

THE [KHYBER PAKHTUNKHWA]
IRRIGATION AND DRAINAGE AUTHORITY ACT, 1997.

?[KHYBER PAKHTUNKHWA] ACT NO. V OF 1997)

CONTENTS

PREAMBLE

SECTIONS

CHAPTER-I

PRELIMINARY

1. Short title, extent and commencement.

2. Definitions.

CHAPTER-II

CONSTITUTION OF THE AUTHORITY

3. Constitution of the Authority.

4. Appointment and terms of office of Chairman and members of the Authority.

5. Remuneration of the non-official members of the Authority.

6. Removal of members of the Authority.

7. The Board of Management.

CHAPTER-III

POWERS AND DUTIES OF THE AUTHORITY

8. Powers and duties of the Authority.

9. Contractual Services.

10. Acquisition of land by the Authority.

11. Right of entry.

*Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

*Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

12.

13.

14.

15.

16.

17.

18.

19.

20.

21.

22.

23,

24.

25.

26.

27.

28.

29.

Arrangement with local bodies or other agencies.

Control over provincial water resources.

CHAPTER-IV ESTABLISHMENT

Appointment of officers, servants, etc.

Recruitment and conditions of service and disciplinary powers.

Immunity of the Authority and its employees.

Delegation of powers to the Managing Director etc.

Persons serving in the Provincial Irrigation Department.

CHAPTER-V FINANCE

Authority Fund.

Authority to be deemed to be a local authority.
Limited liability.

Procedure for fixing of rates for supply of water.
Books of accounts.

Annual financial statements.

Audit.

CHAPTER-VI AREA WATER BOARDS

Establishment of Area Water Boards.
Constitution of AWBs.

Meetings of the Board.
Functions of Area Water Boards.

30.

31.

32.

33,

34,

35.

36.

37.

38.

CHAPTER-VII
FORMER ORGANIZATIONS

Formation of FOs.

Bye-laws and regulation for FOs.

Functions and powers of FOs.

CHAPTER-VIII
REPORTS AND STATEMENTS

Submission of yearly reports and returns.

CHAPTER-IX
MISCELLANEOUS

Transfer of rights and liabilities.

Indemnity.

Rules and regulations.

Removal of difficulties.

Provisions of this Act to override other laws.

THE *[KHYBER PAKHTUNKHWA]
IRRIGATION AND DRAINAGE AUTHORITY ACT, 1997.

(([KHYBER PAKHTUNKHWA] ACT NO. V OF 1997)

[First published after having received the assent of the Governor of the °[Khyber Pakhtunkhwa] in the Gazette of °[Khyber Pakhtunkhwa] (Extraordinary), dated the 16th July, 1997].

AN

ACT

to provide for adopting a strategy for streamlining the irrigation and drainage system in the Province of the 'Khyber Pakhtunkhwa].

PREAMBLE.—WHEREAS it is expedient to adopt a strategy for streamlining the irrigation and drainage system in the Province of the §[Khyber Pakhtunkhwa] with a view to—

(a) replacing the existing administrative set up and procedure with more responsive, efficient and transparent arrangements in order to achieve economical and effective operation and maintenance of irrigation, drainage and flood control system in the Province;

(b) ensuring equitable and assured distribution of irrigation water and providing effective drainage and flood control to the affected lands;

(c) making the irrigation and drainage net-work sustainable on a long-term basis and introducing of beneficiaries in the operation and management thereof; and

(d) improving the efficiency of utilization of water resources and minimizing the drainable surplus;

AND WHEREAS for achieving the objectives aforesaid, it is further expedient to transform the Provincial Irrigation Department into an autonomous authority and to establish Area Water Boards and Farmers Organizations towards development and management of the irrigation, drainage and flood control infrastructures in the Province;

It is hereby enacted as follows:-

CHAPTER-I PRELIMINARY

1. SHORT TITLE, EXTENT AND COMMENCEMENT.—

(1) This Act may be called the *[Khyber Pakhtunkhwa] Irrigation and Drainage Authority Act, 1997.

*Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

°Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

*Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

°Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

*Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

°Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

(2)
(3)

It extends to the whole of the 'Province of the Khyber Pakhtunkhwa].

It shall come into force at once.

2. DEFINITIONS.—In this Act, unless there is anything repugnant in the subject or context,

(a)
(b)

(c)

(d)

(e)

(f)
(g)
(h)

(i)
(j)
(k)

(l)

"AWB" means an Area Water Board established under section 26;

"Authority" means the "Khyber Pakhtunkhwa] Irrigation and Drainage Authority established under section 3;

"Canal" means a canal as defined in the Canal and Drainage Act, 1873;

"Drain" means a natural drain, surface or sub-surface drainage network provided for the evacuation of the surplus sub-soil and surface water from the land under the command of canal system;

"drainage cess" means drainage fees to be charged from users/consumers/other beneficiaries using a drain for the conveyance and/or disposal of effluent;

"FO" means Farmers! Organization formed under section 30;

"Government" means the Government of the "[Khyber Pakhtunkhwa];

"Local Body" means any District Council, Municipal Corporation, Municipal Committee, Town Committee, Union Council or any other Local Committee constituted under any law for the time being in force;

"prescribed" means prescribed by rules made under this Act;

"Province" means the Province of the 'SIKhyber Pakhtunkhwa];

"Rules" or "Regulations" means rules or regulations made or framed under this Act;

"section" means a section of this Act;

(m) "WAPDA" means the Pakistan Water and Power Development Authority;

()

(0)

"water" means any water, standing or flowing on surface or sub-surface within the territory of the Province except such water in the inter-provincial reservoirs and/or rivers and canals within the Province as is allocated to any other Province or Provinces under the Water Apportionment Accord (1991);

"water rate" means the charge for which the Authority agrees to supply water to an AWB or any other water user or an AWB to an FO or to any other water user or an FO to its members, as the case may be.

CHAPTER-II CONSTITUTION OF THE AUTHORITY

3. CONSTITUTION OF THE AUTHORITY.—

'Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

"Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

qd) There shall be established an Authority to be known as_ the "Khyber

Pakhtunkhwa]Irrigation and Drainage Authority.

(2) The Authority shall be a body corporate, with powers to acquire, hold and dispose off property, having perpetual succession and a common seal and shall, by the said name, sue and be sued.

(3) The headquarters of the Authority shall be at Peshawar.

APPOINTMENT AND TERMS OF OFFICE OF CHAIRMAN AND MEMBERS OF THE AUTHORITY.—

(1) The Authority shall comprise of a Chairman and seven members to be appointed by Government and notified in the official gazette. The composition of the Authority shall be as under:

- (i) Any person appointed by Government. ----- Chairman
- (ii) Additional Chief Secretary to Government, ----- Member Planning, Environment and Development Department.
- (iii) the Secretary to Government, ===== Member Finance Department
- (iv) the Secretary to Government, ===== Member Irrigation Department
- (v) Member BoardofRevenue, = = 9 ---- Member Revenue Department
- (vi) the Secretary to Government, Agriculture ----- Member Department
- (vii) STthree representatives] of the 'farmers] none Member appointed by Government
- (viii) | Managing Director of the Authority = ----- Member-cum-

Secretary

(2) The Authority shall be responsible for the overall management and control of the affairs and, for that purpose may, from time to time, delegate such of its powers and functions to any of its members or any employee of the Authority as may be deemed appropriate in the interest of proper and effective conduct of the business of the Authority.

(3) The Authority shall meet at least once in every three months. The Chairman shall, at the written request of not less than three members, convene special meeting of the Authority, after giving not less than seven days prior notice of such meeting, within a

¹Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

²Substituted vide the Khyber Pakhtunkhwa Act No. I of 2006.

³Substituted vide the Khyber Pakhtunkhwa Act No. I of 2006

period not exceeding 15 days from the receipt of such requisition. The meetings, other than special meeting shall be convened at such notice and in such manner as may be prescribed.

(4) The quorum for a meeting of the Authority shall be four members. In the case of any financial matter being considered by the Authority, one of the four members shall be the Finance Secretary to Government.

(5) Subject to section 6, the term of office of the members of the Authority, other than the ex-officio members shall be 4 years.

(6) Any member of the Authority, other than the ex-officio members, upon the expiry of the term of his office shall be eligible for re-appointment for one similar term or for a shorter term as may be determined by Government.

(7) Any member of the Authority, other than an ex-officio member, may, at any time, resign; provided that his resignation shall not take effect until accepted by Government.

5. REMUNERATION OF THE NON-OFFICIAL MEMBERS OF THE AUTHORITY.—

A non-official member of the Authority shall receive, for every meeting actually attended, such allowances as may be prescribed by the Authority. No other salary, payment or compensation shall be paid to the Chairman and the members of the Authority for attending the meetings and/or doing any work as Chairman or as member of the Authority.

6. REMOVAL OF MEMBERS OF THE AUTHORITY.—

(1) Government may, by notification, remove a non-official member or the Managing Director from the membership of the Authority if he—

(a) is or becomes incapable of discharging his responsibilities under this Act; or

(b) has been declared insolvent by a court of competent jurisdiction; or

(c) has been declared to be disqualified for employment, or has been dismissed from the service of Government, or has been convicted of an offence involving moral turpitude; or

(d) has knowingly acquired or has continued to hold, without permission, in writing, of Government, directly or indirectly or through partner, any share or interest in any contract or employment with or on behalf of the Authority or in any land or property which, to his knowledge, is likely to benefit or has benefitted as a result of the operations of the Authority:

Provided that removal under clauses (a) and (d) above shall not have effect without giving him an opportunity of showing cause:

Provided further that if the Managing Director is removed from the membership of the Authority, he shall also cease to hold the office of the Managing Director.

7. THE BOARD OF MANAGEMENT.—

(1) Subject to the overall control and guidance of the Authority, the day to day

management of its affairs shall be carried out by a Board of Management (BOM)

comprising of the Managing Director and assisted by three General Managers, one of whom shall be General Manager, Finance.

(2) The Managing Director and the General Managers shall be appointed by Government in the prescribed manner on the recommendations of the Authority.

(3) The Managing Director shall be the Chief Executive to run the day to day affairs and business of the Authority.

(4) Government may, on the recommendations of the Authority, change the membership of the BOM, or remove any member, including the Managing Director, from the Board of Management, on the grounds specified in clauses (a) to (d) of section 6.

(5) The Managing Director or a General Manager may, at any time, resign, provided that his resignation shall not take effect until accepted by Government.

CHAPTER-III POWERS AND DUTIES OF THE AUTHORITY.

8. POWERS AND DUTIES OF THE AUTHORITY.— The Authority shall have the following powers and duties:

(a) GENERAL:—

(1) Subject to the provisions of the Indus Water Treaty (1960) and the Water Apportionment Accord (1991), "[for the time being in force] to receive irrigation supplies at the barrages and/or head-works falling within the Province and/or from the inter-provincial/link canals and deliver the same in agreed quantities to the various AWBs in the Province at the relevant canal head works. The Authority shall also receive drainage effluent at designated points and convey the same to the inter-provincial outfall drains.

(2) To exercise all the powers under the Canal and Drainage Act, 1873, and the relevant Manuals, Rules and Instructions otherwise vesting in Government and not inconsistent with or in derogation of any provision contained in this Act and/or any Rules and Regulations made thereunder.

(3) To fix the rates in consultation with Government to which it will supply irrigation water at its disposal to its various AWBs/other entities, including the water users mentioned in clause (n) of section 2 as also the drainage cess payable by the users/consumers/other beneficiaries for the conveyance/disposal of the effluent through the relevant drains.

(4) The Authority may levy appropriate surcharge for late payments and recover arrears from defaulters as arrears of land revenue; provided that in case Government declares a remission, waiver, re-scheduling or suspension of payment of any of the dues of the Authority, the same shall be at the cost of Government and Government shall simultaneously notify how the Authority shall be compensated for the loss thereby

"Substituted vide Khyber Pakhtunkhwa Act No. I of 2006.

caused to the Authority and/or any other entity established under this Act.

(b) POLICY AND REGULATION:—

qd) To formulate and implement policies in the water resources sector with a view to continuously improving and achieving effective, economical and efficient utilization, preservation and improvement of such water resources for the development of irrigated agriculture on a sustainable basis.

(2) To formulate and implement policies/guidelines and procedures for the proper and efficient exercise of powers available under this Act by the various authorities and/or their officers/employees and to prescribe training requirements and programmes necessary for the purposes of this Act.

(3) To conduct any enquiries and hear any complaints and adjudicate on any dispute and/or differences of opinion between the Authority and different entities established under this Act and/or any individual and/or the said entity in accordance with the principles of natural justice relevant thereto and to faithfully and punctually implement such decisions as per the letter and spirit thereof.

(4) To prescribe and adhere to the procedures for the filling of documentation regarding water allocation in the Province and all concessions, licenses and leases granted by any entity under this Act and to ensure availability thereof to the general public for inspection and taking of copies thereof.

(5) To establish criteria and procedures for granting, modifying, reassigning, renewing, suspending or revoking any concessions, licenses and subleases granted by the Authority to any other entity or person and/or for the management of the infrastructure in the event of suspension or revocation of a concession, license or sublease.

(c) OPERATIONS:

qd) To operate and maintain the irrigation, drainage, storage reservoirs and flood control infrastructure in the Province including hill torrent control and development works for irrigation of adjoining lands including watershed management practices in catchment areas, but not including civil canals and private kathajat.

(2) To plan, design, construct and/or improve the irrigation, drainage, storage reservoirs and flood control system with a view to ensure optimal utilization of the water resources of the Province on an equitable and efficient basis, in consultation with the Planning, Environment and Development Department of Government.

(3) To maintain all relevant/necessary records, registers and data banks as may be relevant and/or necessary for the effective performance of any or all of its above referred powers and duties.

(4) To issue such directions and take such steps as may reasonably be necessary for the prevention of encroachments and unauthorized construction along or on the properties of the Authority.

(5) To prescribe rates, fees and other charges to be payable in respect of various types of services which the Authority may be required to render or provide under this Act.

(6) To operate and maintain the equipment, machinery and stores of the Authority effectively, efficiently and in a business like manner.

(7) To undertake anti-erosion operations including conservation of forests and reforestation and with a view to achieve this purpose, to restrict or prohibit by general or special order the clearing or breaking up of land in the catchment areas of any rivers, hill torrents and/or other streams.

(d) FINANCE AND ADMINISTRATION:—

qd) To undertake any work, incur any expenditure, procure machinery, plant and stores required for use by the Authority and to negotiate, execute and adopt/ratify all such contracts as may be considered necessary or expedient.

(2) To acquire by purchase, lease, exchange or otherwise and dispose off by sale, exchange or otherwise, any land, property or machinery/ equipment or any other interest in or regarding any land or property.

(3) To direct that any work required to be carried out by a person in connection with training of rivers, hill torrents and/or any other streams or undertaking of anti-erosion measures including conservation of forests and reforestation, but left undone shall, after reasonable notice to such person and due consideration of any objections raised by him in this regard, be undertaken by the Authority and determine the cost to be borne by such person, or after notice and due enquiry by any other person who may be held by the Authority to be liable for the same.

(4) To utilize the Authority Fund to meet the cost and expenses incurred on account of and in connection with the due performance of the various functions of the Authority under this Act including the payment of salaries and other remunerations to the management and employees of the Authority.

(5) To formulate, implement and continuously review/improve the policies and procedures relevant to the management of finances and maintenance of the accounts of the Authority as well as for the inventory and assets valuation and disposal and for the recruitment, promotion, retirement and termination of the services of the employees of the Authority.

(6) To formulate financial policies aimed at ensuring that the finances of the Authority are managed in a consistent, conservative and diligent manner as to protect its assets including provision for their maintenance and periodic replacement as necessary, to preserve its capital and reserves, and to provide prompt servicing of its debts and obligations. Its financial policies must be based on principles of sustainability.

(7) To prepare for the approval of the Authority, the Annual Budget Statement indicating the revenues and sources thereof and the details of revenue and capital expenditure.

(e) TRANSITION:—

qd) To formulate, adopt and implement policies aimed at promoting

formation, growth and development of pilot AWBs/FOs and compilation/faithful monitoring of the results thereof as per requirements prescribed under this Act and to ensure orderly and systematic induction thereof into the operations of the Authority.

(2) To prepare/cause to be prepared and regularly update/pause to be updated Staffing and Operational and Financial Plan(s) which will generally deal with and reflect the following aspects:

- (i) composition of the Authority and Board of Management;
- (ii) functions and responsibilities of the Authority and BOM;
- (iii) vision and strategy;
- (iv) organizational structure including job descriptions for key positions and gradings;
- (v) human resource strategy, staffing plans and compensation policies;
- (vi) | measures for reducing costs and improving efficiency of the operations of the Authority;
- (vii) cost sharing/recovery arrangements including measures to improve collection of water rates/drainage cess;
- (viii) financial arrangements;
- (ix) | schemes/programmes for the improvement of irrigation, drainage, flood control and hill torrents in the Province;
- (x) operations management including water allocation, operation and maintenance and effluent disposal;
- (xi) | programmes for establishment of AWBs and FOs;
- (xii) detailed financial plans/projections clearly outlining the capital budget, operating statement (revenue and expenditure statement), balance sheets and a funds flow statement showing sources and utilization of funds;
- (xiii) transparency and accountability arrangements;
- (xiv) performance and monitoring standards;
- (xv) co-ordination with the Finance and Planning, Environment & Development Department to ensure that the provincial irrigation assets are properly maintained and Authority's development programmes are in conformity with Provincial planning priorities.

(3) To prepare and implement policies with a view to ensuring that the staffing levels within the Authority and other entities under this Act conform with the corresponding levels indicated in the staffing, operational and financial plans prepared/updated under sub-section (2) above through enforcement of freeze on hiring of new employees, non replacement of employees retiring upon attainment of age of superannuation, reassignment of any surplus employees, wherever possible, and by introducing policies offering financial and other benefits for employees voluntarily

10.

opting for early retirement and to take all steps and exercise all powers reasonably required to be taken/exercised in this regard.

(4) To formulate and implement policies with view to ensuring that the Authority and other entities under this Act become fully operative as self supporting and financially self sustaining entities as regards operation and maintenance (hereinafter referred to as 'O&M') cost of irrigation and drainage as specified in section 22 within a period of seven (7) to ten (10) years.

(f) | RESEARCH AND DEVELOPMENT:—

qd) To formulate, implement and regularly update policies, studies and research programmes in order to solve/eliminate and prevent waterlogging and salinity, and to develop irrigated agriculture in the Province, in collaboration with the Planning, Environment & Development Department.

(2) To conduct studies in order to regularly analyze and evaluate the impact of the operations and policies of the Authority on- the ecology and the environment within the Province and to establish the various available options for the minimization of the adverse impact of such operations and policies, if any, and to adopt the optimal option(s) for further action, in co-ordination with the Provincial Environmental Protection Agency.

(3) To co-ordinate/regulate the measures being undertaken/required to be undertaken in the Province for recording/gauging surface waters, monitoring of groundwater table and quality of water and the compilation of data relevant thereto and in this regard to establish and regularly maintain proper liaison with similar work being undertaken in other provinces/agencies.

(4) To cause studies, surveys, experiments, technical investigations and research to be conducted in connection with or regarding the functions and duties of the Authority and/or of any other entity under this Act.

(5) To publish/cause to be published the various policies, details, data and information relevant to the affairs of the Authority on regular basis and to ensure reasonable access of the public to the same.

CONTRACTUAL SERVICES:—

qd) The Authority may, under a written agreement as to the terms and conditions including the extent and manner of payment for the same, undertake execution of any scheme(s) or exercise technical supervision and administrative and financial control over the execution of any scheme(s) framed or sponsored by any other agency.

(2) Notwithstanding anything to the contrary contained in this Act, the Authority may with the previous approval of and written agreement as to the terms and conditions including the extent and manner of payment for the same with the Government, provide agreed services for the execution of any scheme(s) framed or sponsored by Government or any agency under the control of Government or provide technical supervision and financial and administrative control over the execution of any such scheme(s).

ACQUISITION OF LAND BY THE AUTHORITY:—

Acquisition of any land or any interest in land by the Authority for the purposes of or under this section, or for any scheme under this Act shall be deemed to be an acquisition for a public purpose within the scope and meaning of the Land Acquisition Act, 1894, provisions whereof shall apply to such acquisition proceedings; Provided that the Authority, prior to approaching Government for any proposed acquisition of land or any interest therein shall, in consultation with the likely affectees if any, prepare resettlement plan which shall be duly approved by the Authority.

11. RIGHT OF ENTRY:—

qd) The Managing Director or any other person authorized by him in writing may, after prior notice to that effect and with a copy to the respective Deputy Commissioner, enter upon and survey any land, erect pillars for the determination of intended lines of work, make borings and excavations and do all other acts which may be necessary for the preparation and implementation of any scheme under any provisions of this Act; provided that when the affected land does not vest in the Authority, the power conferred by the above sub-section shall be exercised in such manner as to cause the least interference with and/or damage to such land and the rights of the owner thereof.

(2) When any person enters into or upon any land pursuant to sub-section (1), he shall, at the time of such entry or as soon thereafter as may be practicable but in no case later than 60 days from the date of such entry, pay or tender payment for all necessary damage likely to be caused or caused on account of any operations proposed to be carried out or carried out under sub-section (1). In case of any dispute, the same shall be referred to the Collector/Deputy Commissioner of the District who shall decide the same within a maximum period of 30 days from the date of such reference.

12. ARRANGEMENT WITH LOCAL BODIES OR OTHER AGENCIES:-

(1) As soon as any scheme has been completed by the Authority or at a later date, the Authority may arrange by a written agreement with a Local Body or other agency within whose jurisdiction any particular area covered by the scheme lies, to take over and maintain any of the works comprising such scheme in the said area.

(2) Government shall have the power to direct the Authority to hand over any scheme(s) completed by the later to any agency of Government or a Local Body or take over such scheme(s) completed by any agency. In any such case, the Authority shall be entitled or liable, as case may be, to the extent of audited expenditure incurred on such scheme(s).

13. CONTROL OVER PROVINCIAL WATER RESOURCES:-

Subject to the relevant provisions in the Indus Basin Treaty (1960) and the Water Apportionment Accord (1991), the Authority, with the previous approval of the Provincial Government, shall have control over such rivers, canals, drains, streams, hill torrents, springs, reservoirs (except such reservoirs as are under the control of WAPDA) and under ground water resources with-in the Province as may be specified. The conditions under which the Province's water resources are handed over to the Authority, shall be clearly specified as to terms and conditions.

CHAPTER-IV

ESTABLISHMENT

14. APPOINTMENT OF OFFICERS, SERVANTS, ETC:-

(1) Subject to any other provision of this Act, the Authority may, from time to time, employ such officers and servants, or appoint such experts or consultants as it may consider necessary for the performance of its functions, on such terms and conditions as it may deem fit.

(2) Notwithstanding anything contained in sub-section (1), any rules made, or orders or instructions issued by the Authority, the Authority may at any time, for reasonable cause, relieve or remove from its service any person after giving him not less than 90 days notice or pay for the period by which such notice falls short of 90 days.

15. RECRUITMENT AND CONDITIONS OF SERVICE AND DISCIPLINARY POWERS:-

The Authority shall prescribe the procedure for appointment and terms and conditions of service of its officers and servants and shall be competent to take disciplinary action against its officers and servants in the prescribed manner.

16. IMMUNITY OF THE AUTHORITY AND ITS EMPLOYEES:-

(1) The Managing Director, members of BOM, officers and servants of the Authority shall, when acting or purporting to act, in pursuance of any of the provisions of this Act, be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code.

(2) No suit, prosecution or other legal proceedings shall lie against the Authority, the Managing Director, Members of officers and servants of the Authority in respect of anything done or intended to be done in good faith under this Act.

17. DELEGATION OF POWERS TO MANAGING DIRECTOR ETC:-

The Authority may, by general or special order, delegate to the Managing Director, a member of the BOM or officer or servant of the Authority any of its powers, duties or functions, under this Act subject to such conditions as it may deem fit to impose.

18. PERSONS SERVING IN THE PROVINCIAL IRRIGATION DEPARTMENT:-

(1) All employees of the Provincial Irrigation Department, except such employees as may be specified by Government in this behalf, shall, subject to any other provision(s) contained herein, on coming into force of this Act, become the employees of the Authority.

(2) Employees under sub-section (1) shall serve the Authority on such terms and conditions as may be prescribed by rules and regulations of the Authority which shall not be less favourable than their existing terms and conditions of service.

(3) The Authority shall, through adoption of policies of hiring freeze, reassignment, non-replacement of employees retiring upon attainment of superannuation and providing incentives for early retirement, bring the number of its employees in conformity with the corresponding numbers indicated in the relevant staffing and operational and financial plans.

(4) Government shall contribute to the pension, gratuity and final payment of the provident fund of the employees of the Provincial Irrigation Department who become the employees of the Authority under sub-section (1).

CHAPTER-V

FINANCE

19. AUTHORITY FUND:-

(1) There shall be a fund to be known as the "Authority Fund" vested in the Authority.

(2) The Authority Fund shall consist of:

(a) all sums received by the Authority in respect of water charges, sale proceeds, development cess, drainage cess, etc.;

(b) grants made by Government;

(c) loans obtained from Government;

(d) grants made by Local Bodies as required by Government;

(e) sale proceeds of bonds or any other debt instruments issued under the authority of Government;

(f) loans obtained by the Authority with the special or general sanction of Government;

(g) foreign assistance and loans obtained from different foreign agencies with the sanction of, and on such terms and conditions as may be approved by the Federal and Provincial Governments; and

(h) all other sums received by the Authority.

20. AUTHORITY TO BE DEEMED TO BE A LOCAL AUTHORITY:-

The Authority shall be deemed to be a Local Authority under the Local Authorities Loans Act, 1914 for the purpose of borrowing money under the said Act, and the making and execution of any scheme under this Act shall be deemed to be work which such Authority is legally authorized to carry out.

21. LIMITED LIABILITY:-

The liability of Government to the creditors of the Authority shall be limited to the extent of grant made by Government and the loans raised by the Authority with the sanction of Government.

22. PROCEDURE FOR FIXATION OF RATES FOR SUPPLY OF WATER:-

(1) The Authority shall normally supply irrigation water to different areas on equitable and reasonably assured basis.

(2) The rates at which the Authority shall supply water shall be so fixed as to provide for meeting the operation and maintenance cost of the system within a period of 7- 10 years; provided that before proposing any enhancement in the existing rates and/or agreeing to the

same, the Authority/AWB(s) concerned shall use their best endeavours to reduce the quantum of the proposed enhancement of rates through adoption of the following measures:

- (i) reducing costs;
- (ii) improving assessment and collection of Water Rate and Drainage Cess;
- (iii) recovery of arrears;
- (iv) recovery of cost of providing drainage to non-farming beneficiaries; and
- (v) disinvestment of fresh water tubewells in SCARP areas.

(3) The components of O&M to be recovered from the beneficiaries in the form of abiana/drainage cess shall be the full O&M cost of irrigation canals and secondary drains.

(4) The O&M cost of flood protection and public sector fresh ground water (FGW) tubewells will be excluded from abiana. A nominal proportion (say 5 to 10 percent) of the O&M cost of saline ground water (SGW) tubewells and/or main drains may, however, be borne by the beneficiaries, should such a need be felt by the Authority at some later stage.

23. BOOKS OF ACCOUNTS:-

The Authority shall maintain proper books of accounts and records on generally acceptable accounting principles, to explain all its transactions and to give a true and fair view of its state of affairs. The books of accounts relating to a period of not less than ten years immediately preceding the current year shall be preserved in good order.

24. ANNUAL FINANCIAL STATEMENTS:-

(1) The Authority shall, not later than six months after the end of each financial year, prepare financial statements including balance sheet as at the end of the financial year, income and expenditure account for the financial year, and a statement of changes in financial position or statement of sources and application of funds for the financial year, and cause these accounts to be audited in the manner specified in section 25. The financial statements shall be approved by the Authority.

(2) The balance sheet shall give a true and fair view of the state of affairs of the Authority as at the end of financial year, and the income and expenditure account shall give a true and fair view of the surplus or deficit of income over expenditure of the Authority for the financial year.

(3) Accounting standards of the Pakistan Institute of Chartered Accountants shall be followed in regard to the books of accounts and preparation of the financial statements.

(4) Accounting policies shall be stated as part of the financial statements.

(5) The Authority shall attach to its financial statements a statement providing information on any material changes and commitments affecting the financial position of the Authority which have occurred between the end of the financial year to which the financial statement were prepared.

(6) In the month of February each year, the Authority shall submit to Government for information, projected financial statements for the next year.

25. AUDIT:-

qd) The Authority shall have a double audit system.

(2) The financial statements of the Authority shall be audited every year by the Accountant General of the *[Khyber Pakhtunkhwa] as well as by the commercial auditors who shall be appointed by the Authority.

(3) The Auditor shall carry out the audit in accordance with the professional standards of auditing prescribed by the Pakistan Institute of Chartered Accountants, and shall issue a report on the audit.

(4) The Authority shall provide a copy of the audit report and financial statements together with detailed information and explanation in regard to any observation, reservation, qualification or adverse remarks contained in the auditor's report to the Government, and shall file a copy with the Accountant General of the *[Khyber Pakhtunkhwa] within 30 days of the period stipulated for their preparation in Section 24. The Authority shall carry out all reasonable directives issued by Government for compliance with any observation, reservation, qualification or adverse remarks in the audit report.

CHAPTER-VI
AREA WATER BOARDS

26. ESTABLISHMENT OF AREA WATER BOARDS:-

Government shall, as soon as possible, after the coming into force of this Act, notify the establishment of various Area Water Boards (AWBs) in the Province together with their respective territorial jurisdictions which will preferably be based on the canal commands; provided that an AWB shall initially be formed only as a pilot for certain selected canal command area to be replicated later around all major canal commands in the Province, should the result of the pilot AWB is satisfactory.

27. CONSTITUTION OF AWBs:-

(1) Government shall, simultaneously with the establishment of the AWBs in the Province under section 26, notify the constitution of the Boards of Directors (the Boards) of such AWBs. Each Board shall comprise of such number of members as may be required on the basis of successful result of the pilot AWB.

(2) The members of a Board shall in their first meeting elect from amongst themselves a chairman who shall preside over their meetings during their tenure of office. In case the said chairman, for any reason, is unable to attend a meeting of the Board, the members present at such meetings may elect one of the present members as the chairman for that meeting.

(3) The term of office of the members of the Board other than ex-officio members, if any, shall be 4 years. A member shall, on expiry of his term, be eligible for renomination/election for one more similar term.

"Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011
Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

28. MEETINGS OF THE BOARD:-

(1) | The Board shall meet at least once in every quarter. However, the chairman of the Board shall, upon receipt of requisition signed by one half of the members, convene a meeting of the Board, after giving 7 days notice to all the members, within a period not exceeding 15 days from the date of receipt of such requisition.

(2) The quorum for a meeting of the Board shall be two-third of the members, a fraction being counted as one.

29. FUNCTIONS OF AREA WATER BOARDS:-

An area water board shall:-

(a) formulate and implement policies with a view to achieve and continuously improve effective, economical and efficient utilization of irrigation water at its disposal and to ensure that within a period not exceeding 7 to 10 years from the date of its constitution, it becomes fully operative as a self-supporting and financially self-sustaining entity;

(b) operated and maintain the irrigation, drainage and flood control infrastructure located within its territorial jurisdiction, but such operation and maintenance shall not extend to civil canals and private kathajat;

(c) adopt and implement policies aimed at promoting formation, growth and development of FOs including pilot projects for FOs and faithful monitoring of the results thereof; and

(d) perform any other functions assigned by the Authority.

CHAPTER-VII FARMERS ORGANIZATIONS

30. FORMATION OF FOs:-

qd) The Authority and AWB shall, within one year of its establishment, devise and implement pilot programs, policies and take steps thereunder to ensure that FOs are formed at the minor/distributary level in a phased and orderly manner in accordance with the relevant bye-laws and regulations framed by the Authority under section 31.

(2) The Authority and AWB concerned shall enable the FOs formed under sub-section (1) to become financially self sustaining and self sufficient for the due and effective performance of their functions prescribed under this Act within a maximum period of seven (7) to ten (10) years from the respective dates of their formation:

Provided that FOs established by Agriculture Department, NGOs, community organizations and other sponsoring entities, shall be deemed to be FOs within the meaning of this Act.

31. BYE-LAWS AND REGULATIONS FOR FOs:-

The Authority shall, within such period as may be reasonable, but in no case exceeding six months from the date of coming into force of this Act, publish/cause to be published bye-laws/regulations relevant to the formation of the FOs in the Province.

32. FUNCTIONS AND POWERS OF FOs:-

A Farmer Organization (FO) shall:-

- (a) operate, manage and improve the irrigation and drainage infrastructure, comprising of minors, distributaries and drains together with any structures thereon located within the area relevant to the FO concerned, other than civil canals and private kathajat;
- (b) obtain irrigation water from the Authority or AWB concerned at the head of the minor or the distributary and to supply the same to their members and other water uses, if any;
- (c) receive the drainage effluent from their water users and to convey the same through field/collector drains to the designated nodal points of the drainage system;
- (d) collect the agreed water charges/other dues, if any, from its water users and to pay the agreed consideration for supply of irrigation water and conveyance and/or disposal of drainage effluent to the Authority or AWB concerned;
- (e) engage, hire or employ any consultants, advisors and employees as may be deemed necessary or be otherwise reasonably required for the due and effective performance of various powers and functions on such terms and conditions as may be prescribed including terms and conditions relevant to the conclusion or premature determination of such engagement etc. of any consultant, advisor or employee, as the case may be; and
- (f) any other power and functions not being inconsistent with the functions and powers given above which may be vested in the FOs under the bye-laws and regulations framed by the Authority under section 31.

CHAPTER-VIII

REPORTS AND STATEMENTS

33. SUBMISSION OF YEARLY REPORTS AND RETURNS:-

(1) The FOs, AWBs and the Authority shall submit to Government, as soon as possible after the end of every financial year but, before the expiry of a period of seven months of such end of the financial year, a report on the conduct of their affairs for that year including audited financial statement for the year in question.

(2) Government may reasonably require the submission of the following:

(i) any return, statement, estimate, statistics or other information

regarding any matter under the control of such entity; or

(ii) a report on any such matter; or

(iii) a copy of any document in the charge of such entity and the entity concerned shall comply with every such requisition.

(3) The Authority and AWBs shall cause to be published their annual reports submitted together with brief particulars of the projects proposed to be undertaken during the next financial year in at least one English/Urdu/ regional language newspaper.

CHAPTER-IX

MISCELLANEOUS

34. TRANSFER OF RIGHTS AND LIABILITIES:-

(1) Upon coming into force of this Act all assets and liabilities and all rights and obligations of the Provincial Irrigation Department shall stand transferred to the Authority, on such terms and conditions particularly as regards the use and disposal of said assets, as may be determined by Government.

(2) All contracts made by the Provincial Irrigation Department relating to irrigation, drainage, flood control and hill torrents shall be deemed to be contracts made by the Authority. All decisions and/or instruments shall be signed/authenticated for and on behalf of the Authority by the signatures of the Managing Director and/or any other employee or employees of the Authority duly authorized by the Managing Director in this behalf.

35. INDEMNITY:-

(1) Nothing in this Act shall be construed as imposing" upon the Authority, either directly or indirectly, and duty enforceable by proceedings before any court.

(2) No suit, prosecution or other legal proceedings shall lie against the Authority, the Managing Director, or any other officer, servant, expert or consultant of the Authority in respect of any damage caused or likely to be caused, or anything done or intended to be done in good faith, under this Act or the regulations made thereunder.

36. RULES AND REGULATIONS:-

For the purpose of carrying into effect the provisions of this Act, the Authority may, with the approval of Government, frame and notify such rules and regulations as it may consider necessary or expedient.

37. REMOVAL OF DIFFICULTIES:-

If any difficulty arises in giving effect to any of the provisions of this Act, Government may make such orders, not inconsistent with the provisions of this Act as may appear to it to be necessary for the purpose of removing the difficulty.

38. PROVISIONS OF THIS ACT TO OVER-RIDE OTHER LAWS:

In case of any conflict or inconsistency between any provision(s) of this Act and any other law(s), the provisions of this Act, to the extent of such conflict or inconsistency, as the case may be, shall prevail.