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# COMMENTS ON DRAFT LAW ON SAFETY OF HYDRAULIC FACILITIES

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14 April 2020

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CONTRACT NUMBER: AID-OAA-I-13-00018

DELOITTE CONSULTING LLP

USAID | GEORGIA

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LANGUAGE: ENGLISH

14 APRIL 2020

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# DATA

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**Practice Area:** Hydraulic facilities

**Key Words:** Hydraulic Facility, Legal Procedures, Legal Provisions

## ACRONYMS

<b>EnCT</b>	Energy Community Treaty
<b>EU</b>	European Union
<b>GNCOLD</b>	Georgian National Committee on Large Dams
<b>GoG</b>	Government of Georgia
<b>RES</b>	Renewable Energy Sources
<b>RIA</b>	Regulatory Impact Assessment
<b>USAID</b>	United States Agency for International Development

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# 1. INTRODUCTION

In October 2016, Georgia signed the Energy Community Treaty (EnCT) signaling the country's commitment to direct future energy planning and market development towards approximation with the European Union (EU). This step commits Georgia to enhance the security of energy supply by promoting the development of relevant infrastructure, increasing market integration and gradual regulatory approximation towards key elements of the EnCT, and promoting the use of Renewable Energy Sources (RES). In order for Georgia to meet its strategic commitments in the energy sector, the United States Agency for International Development (USAID) is providing technical assistance and policy advice on legal, regulatory and institutional reform issues, including facilitating investment and deal structuring, engineering and environmental analyses, financial planning, and outreach, and other consulting. This technical assistance, ("USAID Energy Program") is being rendered by Deloitte Consulting LLP, under a USAID contract, AID-OAA-I-13-00018.

The objective of USAID Energy Program is to support Georgia's efforts to facilitate increased investment in power generation capacity as a means to increase national energy security, facilitate economic growth, and enhance national security. The project will have a significant impact on energy market reform efforts of the Government of Georgia (GoG) to comply with the country's obligations under the EnCT. The investment objective will be achieved through the provision of technical assistance to a variety of stakeholders in the energy sector.

The purpose of USAID Energy Program is to: (1) support Georgia in energy market development per Georgia's obligations under the EnCT, (2) build the capacity of the GoG and relevant institution(s) to evaluate the fiscal and long-term impacts of regulatory changes, (3) promote energy investments, primarily in variable renewable energy development, (4) support integration of non-hydro renewable energy into the power system, and (5) provide strategic advisory services to the GoG to increase Georgia's energy security.

The ultimate goal of this Program is to enhance Georgia's energy security through improved legal and regulatory framework and increased investments in the energy sector. The ultimate expected outcome of this Program is an energy market legal and regulatory framework that complies with European requirements and encourages competitive energy trade and private sector investments.

USAID Energy Program is tasked under its contract, AID-OAA-I-13-00018, to provide technical and/or advisory assistance to Parliament (lawmaker), Government of Georgia (executor) and other Energy Stakeholders playing on energy sector of Georgia. The project intends to assist energy stakeholders to navigate the ongoing reforming processes quickly and transparently through providing appropriate legal advices and recommendations.

## 2. EXECUTIVE SUMMARY

The preliminary draft law on the Safety of Hydraulic Facilities was developed by the Swiss Company Stuck. As a result of public discussions and multiple discourses among the energy and water stakeholders, the draft law saw modification several times.

USAID Energy Program provides comments on the existing draft law in agreement with the decisions taken during meeting, held in February 2020 at the Parliament of Georgia.

The draft law itself regulates the Safety of Hydraulic Facilities and Liability for Damage Caused by The Release of Water from Hydraulic Facilities. The draft applies to the following hydraulic facilities: i) the maximum inundation height above the low-water inundation level of the reservoir or above ground level is at least 10 meters; ii) the maximum inundation height is less than 10 meters, but the reservoir has a storage capacity of more than 50,000 cubic meters. iii) water reservoirs, which, are not subject to the requirements of the present draft law but are considered as having a particular risk potential by the duly authorized bodies.

The draft law is closely linked to the number of primary and secondary legal acts including: the Law of Georgia (Code) on Product Safety and Free Circulation, the Law of Georgia on the Control of Technical Hazards, Order of Energy Minister On Approval of the Rules of Technical Operation of Power Plants and Networks, Government Resolution on Issuance of Construction Permit and the Terms and Conditions of Operation of Buildings, Government Resolution on the Rules for Issuing Construction Permits and Permit Conditions of Special Importance Objects, Government Resolution on General Rules for Health Protection of Hydrotechnical Buildings and Hydromechanical Equipment of Power Supply Enterprises and not limited.

USAID Energy Program developed comments on the existing draft Law on Safety of Hydraulic Facilities. The Program will share the comments with the authors of the existing draft version - Georgian National Committee on Large Dams (GNCOLD) and with the Parliament of Georgia, that will proceed to adopt the draft Law on the possible short-term conditions, due to its high importance to the energy sector development.

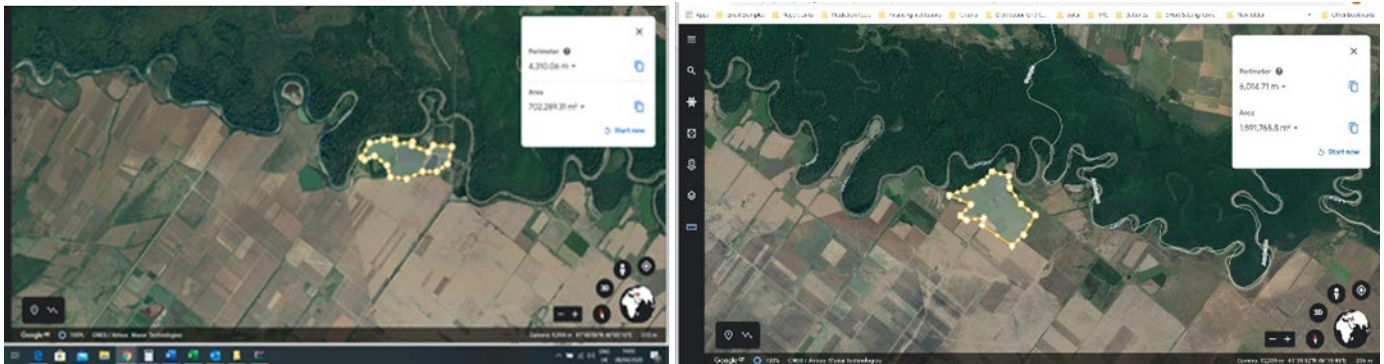
The presented document aligns with the Program tasks and ensures assistance to the GoG, the Parliament of Georgia and other competent authorities in drafting, commenting and reviewing primary and secondary legislation.

### 3. COMMENTS ON DRAFT LAW ON SAFETY OF HYDRAULIC FACILITIES

Draft Law on Safety of Hydraulic Facilities			
#	Article	Title	Comments
1	Article 2	Terms Definition	Clarify what kind of damage may be handled through this law - dam owners and managers need to develop and have a comprehensive understanding of dam failure consequences. The potential consequences of a dam failure include loss of life, economic losses (direct and indirect), losses such as environmental damage and public health impacts, and intangible consequences such as cultural heritage consequences and social trauma.
			The draft law is proposed to cover the regulation of design, construction, repair, reconstruction and dismantling works. Therefore, these terms need to be clearly defined similarly to the legal acts related to the construction permit like Resolution of GoG on Issuance of Construction Permit and the Terms and Conditions of Operation of Buildings.
			Since the term "Hydraulic Facility" is pivotal, it should be mentioned that it is already defined by the "Government Resolution on General Rules for Health Protection of Hydrotechnical Buildings and Hydromechanical Equipment of Power Supply Enterprises". It is highly desirable to define the term in a way that it does not contradict the acting legal acts in energy sector.
2	Article 3	Scope of Law	<p>The presented draft law will cover water mains with a water discharge of more than 10 m<sup>3</sup>/s. Such canals are under the operation and responsibility of Georgia Amelioration. The draft law does not define clearly, its designed discharged capacity or discharge capacity in forced mode. The irrigation canals designed in a manner that considers the higher discharge capacity of water main in the proximity of Headwork. There are cases where discharge capacity is reduced at the 15<sup>th</sup> kilometer of a canal and then again increased due to additional headwork of water feed.</p> <p>More clarification is required in the Law by defining whether the scope of law covers the entire irrigation system or part of it which is designed for more than 10 m<sup>3</sup>/s. Also, it would be better, if during the Regulatory Impact Assessment (RIA) of this law, the impact on irrigation systems and irrigation customers are estimated.</p>
			<p>The scope of this law goes beyond the regulation of multipurpose dams, like irrigation, energy production and water supply. Article 3 Paragraph 2 Sub. B ``The maximum flooding height of the water in the reservoir is less than 10 meters from the base of the water hydraulic structure, but the total volume of the reservoir exceeds 50,000 cubic meters.</p> <p><b>The question:</b> does the law cover fishponds? For example, if the height of the pond from the feed-in or drain pipe is 2 m and the area of the pond surface is 3 ha, then the fish ponds will also fall under the scope of this law, as the capacity of water stored in ponds may exceed 50000 m<sup>3</sup>. Below are provided two images of fishponds at the proximity of the Alazani River with the surface of up to 1500 and 700 ha. Even if the depth is up to 0.5 m, will the volume of water stored on those ponds exceed 50000 m<sup>3</sup>?</p> <p>In this case, the proposition under the hydraulic structure should have a clear definition. Also, when assessing the impact of the law, these types of ponds must be taken into account, as well as the extent to which the required technical conditions should be met by owners of these ponds.</p> <p>It's worth mentioning, that GNCOLD defines large dam as "Large Dam - A dam with a height of 15 meters or greater from lowest foundation to crest or a dam between 5 meters and 15 meters impounding more than 3 million cubic meters, and defined in greater detail in the World Register of Dams.</p>
3	Article 6	Basic Principles of Construction and	Since the hydraulic facilities are exclusively included in the list of "Special Importance Objects" in accordance with the Resolution of the GoG # 257, construction and/or reconstruction permits for hydraulic facilities are solely



Draft Law on Safety of Hydraulic Facilities			
#	Article	Title	Comments
		<b>Operation of Hydraulic Facilities</b>	under the authority of Technical and Construction Supervision Agency. Accordingly, no entity has a right to issue the permit for the construction and reconstruction.
4	Article 8	<b>Commissioning of Hydraulic constructions</b>	According to Article 7, Paragraph 1, the Agency issues a permit for construction and reconstruction. However, Article 8 authorizes the Agency on commissioning after the repair works.  It is recommended that the draft law, under terms of definition, considers the definition for types of repairs and under the Article 7 clarifies the responsibility of the Agency on permit issue for certain types of repair and commissioning responsibility.
5	Article 9	<b>General Conditions on Technical Safety of Operation of Hydro-technical Buildings</b>	This article envisages the commitment of a responsible person, who is obliged to implement testing and submit the consequences to the Agency and the Commission, which is compulsory for assessment of safety of the hydraulic facility and not limited, to implementation of other related issues. The rights and responsibilities of the accountable persons (such as Director, Director General and etc.) are defined by the law of Georgia on Entrepreneurs. If the presented draft law envisages different responsibilities, it would be preferable to ensure the obligations through the group of responsible persons. This will increase the sense of liability and will enhance consistency on decisions made by a group of accountable persons.



Fishponds at the Proximity of the Alazani River with the Surface of up to 1500 and 700 ha.

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