve the details of use, for instance, fisheries, industry, or irrigation. Information on quantity, qualities, and other technical information about the required water will be reviewed by the Water Council based on information at the Drainage Basin and office of the Executive Director.

Details of each type of water use right should include at least the following main themes:

- source of the right;
- type of water;
- purpose, method of use, and administration;
- duties and rights of the beneficiary;
- dispute resolution methods (between user and water providing enterprise);
- consequences violation of contractual duty, e.g., maintenance and care; and
- other relevant matters.

The existing laws, regulations, and decisions, including law on “Construction, Administration, Maintenance and Operation of Irrigation and Drainage Works,” and subsequent regulations, Decision N° 235, 1993, on Administering Water Supplies for Household and Non-Household Users, Decision N° 102 of March 16, 1992 on the “Norm and Price of the Usage of Potable Water in the City and in the Villages,” should be reviewed in the light of the concept of rights to use and price uniformity.

4 The Water Enterprise

A water enterprise is an entity that undertakes to provide water utilities. The entity may be established as a State-owned statutory enterprise which may operate as a Government organ or as a limited commercial enterprise entirely owned by the Government. The entity may also be privately owned as a profit organization.

The existing Albanian water enterprise's organizational structure follows neither form and, therefore, faces administrative, budgetary, and operational problems. The accountability of the water enterprise to district, municipal, or local government for administrative and personal purposes and to the Ministry of Construction, Housing and Territories Adjustment for budget creates a loose link to both organizations. This creates an ineffective management structure in terms of personnel, use of budget, and control. Where there is a loose link between the budgetary allocation and management, the municipal, local administration, or Ministry of Construction lacks sufficient control over the activities of the enterprises and over the enterprises themselves. The collection and appropriation of water tariff revenue by the Ministry of Finance is an additional disincentive against efficient services.

A regulation for implementing the water law of Albania should define types of water enterprises, procedure of appointment, duties, property rights, water distribution scheme, price setting and collection, and resolving disputes. The results expected from the implementation of the law depends on the form and organization of the enterprises to be selected to provide water services.

4.1 Public and private enterprises are considered to provide services. Options that could be seriously considered under the current reform may be three, as follows:

4.1.1 Government Enterprises Owned by the Drainage Basin Administration

The Drainage Basin Administration itself is entrusted with powers of providing water services through one or more water enterprises or contracting out the management to other public or private bodies under the direction of the Water Council. To start operating by itself, the Drainage Basin Administration will assume all rights, obligations, assets, and liabilities of the existing water enterprises that are located within the Drainage Basin boundaries. The Drainage Basin may establish one or more water enterprises depending on the demand in the Basin Administration under its own supervision. The estimated value of assets and liabilities assumed from the existing enterprises will be recorded. The Drainage Basin Administration operates the re-established water enterprises on commercial basis. The issue of redundant labor must be addressed by creating a safety net, such as pension schemes and "golden handshake" (successfully applied in many privatizations), i.e., lump sum payment of benefits to displaced workers based on the number of years of service and retrenching in other departments.

The Water Council will entrust the Basin Administration to undertake the operation of water services in:

- providing services in cities, rural, and coastal areas;
- gradually providing self-supporting funds from revenue of water sale. To operate on a commercially competitive basis, the enterprise under the Basin Administration must keep its accounts and records on revenue, expenditure, and capital expansion reserve;
- the Drainage Basin Administration defines relations between the water enterprise and other concerned government organs, such as construction, environment, and health;
- developing the construction of water works department which assists enterprises in developing new sources, and laying water main and pipes;
- deciding on the method of collection;
- controlling waste, theft, and unauthorized use of water;
- establishing sub-water enterprises for specific purposes, such as the collection and distribution of water at public fountains, the maintenance of water pipes, and the installation of meters, etc.; and
- appointing and dismissing directors and staff of water enterprises.

Note: One major problem is that such enterprises may turn out to be parastatals with a controlled budget and inefficient management. Such a system will defeat all purposes of the current reform exercise.

4.1.2 Public-Private Partnership Scheme

The Water Council will contract out parts of or the entire operations of an enterprise which provides water services. It may appoint a municipality or a private water company to take monopoly of the water services and operate under the supervision of the Drainage Basin Administration. It will also have the option to contract out construction works, the collection system, or management. The duties of the Drainage Basin Administration under this scheme will be:

- to provide proper procedures of application and appointment (e.g., prepare application forms, bidding procedures, selection, etc.);
- to determine conditions of operation (e.g., monitoring water price caps, determining water enterprise relations with other regulatory agencies);
- to determine standards of services and procedures for monitoring, including on-site review and receiving periodic reports;
- to set conditions for modifying terms of appointment or of termination;
- to set procedures for addressing consumer complaints and for coordination with concerned regulatory government organs, such as environment; and
- to set procedures for reviving failing companies or temporarily administering bankrupt companies in the case of a bankruptcy ruling by court order.

The Water Council will have options and flexibility of operating and, at the same time, monitoring those types of enterprises through the Basin Administration. It can allocate resources, such as information, technical assistance, and equipment, to the contracting water enterprises.

4.1.3 Participation of the Private Sector

Private contractors operate within the scope of a contractual agreement entered into with the Water Council. The forms of agreement may range from long-term concession to privatization of existing enterprises.

To enforce the agreement, clear laws on labor standards, tax, investment, and commercial procedures and a competent commercial court system are essential external elements. Availability of an experienced water undertaker is crucial, as services in water concern the health and well-being of the public. Elaborate agreements define rights and duties of both parties. In Albania, therefore, the Water Council may contract out on a case-by-case basis, while the essential legal and institutional framework gradually takes firm ground.

The private participation may be arranged by:

- **Management Contract.** The Water Council will decide to contract out the operation and maintenance of water services in a water basin administration to the private company. The existing personnel (technical and administrative) and facilities may be loaned to the private company. The management contract may also include billing and collection, installation of a metering system, and controlling private connections and waste. Revenues from water sales go to the Water Council. The amount of compensation will be linked to the effective distribution of water and collection. This will create an incentive to the private company.
- **Concession.** This involves an agreement by which the water construction, distribution, and operation is given to a single operator. The concessionaire finances (at its own risk) and supplies all facilities. The concession will normally be long-term (in many countries, it lasts up to 30 years). This may be arranged under variations of Build-Operate-Transfer (BOT) or Build-Own-Operate (BOO – ownership here means possession), etc. In an ideal situation, a concessionaire may be a joint venture between a foreign water company and a local partner. It brings together capital, technology, and management skill. The concession law provides detail for such agreements. The price of water, the method of selling, the quality, the quantity, the source, etc. is determined by the Concession Contract.
- **“Affirmage.”** The State develops sources and contracts out operation, maintenance work, and distribution and collection of charges. This requires that the Water Council secures sufficient fund for developing various sources. The contracting company charges water prices valued at the cost of connection plus the profit margin. This system has been effective in France (affirmage) and many other countries, as users pay for the services and governments retain monitoring and control over such companies.

Both concession and “affirmage” systems may seriously be considered for the ongoing city water service constructions. The Water Council may explore the possibilities of using both

the government and the private provision of water services. The Water Council, at the water basin level, should be involved in providing the services in the transition period because:

- the current water enterprise system should be reorganized by the Water Council under the Drainage Basin Administration;
- the budget structure should be reviewed to allow water enterprises to use revenue for greater efficiency and increased self-sufficiency; and
- the price of water should be readjusted to gradually reflect the cost of connection. This will gradually transfer the cost of subsidizing water provision from the taxpayer to the consumer.

The private enterprises would then be allowed to compete for acquisition in any of the contractual methods. This enhances efficiency in water provision; defers the cost of construction and administration to the private sector; makes the Water Council more effective in monitoring; and reduces waste.

4.2 Duties of the Water Enterprise

The duties of the water enterprises under the Drainage Basin Administration will be defined by Water Council Directives. The duties and rights of private water enterprises will be defined in an appointment agreement. In all cases, the following main points should be elaborated in a regulation or an agreement.

4.2.1 The water enterprise has a duty to:

- maintain an efficient and economic water supply system. “Efficient” includes availability of water services on demand, long-term plans to develop sources to meet future demand, responsiveness to customer needs in repair, metering, etc. “Economic” includes a competitive cost for the connecting service, improved management, technical service and collection system to cover the cost and return to capital from the revenue derived from the sale at the fixed tariff, reduction of waste by maintenance of pipes, and surveillance against unauthorized use.
- supply to premises, business, industrial enterprises, agricultural schemes, and individuals on demand. This duty includes making the quantity of water demanded in a basin area available, the ability to meet demand for bulk supply, techniques to provide water quality for various types of use, such as clean for domestic supply, other quality for industrial and agricultural schemes, and the ability to produce the necessary pressure level.
- maintain, improve, and extend water main and other pipes to meet contractual and regulatory obligations.
- satisfy various prescribed performance and accountability standards set by regulation or contract.
- inform the rights of the user under a regulation or an agreement. Consumers may be unaware of obligations of the water enterprise. Outline of the obligations and information on how the client can be redressed in case of failure of the enterprise.
- observe the prescribed administrative and judicial procedures in case of dispute.

- comply with ancillary laws, such as environment, sanitary, labor, and fiscal.

The water agency or private enterprise will have contractual rights or rights arising from a regulation to recover the cost and capital. Details of the price of water should be defined in a regulation. Guidelines are provided in other parts of this document.

4.2.2 Non-Piped Water Services

Non-piped water services may be provided by private entrepreneurs from public stand posts or from source. The service is door-to-door or sale at public stand.

A public stand sale may be contracted out by the Drainage Basin Administration or by a private water distributor to a private vendor. A Water Users' Association, which regulates a water stand, may appoint a controller to distribute water to families at fixed prices.

N.B. Private vendors in many countries have developed control mechanisms, such as hiring one or more persons at the stand to sell water by using a graduated container. The amount sold is determined by a meter. Coin-operated water vending machines have also become increasingly popular.

Private operators may provide from a source. A government-owned source may provide filtered and chlorinated drinking water at a fixed price to vendors who then distribute from door to door at a profit margin. The price will be stabilized by competition.

Another widely used method is where the vendor owns or takes concession of the source. The source is inspected by a regulator (e.g., the Ministry of Health) periodically; the company purifies (e.g., by subcontracting government or private organization) packages and distributes in a container door to door. Price caps are set by the government. The company generates profit from the quality, speed, and service orientated provision of water.

The main problems with non-piped services are that the cost of services is high and quality of water may be poor.

4.2.3 Pipe Water Distribution

Ownership of existing pipeline network, equipment, and assets will be transferred to the Drainage Basin Administration. For providing immediate services or future expansion, the Water Basin Administration will negotiate to sell or lend the pipelines and equipment to enterprises contracting to provide water services. A management contract may provide management of the system, maintenance, and expansion of the network. Various options under the forthcoming concession law may be considered.

Considering the current status of pipelines management and maintenance by water enterprises and the quantity of loss or unaccounted water, the maintenance and expansion of water main and pipelines would be more effectively administered and expanded by an autonomous public

or private company under the management and distribution contract. Details of contractual arrangements and format will be similar to what would be prescribed in the concession law.

The contractor should provide periodic reports on consumption, technical conditions, chart of pipeline network, expansion scheme, etc. to the Water Council through the Water Basin Administration. A form of compensation to the enterprise will be determined according to the type of contractual arrangement. In all cases, the enterprise will be liable to damages that may occur to consumers and the contracting party because of substandard maintenance, insufficient supply, and improper monitoring quality of water.

5 Relation of Water Enterprises to Other Regulatory Agencies

5.1 Environment

The Albanian law of environmental protection and preservation requires a regulatory supplement to distinguish the operational and institutional responsibility of the Environment Protection and Preservation Committee from that of various government regulatory bodies. In the case of water, the sanitary issues regulated by the Ministry of Health and environmental questions overlap, and the blurred definition of regulatory power over these issues retards the effective implementation of the environment protection and preservation law. The Environment Protection and Preservation Committee also lacks the necessary expert resources, equipment, and facilities to effectively enforce environment issues in the water sector. The Committee has prepared a National Environmental Action Plan to implement the environment law. With the environment plan of action and regulatory power provided under the environment law, the Committee plans to assume clear jurisdiction on activities of water enterprise. The drafting of a regulatory framework for water should closely coordinate with the Committee.

5.2 Health

The Ministry of Health, by Law on Sanitary Inspection of 1992, sets the standard for the quality of water supplies. For drinking water, it has set bacteriological, physical, and chemical standards and daily checks at 13 central points in Tirana, and has organized quality control laboratories and systems in all districts. It approves new standards for newly developed water sources by the Hydrogeology Institute.

The environmental and health organizations will extend regulatory arms on the water enterprises. However, the water enterprises, established by statute or contractual arrangement, will be accountable to the Water Council for fulfilling their obligations. A regulation that governs operations of a water enterprise must, therefore, define the legal obligations of the enterprises under health and environmental laws by reference, and also the institutional relation between the Water Council and other regulatory organizations regarding the licensing of enterprises, violations of regulatory standards, and dispute resolution. Main themes should include:

- The standard of water quality for domestic, industrial, and agricultural use, in reference to those set by the Sanitary Inspection Law of 1992.
- Procedures for sanitary and quality permits for new source development. This procedure should be included as part of the licensing process enforced by the Water Council.
- The water enterprise should be obliged to notify regulatory agencies (including Police and Health Departments) and clients in the event or possibility of water contamination and must comply with measures taken by regulatory authorities to reduce the damage. These and related duties outlined in the Sanitary Law should be enforced by the Ministry of Health and the local administration coordinated by the Drainage Basin Administration in their respective jurisdictions.
- Duty of the water enterprise to protect water from pollution. This may include the imposition of strict liability or penalty for allowing pollutants in the water.
- Duty to reduce injury to streams, reservoirs, and wells. This includes unauthorized public use that causes damage to quality and prevention of polluting matter at the point of discharge.
- Identifying persons (physical or natural) responsible for polluting and taking administrative or judicial measures, etc.
- Duty to observe purification and filtration standards.

The Regulatory Institutions should coordinate enforcement with the Water Council at the Drainage Basin Administration level. The Ministry of Health has established a hygiene controller, laboratory, and inspector to monitor and report in all 36 districts. Currently, the Ministry coordinates with the District Administration and Water Enterprises for enforcement of sanitary standards. Under the new water law, the Drainage Basin Administration (which may include more than one district) should coordinate efforts of concerned regulatory organizations for an effective enforcement of sanitary and environmental standards. The direct regulatory or contractual relation between the water enterprises and the Water Council enhances the chances of enforcement of these standards through the coordination of the Drainage Basin Administration.

6 Finance

The regulation on water charges will address:

- License fees for developing sources, and obtaining concessions or authorization to manage distribution, maintenance, or collection. License fees will be determined on the basis of agreed-upon accounting methods, taking into account present value of future sources income, cost, capital input, and level of user tariff charges.
- Water use fees, on the other hand, involve many other considerations, including water distribution system, planning, financing of water supply, efficiency in use of national water resources, and spending specially from low-income user group. Taking these matters into account, pricing systems generally can be categorized into:

- ▶ Development charge, determined by capital cost of infrastructure.
- ▶ Connection charge, determined by size of connection or characteristics of consumer.
- ▶ Periodic fixed payment, determined by characteristics of consumer.
- ▶ Metered consumption payment, rate per unit of water consumed.

Many countries have adopted a combination of two or more of these methods based on a variety of considerations, including differential treatment for commercial, industrial, and domestic users, type of property, distance, size of connecting pipe, etc. The goal of water system charges would remain, however, efficiency, financial viability, and equity.

6.1 Current Status of the Law

The water charges are currently determined by:

- Decree N° 289 of June 14, 1993, on tariffs for the irrigation of water. The tariff sets three fixed rates based on geographical elevation and one on actual cost basis. The difference between the actual cost basis and fixed rates (about eight times) requires a heavy subsidy, currently 400 million leks, and may have various impacts on the creation of agricultural joint ventures and the price of agricultural products. Determination of tariff on actual costs should be planned, taking into consideration the ability to pay, encouraging commercial enterprises, and reducing strains on the budget.
- Decree N° 102 of March 16, 1992, on the Norms of Consumption and Price of Potable Water in Towns and Villages. The decree sets only a single tariff rate (1 lek/M³) for all types of urban (town and village) and delimits daily use on basis of use of hydrosanitary facilities. The flat rate, which does not take the actual cost into account, encourages wasteful consumption for those families that may not need the amount of daily allowance and constrains those who need more. (In some countries such a system has been used to ration the water supply for lawns, pools, and other quasi-domestic use by charging an extra fee.) The heavy subsidy to cover the difference between actual cost and revenue from fees collected drains budgets (currently financed by increasing the budget deficit).
- Decree N° 236 of May 10, 1993, defines the administration of the water supplies for household and non-household users. The use of water is determined by contract between the water enterprise and the user with the amount being determined by metered consumption installed at the user's expense. This regulation on metered use contradicts in some respects the daily use amount.

These three Decrees were issued by three government departments, which makes comprehensive enforcement cumbersome.

6.2 Rationale for Self-Financed Service

One of the primary concerns in water services is how to mobilize financial resources to provide quality service in an affordable price range. Self-financing of the service has become the norm for several reasons, including fairness in having people to pay for what they get; to avoid raising revenue from other sources and distort resource allocation through tax; to avoid

Drainage Basins reliance on uncertain transfers of funds from higher authority, thus guaranteeing certainty and efficiency in planning investment and in operating and maintaining water works; to encourage appropriate standards in service; to create incentive for an efficient management. It should be noted that subsidized consumption at public taps are considered efficient in light of the overall social purpose.

The most typical methods of financing include:

- setting rising block rates.
- user fees or periodic connection charges linked to the value of connected property.
- financing through general property tax.
- charges varying with socioeconomic characteristics of neighborhoods.
- higher commercial and industrial enterprise charges.
- cross-subsidies with other utilities.
- urban-rural cross-subsidies.
- charges varying according to pipe size or number of taps.
- subsidized consumption from public taps.

6.3 Key Issues to be Addressed

The regulations on price of water, therefore, should take the following considerations into account:

- **Quality of Water.** Domestic, industrial, and agricultural quality may be redefined gradually for a cost-effective use. Initial cost of laying pipes and plumbing for various types of water may be costly; the long-term result will be savings by water re-users, waste treatment, less cost of purification, and overall cost and tariff reduction.
- **Water Charges.** A debate on moral issues of charging a fee for water usually obliges governments to set a cap on water charges. Determination of the caps should normally take into account the cost of replacement, i.e., operational cost, renewal cost, and expansion cost. Special consideration should also be made for difference in level of income (low, middle, and high neighborhood income categories in urban areas), and seasonal change in water supply (higher tariffs in the dry season and lower tariffs in the rainy season).
- **Collection and Accounting.** Normally these functions are problematic and therefore various approaches are recommended.
 - ▶ **Meters.** Currently, Decree N° 102 of March 16, 1992, and Decision N° 236 of March 10, 1993, are in force. In the hierarchy of laws, a Decree supersedes Decisions (unless these terms were used interchangeably). In the Decree, economic enterprises, institutions, and physical and legal entities are obliged to install meters by themselves, whereas the Decision obliges non-household users to install meters at their own expense upon approval by the Water Works. The fact that users install their own meters may have an impact on standardization of water meters, use of water,

monitoring of the meters, and accountability in case of malfunctioning as experienced in current usage.

For effective use of meter measurement, some general problems must also be taken care of.

- In a one-stand pipe normally serving low-income families, problems of administration, vandalism of faucets, drainage facilities, and failure to pay the monthly fee usually occur. Current systems of community administration lack incentives as members of the Water Association voluntarily monitor the water. Water may be cut off to the community for failure of a member to pay dues. Options to overcome these problems include:
 - To create a few stands of vendor operator. The vendor will be hired under contract and will be licensed to pay subsidized rates and sell by containers at a slightly higher rate determined by the Water Council.
 - Develop kiosk vending administered by the Water Users' Association.
 - Introduce coin-operated meters.

The lessons from these methods of metered one-stand vending will improve the use of water at a cost related to the services provided and will decrease wastage. It also encourages requests for installation of household meters.

- Pipe water use by households or organizations would be measured and accounted for by installing meters. The current Decree should be consolidated under the Water Council regulations on water pricing to set standard meters preferably provided and installed by the Water Council construction unit (water works construction) or by private water enterprises according to the directives provided by the Water Council. The regulations should provide to all private domestic users or for enterprises upon request and set installment fee, to be paid in monthly installments prorated over a period to encourage household installation. This requires initial capital input. Seeking a low-interest loan is imperative.
- ▶ Diameter of supply pipe may also serve as basis for the determination of fees for use of water.
- ▶ Various forms may be developed to monitor meters installed, number, type, and charges for water.

Option format for requesting installation:

Form No.

**National
Water Council**

Dear Sirs,

I kindly apply for _____ water connection from a main owned or managed by
_____ to my house at _____.

Signature of Line Manager

Signature of Applicant

**National Water Council
Estimation Schedule**

No.	Description of Materials	Estimated Quantity	Size	Unit Price	Amount
1	Pipes				
2	Sockets				
3	Elbows				
4	Tees				
5	Nipples				
6	Plugs				
7	Gate Valves				
8	Stop Cock				
9	Tapping Cock				
10	Others				
11	Deposit for Meter				

Checked for Materials _____

Calculated by _____

TOTAL

=====

Date _____

**National Water Council
Schedule
Service Charge, Rates for Water**

1. Rates for Water Services
- a) Supplied through meter per M3 Leks__
 - b) Estimate Rate Supplied Without Meter
 - i) 4 number family per M3 Leks__
 - ii) Extra person more than four per M3 Leks__
 - c) Water from Public Stand... per M3 Leks__
2. Water Pipe Connection fees
- a) Connection Fee Leks__
 - b)

Diameter of Pipe	Service Charge for Pipe up to 5m	Pipe fees for extra meter	Deposit Fee	Monthly Charge for Meter Rent
3/8	Leks__	Leks__	Leks__	Leks__
1/2	Leks__	Leks__	Leks__	Leks__
3/4	Leks__	Leks__	Leks__	Leks__
1	Leks__	Leks__	Leks__	Leks__
1 ¼	Leks__	Leks__	Leks__	Leks__
1 ½	Leks__	Leks__	Leks__	Leks__

- c) Charges for a pipe to be carried across a road:
 - i) Charges for repair of asphalt road __ per sq. m, Lek__
 - ii) Charges for repair of non-asphalt road __ per sq. m, Lek__
- d) Reconnection fees for discontinued service __ Lek__

Although the current income level may require subsidized or free provision (especially drinking water) to certain income categories, the cost-responsive basis should be laid out in the regulation. Contracting out to public or private water enterprises with an effective monitoring mechanism by the Water Council and Drainage Basin Administrations may bring about much improvement in efficiency in the distribution and collection. That will create charges based on types of services provided. The Water Council may set rates for pipe water supply that would encourage the water enterprise to operate profitably by improving the current efficiency level and expansion rather than by price hiking.

7 Dispute Resolution

7.1 Disputes between the Consumer and the Water Enterprise

Most disputes arise from failure to pay water use charges. Various methods are used to solve such disputes after considering the conceptual and economic issues that may be involved. In some civil law countries, only public authorities are capable of disconnecting utilities from consumers. Thus, private water companies do so in the name of the public authority. In many other countries, various types of notices are provided by the water enterprise before disconnecting.

Under the current practice, the method of disconnecting with notice by the water enterprises is applied. However, based on the description given by the water enterprise directors, some of the weaknesses of this method include disconnecting the use of water by households in a village because of non-payment of a member and no tracing for illegal connection of water pipes from the main to household or commercial premises.

Unless a category of persons is exempted by government policy, the most common method of enforcement for non-payment is disconnecting on the grounds of obligations to pay for services received. The Water Council regulation should, therefore, include conditions under which the supply of water may be suspended or cut off; determine the number and format of disconnection notices; and determine conditions under which reconnection repair can be made by the water works construction or private.

The regulation should assimilate relevant provisions of the current laws including law on "the construction, administration, maintenance and operation of irrigation and drainage water" 1994, the "Norm and Price of Usage of Potable Water in the City and Villages," Decision 102, 1992; and Decision N° 87 of March 12, 1992, on "Methods of Payment for Renting Houses, Using Electricity Energy and Water."

Complaints of consumers against water enterprises for failure to supply, substandard service, overcharge, or others must be addressed to the Water Council Basin Administration. The Council provides a forum for amicable solution. Any of the parties can appeal against the administrative decision to regular courts. (In many countries, water authorities are given such quasi-judicial role by law because they have direct contractual relation with water companies and stand as an arbitrator between the water companies and the consumer.) Remedies must include reducing charges to extent of use, and monetary damages based on identifiable economic injury.

7.2 Disputes between the Water Council and the Water Enterprise

Failure to Meet Obligations. Repeated failure by a water enterprise to meet its financial obligation triggers an investigation about the financial health of the company.

In water enterprises, under the Water Council, the Water Basin Administration in charge will be responsible for identifying the cause and seeking remedy. Options of restructuring

management, operation, and accounting, and seeking contracting out to private management should be explored.

In private companies, the failure to perform according to contract obligations triggers various proceedings by the water authority, including seeking injunction and appointment of a temporary administrator by court in case of bankruptcy.

These procedures require a commercial court system responsive to the urgent disposition of commercial cases. The existing commercial code and procedure, the bankruptcy of state enterprises Law N° 7631 of 1992, Law N° 7638 of 1992 for commercial companies, the draft civil code, and the commercial section of the court system should be closely examined in preparing the regulation.

7.3 Disputes between Third Parties and the Water Council

Disputes may arise when unauthorized persons tamper with water, including illegal connection, diversion of the water course, unauthorized use of stream beds or banks that may effect use by downstream users, and discharge of pollutant into the water. The jurisdiction to stop these types of incidence will be that of the courts. In addition to injunctions and recuperating the value of economic damages caused by the incidence, an additional penalty may be imposed in certain cases, such as theft, illegal connection, and intentional discharge of pollutants. The extent of the fine should be outlined in the water law, balancing the extent of the wrong act with the amount of fine. The penalty should also relate to the penal code procedures.

7.4 Labor Dispute May Cause Disruption of Services

Contractual and administrative arrangements are needed to continue providing the water during such incidents. In many jurisdictions, workers on key utilities or health institutions are by law enjoined from closing down services because of management-labor disputes. One of the reasons for keeping water services under state control partly relates to that factor. In Albania, private participation in the provision of services may require revision of labor law and standards especially in the case of a general close-out strike. Regulation of the Water Council should outline mechanisms for resolving labor disputes, including conditions of creating labor unions, management/labor committees to review complaints, appeal procedures, and labor courts.

7.5 Pollution

Many jurisdictions adopt and enforce the principle of liability primarily of the water enterprises for supplying polluted water. In Albania, the Ministry of Health is responsible for checking and approving water quality under Law on Sanitary Services, 1992, and the Committee of Environment Protection and Preservation under the Law on Environment Protection and Preservation, 1993. Water regulation should specifically oblige water enterprises to monitor pollution. Additionally, the method of coordinating research capacity and responsibility of these organizations within the ambit of the Water Council should be defined.

8 Waste Water

Waste water treatment and discharge regulation appears in various pieces of legislation. Consolidating waste water management, the disposal of urban and industrial waste discharge within the ambit of water regulation, is useful for administrative ease. Current law and institution on management of waste and sewerage system should be reviewed to coordinate the institutional structure with that of the Water Basin Administration. Currently, there is no separate regulation for treating waste water and dumping procedures. Experience of some countries provides low-cost methods of waste water treatment, including sewerage system consisting of a treatment plant and a trunk interceptor receiving dry weather discharges from existing road drains; oxidation pond, flood control plan, constructing water retention ponds, aerated lagoons, and activated sludge and on-site treatment. A separate regulation in connection with waste water should include methods of implementing these structures. The Water Council's authority in regard to waste should be examined in relation to the existing laws and organization that is responsible for waste disposal and sewerage systems.