

THE 1[KHYBER PAKHTUNKHWA] WATER USERS' ASSOCIATIONS

ORDINANCE, 1981.

*[KHYBER PAKHTUNKHWA] ORDINANCE NO. II OF 1981.

AN
ORDINANCE
[14th February, 1981]
CONTENTS

PREAMBLE

CHAPTER—I

PRELIMINARY

1. Short title, extent and commencement.

2. Definitions.

3. Ordinance to over-ride other laws.

4. Purpose.

10.

11.

CHAPTER—2

PURPOSE, POWERS AND FORMATION

Association to be bodies corporate.

Formation of Association.

Powers of Association.

Recovery of cost.

Dues to be recovered as arrear of land revenue.

Appeals.

Composition.

CHAPTER—3

GENERAL BODY

General meetings.

Special meeting.

Duties of General Body.

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

2 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.
30.
31.
32.
33.
34.
35.
36.
37.
38.
39.
40.

2|Page

Voting.
Resolving disputes.
Composition.
CHAPTER—4
BOARD OF DIRECTORS
Chairman and Officers.
Quorum.
Oath.
Duties of Board of Directors.
Duties of Chairman.
Duties of Secretary.
Duties of Treasurer.
Assistance to the Board.
Distributary Associations.
CHAPTER—5
FEDERATION OF ASSOCIATIONS
Canal Associations.
Registry of Distributary and Canal Associations.
Duties and powers.
Capital expenditure and improvements.

Evidence of Land ownership.

CHAPTER—6

MISCELLANEOUS PROVISIONS

Transfer of membership.

Assessments.

Credit.

Auditing of accounts.

Fines for abuse.

Enforcement of fines and fees.

Acquisition of lands.

Contract water and water rates.

Improvement of Distributary.

Preferential treatment.

Preparation of forms.

Power to make rules.

THE 1[KHYBER PAKHTUNKHWA] WATER USERS' ASSOCIATIONS
ORDINANCE, 1981.

*[KHYBER PAKHTUNKHWA] ORDINANCE NO. II OF 1981.

[14th February, 1981]

AN
ORDINANCE

to provide for the formation, operation and promotion of water users' association in
the 3[Khyber Pakhtunkhwa].

WHEREAS it is expedient to provide for the formation, Preamble
operation and promotion of water users, associations in the
'Khyber Pakhtunkhwa] and matters ancillary thereto in the
manner hereinafter appearing.

AND WHEREAS the Governor of the "[Khyber
Pakhtunkhwa] is satisfied that circumstances exist which render it
necessary to take immediate action;

NOW, THEREFORE, in pursuance of the Proclamation of
the fifth day of July, 1977, read with the Laws (Continuance in
Force) Order, 1977 (C.M.L.A., Order No I of 1977), and in
exercise of all powers enabling him in that behalf, the Governor of
the [Khyber Pakhtunkhwa] is pleased to make and promulgate the
following Ordinance.

CHAPTER—I
PRELIMINARY

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

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

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

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

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

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

1. (1) This Ordinance may be called the 'Khyber Short title, extent and Pakhtunkhwa] Water Users' Associations Ordinance, 1981. commencement.

(2) It extends to whole of the 7[Khyber Pakhtunkhwa] Province.

(3) This section shall come into force at once and all or any of the remaining provisions of this Ordinance shall come into force in such area or areas and on such date or dates as Government may, by notification, direct.

2. In this Ordinance, unless there is anything repugnant in the Definitions. subject or context:

(a) "Association" means an irrigation association (Anjuman-e-abpashi), organized and registered under this Ordinance;

(b) "Association in good standing" means an Association that is not in default of a bona fide legal obligation;

(c) "Association village" means that area of land

irrigated from the source of water developed or utilized by the Association;

(d) "Board of Directors" means the governing body of representatives elected by the General Body;

(e) "bye-laws" means bye-laws of the Association;

(f) "Canal Officer" means the Canal Officer as defined in the Canal and Drainage Act, 1873 (VIII of 1873);

(g) "Collector" means the Collector as defined in the West Pakistan Land Revenue Act, 1967 (W. P. Act XVII of 1967);

'I(ga) "Field officer" means an officer declared as such by Government and includes the Director, the Deputy

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

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

Director and the assistant Director of the On Farm-Water Management;]

(h) "General Body" means the collective body of membership of the Association;

(i) "irrigator" means the operator of a separate farm, whether he is an owner of land, tenant or renter, and includes the representative chosen by the joint owners of joint operators of a jointly owned or operated farm;

*[(ia) "Management" means the Department or Directorate of on-Farm water Management,
3[Khyber Pakhtunkhwa];]

Gj) "member in good standing" means any member whose payment of assessment is not in arrears by more than one year, or who is not under conviction for a criminal offence, or is not a minor;

(k) "membership" means all the irrigators who are members of the Association and are entitled to participate in the general assembly;

() "outlet/tube well village" means that portion of land irrigated from a particular canal outlet or Government tube-well;

(m) "watercourse" means the main channel from the canal outlet (mogha) and laterals; and

t(n) "water storage tank" means a small reservoir constructed for storage of water for increasing volumetric flow and timely releases of water.]

3. The provisions of this Ordinance and the rules made Ordinance to over-ride other laws.

1 Inserted by Khyber Pakhtunkhwa Ord. No. VII of 1993.

2 Inserted by Khyber Pakhtunkhwa Ord. No. VII of 1993.

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

4 Added vide Khyber Pakhtunkhwa Ord. No. VII of 1993.

thereunder shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

CHAPTER—2
PURPOSE, POWERS AND FORMATION.

4. (1) The primary purpose of the Association shall be—

(i) the operation, maintenance, improvement and rehabilitation of the watercourse;

(ii) [the improvement of water supply from surface or ground water and construction of water storage tanks]; and

(iii) the improvement of On-Farm Water Management.

(2) The secondary purpose of the Association shall be to perform such other functions as relate to the obtaining of other agricultural inputs and the economic and social well being of the membership.

5. An Association shall be a body corporate by the name under which it is registered, having perpetual succession with power to hold property, both moveable and immovable, and shall by the said name sue and be sued.

6. (1) Whenever at least fifty-one percent of the irrigators on a water course who are above the age of eighteen years agree to the formation and operation of an Irrigator's Association (Anjuman-e-abpashi), they shall make an application to the Director, On-Farm Water Management, through his Field Officer.

(2) Upon receipt of application, the Field Officer shall review the application and convene a meeting for all irrigators in the watercourse command area.

(3) If seventy-five percent of the irrigators, who are above the age of eighteen years, consent to formation of the Association, membership of the non-consenting irrigators or those who are not capable of so consenting under any law for the time

1 Substituted vide Khyber Pakhtunkhwa Ord No. VII of 1993.

Purpose.

Association to be bodies corporate.

Formation of Association.

being in force shall be mandatory and they shall be deemed to have consented to be the members of the Association.

(4) Upon receipt of a complete membership list and after ascertaining the facts as mentioned in sub-section (1) or, as the case may be, sub-section (3), the Field Officer shall approve the application, register the Association by entering the name and particulars of the Association in a register to be kept for the purpose, send one copy of the list to the Provincial Director, On-Farm Water Management, and provide the Association with a certificate of formation as evidence of the legal existence.

(5) The membership list shall be kept current by the Association.

(6) The Field Officer shall examine and approve the membership list, and shall determine that each member is a bona fide land owner or an operator or a tenant.

(7) Any person aggrieved by the decision of the Field Officer may file an appeal to the Collector, whose decision thereon shall be final.

(8) The list of Associations and names of Officers of Associations shall be sent to the Irrigation, Agriculture, Revenue and other requesting Departments.

(9) The Association shall, within 30 days of the approval of the membership list, convene a meeting of the General Body, elect the Board of Directors, adopt bye-laws and open a bank account.

(10) The level of formation of an irrigators' Association shall be at the outlet village or tubewell village. The Association may increase in irrigated area by tubewells, and Associations sharing a common Government or private tube-well may make provisions in bye-laws for operation and maintenance of the same.

(11) Whenever the area of an outlet or tubewell village is changed by the Irrigation Department, the membership of existing Associations shall change accordingly. If membership changes by twenty-five percent or more, there shall be fresh election of the Board of Directors.

7. In carrying out the functions under this Ordinance the Powers of Association.
Association shall generally have the powers—

- (i) to improve, rehabilitate, operate and maintain the watercourses;
- (ii) to improve the water supply from surface or sub-surface sources and to construct water storage tanks];
- (iii) to locate, own, operate and maintain tubewells and lift pumps in the name of the Association;
- (iv) to sanction upgrading and maintenance of farm ditches and field outlets;
- (v) to encourage adoption of improve on-farm water use and management practices and other improved land and agricultural input practices;
- (vi) to participate in programmes to improve watercourses, land levelling and agronomic practice, and to lease, own, operate and maintain equipment, structures and other matters associated with improvement efforts;
- (vii) to establish water delivery schedules and supervise water allocation and distribution in the Association village in such a manner so as not to interfere with canal water delivery;
- (viii) to set and collect general and special assessments;

1 Substituted vide Khyber Pakhtunkhwa Ord No. VII of 1993.

- (ix) to conscript labour for emergency repair of water course;
- (x) to locate, install and maintain drainage facilities for fields;
- (xi) to remove obstructions in watercourse during realignment, operation and maintenance;
- (xii) to enter into contracts for obtaining loans and grants and setting a repayment schedule;
- (xiii) to insure that all members' rights under the law are respected, and that each member gets his fair share of water in a timely fashion; and
- (xiv) to insure that all members of the Association contribute their fair share of labour, money and other services for improvement, maintenance and operation of the water course.

"7A. (1) Notwithstanding any thing to the contrary contained in any law for the time being in force, where in connection with renovation of a water course, construction of water storage tanks or any other on-form mater management activity notified by Government, the material used in such renovation or construction is supplied by the Management, the irrigators making use of the above mentioned activities shall b liable to pay proportionately to the Management such percentage of the total cost of the material so used in the renovation of the water course and construction of water storage tank, as is specified by Government, from time to time, by Notification in the official Gazette.

(2) Except as provided in sub-section (4), the share of each irrigator shall be worked out on estimated cost of the renovation or construction work and shall be payable by the

1 Inserted vide Khyber Pakhtunkhwa Ord. No. VII of 1993.

Recovery of cost.

irrigators in lump sum in advance of the commencement of work or as per agreement. The advance payment shall be subject to adjustment, if, on completion of the work, the total cost varies from the estimated cost.

(3) For the purposes of preceding sub-sections, the Field Officer shall work out the proportionate share of each irrigator and shall, by notice, require the irrigators to deposit with him their share in the manner specified in the notice. The share so deposited shall be credited by the Field Officer in a Government Treasury under the head “1260-Receipts from Economic Services-1261-Agriculture-1261-Income from On-Farm Water Management”.

(4) All materials supplied by the Management and used in connection with the renovation of water course, where recovery clause exists in the loan Agreement executed on or after the 1st of July, 1985, shall be the materials in respect whereof the cost, as aforesaid, shall be recoverable under this section.

Explanation:—Renovation of Water Course for the purpose of this section shall include repair, improvement, construction and maintenance of a Water Course and Water Storage Tank, removal of hindrances in the smooth flow of water in a water course, re-alignment of water course based on engineering survey and design, installation of Pacca Nakkas at sanctioned sites, construction of culverts on the crossings and construction, reconstruction and maintenance of buffalo wallows where required.

(5) For the purposes of sub-section (3), the proportionate share of each irrigator shall be worked out on the basis of official warabandi of the Irrigation Department or the Board of Revenue, or, if there be no official warabandi, on the basis of Khangi Warabandi.

(6) Any person who willfully causes obstructions in the work of improvement of a water course undertaken by an Association or Government under the provisions of this Ordinance shall be deemed to be obstructing a public servant in the discharge of his public functions and shall be punished accordingly.

7B. All dues or arrears of dues, in case of default of payment by the irrigators, shall be recoverable as arrears of land revenue.

Dues to be recovered as arrear

TC. (1) Any irrigator not satisfied with his share as worked out under sub-section (3) of section 7A, may, within a period of thirty days from the date of receipt of the notice requiring him to deposit his share, prefer an appeal—

(a)

(b)

(c)

(d)

to the next higher authority, if the share has been worked out by an officer declared by Government as a Field Officer; or

to the Deputy Director, On-Farm Water Management if the share has been worked out by the Assistant Director; or

to the Director, On-Farm Water Management, if the share has been worked out by the Deputy Director; or

to Government, if the share has been worked out by the Director, On-Farm Water Management.

(2) The order passed in appeal shall be final and shall not be called in question before any court or before any authority:

Provided that no order shall be passed in appeal without giving the appellant an opportunity of being heard".]

CHAPTER—3 GENERAL BODY.

8. The irrigators of an Association shall constitute the General Body.

9. Every Association shall call an annual general meeting of the membership and not less than one other general meeting per year.

10. On request of not less than one-fifth of the members of the Association or at the request of the Board of Directors, the Chairman shall call a special meeting of the membership.

11. The General Body shall elect the Board of Directors, make of land revenue.

Appeals.

Composition.

General meetings.

Special meeting.

Duties of General Body.

or approve organizational policies, and plan of operation, approve and amend bye-laws, approve assessment and budget, approve selection of ditch tenders and assessment collectors, approve adoption of improvement programmes and leasing, purchasing or otherwise obtaining equipment, pumps, seeds, fertilizer, chemical and other like products, and do all other things necessary to carry out the purposes of this Ordinance and the Association's bye-laws.

12. (1) All irrigators shall be entitled to vote on issues requiring voting in carrying out the duties of the General Body.

(2) Each decision by the General Body shall require two third majority of votes.

13. (1) The General Body may either elect a special body to, or delegate to the Board of Directors the authority to, hear and decide disputes between members of the Association.

(2) Violation of the decision of the Board of the special body shall only be punishable with a fine, and not suspension of water delivery unless approved by the General Body.

CHAPTER—4 BOARD OF DIRECTORS.

14. (1) There shall be elected by the General Body, using secret ballot, a Board of Directors consisting of not less than five members in good standing.

(2) The General Body shall decide and include in the Association bye-laws whether the representatives to the Board of Directors are to be elected from geographic portions of the watercourses (head, middle and till) or by social group or at large.

(3) No member elected to the Board of Directors shall enjoy any benefits greater than any other member by virtue of his elected position.

(4) Members of the Board of Directors shall be elected for two years term, except in the first election after organization when one-half or there abouts shall be elected for one year. There after half or there abouts shall be elected annually. A person shall not serve for more than two consecutive terms on the Board of Directors.

Voting.

Resolving disputes.

Composition.

15. The members of the Board of Directors shall annually choose a Chairman, Secretary and Treasurer. If the bye-laws so specify, the Chairman may be by rotation and Vice-Chairman also appointed.

16. Action by the Board of Directors shall require two third vote of the total members of the Board.

17. Members of the Board of Directors shall make an oath to uphold the purposes and duties of the Association and if they be muslims, to also uphold the tenets of Islam.

18. The Board of Directors shall be responsible for carrying out the purposes of this Ordinance, the Association bye-laws and more particularly shall:

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(v)

(vi)

(vii)

manage the Association activities in delivery of water;

develop a plan of operation, maintenance, improvement and rehabilitation of the watercourse;

supervise the construction and maintenance of the watercourse and other improvement activities;

employ and discharge ditch tenders, collectors, and construction personnel;

exercise emergency powers to repair watercourse breakages;

negotiate and contract with government agencies and _ other institution for improvement programmes acceptable to the General Body;

serve as the communication link between government agencies in dissemination of information and all matters representing the

Chairman and officers.

Quorum.

Oath.

Duties of Board of Directors.

views and requests of the Irrigators Associations;

(viii) maintain the financial and organizational records of the Association; and

(ix) call special meeting of the General Body for any matter involving original expenditures and other important issues involving the general membership.

19. The Chairman shall be responsible to call and conduct meeting of the Board of Directors and General Body and to otherwise act on behalf of the Association in all other matters. The Chairman may designate a temporary Chairman in case he is unable to perform his duties:

Provided that if there is a Vice-Chairman, he shall act as the Chairman. The Chair-man and the Secretary shall sign all contracts and other obligations of the Association.

20. The Secretary shall keep a record of minutes of the Association.

21. The Treasurer shall keep and maintain financial records of the Association. The Treasurer may make deposits in the Association's account, but all withdrawals shall require the signatures of both the Chairman and the Treasurer.

22. The Board of Directors may appoint a person competent to perform the duties of Secretary of Treasurer to assist the Secretary or Treasurer in the performance of their duties.

CHAPTER—5 FEDERATION OF ASSOCIATIONS.

23. (1) The Irrigator's Associations on each distributary may form a Federation of Associations (hereinafter called the Distributary Associations) Such an Association, when formed, shall be called by the name of the distributary concerned.

(2) When more than half of the watercourses on a distributary are organized into Irrigators' Associations, they may

Duties of Chairman.

Duties of Secretary.

Duties of Treasurer.

Assistance to the Board.

Distributary

Associations.

form a Distributary Association. Any other Association formed thereafter on any other water-course on the same distributary shall immediately become constituent member of the Distributary Association.

(3) Each Irrigators" Association shall send one representative to the Distributary Association.

(4) The Chairman of the Irrigators' Association shall act as the representative of his Association to the Distributary Association.

(5) The members of the Distributary Association shall select a Chairman and other officers as needed.

24. (1) On each major canal all the Distributary Associations may form a Federation of Associations (hereinafter called the Canal Associations). Such an Association, when formed, shall be called by the name of the canal concerned.

(2) When more than half of the distributors on a major canal are organized into Distributary Associations, they may form a Canal Association. Any other Distributary Association formed thereafter on the remaining distributaries shall immediately become constituent member of the Canal Association.

(3) Each Canal Association shall have a Board of Directors and the Chairman of each Distributary Association shall be the representative to the Board of Directors of the Canal Association.

(4) The members of the Canal Association shall select Chairman and other officers as is needed.

25. The Distributary Associations and the Canal Associations shall be registered with the Director of On-Farm Water Management Project. A copy of the registry and name of Chairman shall be provided to all other concerned departments.

26. (1) The Distributary Association or Canal Association shall-

Canal Associations.

Registry of Distributary and canal associations.

Duties and powers.

may—

27.

expenditure

17| Page

(2)

(ai)

(iii)

(iv)

(v)

(vi)

represent its members in issues and problems related to the distributary or, as the case may be, more than one distributary or the whole canal;

represent its respective constituent members to the Departments of Irrigation, Agriculture and any other Department;

serve as channel of communication between the Irrigation Department and _ the constituent members of the Association;

participate actively with the Irrigation Department in the-improvement, maintenance and operation of the distributaries and canals;

maintain financial records and minutes of meetings, levy assessments upon member Associations and exercise collection authority on a voluntary basis or in case of default by certifying the amount for collection to the Collector; and

make by-laws and rules of operation.

The Distributary Association or Canal Association

(i)

(ai)

make recommendations and requests for distribution of water into a minor or

distributary on a demand or fixed delivery basis; and

make recommendations and requests to the Irrigation Department for construction of bridges, regulators, drop structures, new minor canals etc. at Association cost or cost-sharing.

The Board of Directors of the Distributary or Canal Association shall, before committing or making any major capital

or

improvements, obtain the approval from

Capital expenditure and improvements.

membership of their respective Irrigator's Associations.

CHAPTER—6
MISCELLANEOUS PROVISIONS.

28. Membership in the Association as representative of joint owners or as tenant does not imply relinquishment or *prima facie* evidence of title to land.

29. In the event of a transfer of any type of an irrigator's holding to another Irrigator who previously was not member of the Irrigators' Association, the membership in the Association shall also stand transferred.

30. (1) General Assessment shall be to carry out the primary purposes of the Association.

(2) Special Assessments shall be to carry out the secondary purposes of the Association.

(3) Assessments should be allocated in proportion to cultivable lands in the Association village.

31. Credit may be extended to a legally constituted Association responsible for its debts and actions and being in good standing. The Association will have power to encumber the land in the Command area without unanimous consent of the land owners.

32. The Association shall have the financial accounts audited every year by an auditor selected from the government list of approved auditors.

33. The Association shall adopt a Schedule of fines in the bye-laws, which fines shall be either commensurate with the damage caused or, as the case may be, the benefit received, or may be levied in proportion to acreage irrigated on the watercourse.

34, (1) The Board of Directors may certify to the Collector the amount recoverable from a member as fines or fees, which the members refuses to pay on demand, collectable as arrears of land revenue.

Evidence of land ownership.

Transfer of membership.

Assessments.

Credit.

Auditing of accounts.

Fines for abuse.

Enforcement of fines
and fees.

(2) The Collector shall recover the said amount so certified and reimburse this amount to the Association.

35. The Association may acquire lands necessary for location or relocation of watercourses and installation of tubewells on a voluntary basis, with compensation to be paid accordingly for the land so acquired.

36. The Association or Federation of Associations at any level may contract with the Irrigation Department for the supply of canal water on a contract basis at the outlet, or contract on volumetric rate basis at the minor or distributary canal, as provided in the canal rules, instead of the crop rate basis commonly used. In this case, the Association will collect and pay the agreed rate to Government.

37. Any Association or Federation of Associations which desires to improve the distributary or participate in improvement process on the distributary or canal must first have the approval and supervision of the Canal Officer.

38. The Department of Irrigation, Agriculture, Revenue and Co-operatives and Credit Institutions shall give preferential treatment to Irrigators' Associations organized and registered under this Ordinance to facilitate their efficient functioning.

39. The Directorate, On-Farm-Water Management, shall prepare necessary forms to expedite and facilitate formation of Irrigators' Associations and Federations of Associations.

40. Government may make rules for carrying out the purposes of this Ordinance.

Acquisition of lands.

Contract water and water rates.

Improvement of distributary.

Preferential treatment.

Preparation of forms.

Power to make rules.

LIEUTENANT GENERAL FAZLE HAQ
GOVERNOR OF THE KHYBER PAKHTUNKHWA

Peshawar,
Dated the
[14th February, 1981]

