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INTRODUCTION OF WATER RIGHTS IN VIET NAM

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General introduction

Water is a precious resource. However as long as water resources are abundant, water can be easily forgotten and other water users of a river, a reservoir or an aquifer may be ignored by another one. In line with population growth, water demands for domestic, agricultural and industrial uses also increase. Coordination in water use becomes more complex and urgent. Many issues relating to water right institutions raise including whether socially accepted water complaints are legalized, whether water institutions established in such competition situation influences water access by people. Similar pressures on ownership definition also occur in land and other natural resources because those resources become rarer. While institutional changes in land occupation right are being studied and discussed more and more, changes in water occupation right are less emphasized by community.

Water use rights play an important role for people's living, incomes and environment protection. Because water use right decides whether people is taken into consideration or eliminated in the control of this vital resource in their life. Progresses in water right institutions contribute to poverty reduction, improve economic efficiency and natural protection. However, efforts to improve water allocation can be vain or even cause adverse affects unless they are based on insights about social institutions that form water access and on thorough assessments of water management enhancement solutions. Diversity of cultural, environmental aspects and economic activities and other conditions as well imply that there is no best way to improve water use right and water allocation institutions. So the best way to well realize water management depends on your starting point with available paths.

So far, increasing water demands due to development activities and population growth have intensified water resources management in the world. Many countries have applied both policy measures and specific programs to reasonably and effectively exploit, use and protect their national water resources.

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Viet Nam recognizing the role of water in life and the development process of the country considers water as an essential resources, a vital element of life and environment deciding existence and sustainable development of the country (Law on Water Resources, 1998).

In approaching effective water resources management to meet social development demands, the concept on water right was established in water resources arguments. Legally, after years of preparing the Law on Water Resources with some tens of drafts, Viet Nam has established legal regulations as bases for orienting economic, development, water resources protection and water caused harm prevention activities. In other words, viet Nam has clear concepts on water use rights. Water exploitation and utilization were spontaneous, unplanned before but the water legal system have been strengthened with enactment of the Law on Water resources and a series of by-laws. Water rights properly perceived by government levels, sectors and localities that confirm the role of water resources in the new development stage of the country.

I. Introduction of water rights in Viet Nam

According to the Law on Water resources and by-law systems, we would like to briefly present water rights stipulated by the legislations:

1. Ownership of water resources

- a. Every body is equal in using water resources but uncontrolled exploitation may cause negative impacts on equitable utilization. Article 1 – Law on Water resources specifies:
 - *Item 1: The water resource comes under the ownership of the entire people under the unified management of the State.*
 - *Item 2: Organizations and individuals are entitled to exploit and use the water resource for life and production. At the same time they have the responsibility to protect the water resource, prevent combat and overcome the harmful effect caused by water as prescribed by law. The State protects the legitimate interests of organizations and individuals in the exploitation and use of the water resource.*
- b. Legislation stipulates the right on water exploitation and utilization but also provisions to realize the people's ownership for water resources. Article 5 – Law on Water resources provides:
 - *Item 1: The protection, exploitation and use of water resource, the prevention, combat against and overcoming of the harm caused by water must comply with the zoning of the river basin already ratified by the competent State agency: ensure the systematic character of the river basin and must not lead to severance along the administrative boundary.*
 - *Item 2: The protection of water resource, the prevention and fight against deterioration and depletion of the water source must be linked with the protection and development of forests and the reproductive capability of the water source and with the building and protection of water conservancy works, the prevention and combat against pollution of water source and the exploitation and integrated use of the water source in an economical, safe and effective manner.*

- *Item 3: The prevention, fight against and overcoming of the harm caused by water, there must be a plan and measures to take the initiative in preventing, avoiding, alleviating and limiting the harm caused by water ensure the harmonious combination of the interests of the whole country with those of different regions, branches, between modern science and technology and the traditional experiences of the people an in conformity with the capacity of the economy.*
 - *Item 4: The project on the protection, exploitation and use of water resource and on the prevention, combat and overcoming of the harm caused by water must contribute to socio-economic development and must take measures to ensure the life of the population, national defense, security, protecting the historical and cultural relics, beautiful landscapes and the environment.*
- c. The water resource under the ownership of the entire people is also realized in Article 7 on investment policy in water resources development – Law on Water resources.
- *Item 1: The organizations and individuals who exploit and use water resource have the financial duty and the duty to contribute manpower and budget to the building of works for the protection, exploitation and use of water resource, the prevention, fight and overcoming of the harm caused by water.*
 - *Item 2: The State shall carry out the policy of exemption and reduction of tax on water resource, and water resource charge with regard to the areas with difficult socio-economic conditions and areas with exceptionally difficult socio-economic conditions.*

One of the water rights is water resources ownership. The Law on Water resources specifies that water belongs to entire people. It is understood that people will benefit what in exploitation and utilization of this resource. It means all organizations and individual are entitled to exploit and use water resources but have duty to contribute manpower and budget to the building of works for water resources exploitation, utilization and protection. Among provisions of the Ordinance on hydraulic work exploitation and management, by-laws regulations, this financial duty is specified in forms of irrigation fees, water tariff and water tax (in the Ordinance on resources taxes).

In parallel with the financial duty, the Law on also prescribes tax exemption, reduction for socio-economically difficult areas (Article 7 – Item 2). This is a bright point in view of socio-economic policies of Viet Nam legislation in general and in the Law on Water resources in particular. Exemption and reduction is realization of the equitable ideal in water resources exploitation and utilization and is implemented by legal tools and by the Government management.

2. The right to exploitation and utilization of water resources

- a. Article 22 – Law on Water resources prescribes that organizations and individuals that exploit and use water resource have the following rights:
- *1st item: They have the right to exploit and use water resource for purposes of living, agricultural, forestry and industrial production, mining, electricity generating, water transport, aquaculture, sea fishery, salt making, sport, recreation, tourism, medicine, health rehabilitation, scientific research and other purposes as stipulated by this Law and other provisions of law.*

- *2nd item: They are entitled to benefit from the exploitation and use of water resource to assign, lease, legate and mortgage their properties for investment in the exploitation and use of water resource, and to develop water resource as prescribed by this Law and other provisions of law.*
 - *3rd item: They are entitled to compensation for damage in case their permits for exploitation and use of water resource are withdrawn before term for national defense and security reasons or other national and public interests as provided for in this Law and other provisions of law.*
 - *4th item: They can lodge complaints and seek legal actions at the competent State agencies for acts of violations of the right to exploit and use water resource and other legitimate interests.*
 - *5th item: They enjoy State protection over their legitimate rights in the exploitation and use of water resource.*
- b. In view of water allocation and use for multiple purposes, the Law specifies measures to be taken by the State in order to give the highest priority to domestic water use as in item 1 of Article 25;
- *To invest in and support the projects of supply of living water, clean water to give priority to the areas with exceptional scarcity of water, areas with difficult socio-economic conditions, areas with exceptionally difficult socio-economic conditions, and areas with heavily polluted water sources*
 - *To encourage Organizations and individuals in the country and foreign Organizations and individuals to invest in the exploitation of water sources for living*

Relating to responsibilities of government agencies in this filed, the Law stipulates:

- *Item 2nd Article 25 : The People's Committees at all levels and the competent State organization shall have to work out and carry out planning, plans and projects for supply of living water and clean water, and carry out urgent measures to ensure water for living in case of natural calamities or accidents causing shortage of water.*
- *Item 3rd Article 25: Organizations and individuals that are supplied with water for living and clean water shall have to contribute manpower and finance to the exploitation and treatment of water for living and clean water as prescribed by the competent agencies and organizations.*

Article 26 specifies water resources exploitation and utilization for agricultural production

- *Item 1: The State shall invest in and support the exploitation and use of water resource for agricultural production.*
- *Item 2: Organizations and individuals exploiting and using water resource for agricultural production must take measures to save water, prevent and combat acidity and salinity of water, slushiness and erosion without polluting the water source.*
- *Item 3: Organizations and individuals can only exploit and use waste water after ensuring that the quality of water meets the prescriptions of the competent State agency for agricultural production.*

Article 27 provides for water resources exploitation and utilization for aquaculture:

- *Item 1: The State encourages investment in the exploitation and use of sea water for salt production. Organizations and individuals using sea water to produce salt must not cause the infiltration of salinity and adverse impact on agricultural production and on the environment.*
- *Item 2: Organizations and individuals can use waste water only after satisfying that the quality of water meets the prescriptions of the competent State agency for aquaculture and the raising of marine products. The exploitation and use of water resource for the exploitation, raising of water and marine products must not cause the deterioration and depletion of the water sources or obstruction to the current or damage to the water conservancy works, impede water navigation or cause salinisation of the water source and the agricultural land.*

Article 28 prescribes water resources exploitation and utilization for industries and mining:

- *Item 1: Organizations and individuals that exploit and use water resource for industrial production must save water. They are encouraged to use running water, re-use water and must not cause pollution of the water resource.*
- *Item 2: Organizations and individuals that exploit and use water resource for mining must take measures to treat water and reintroduce it into the source as planned after using water.*

Article 29 provides for water resources exploitation and utilization for hydropower generation:

- *Item 1: The State encourages the exploitation and use of water sources for hydro-electricity*
- *Item 2: The building of hydroelectric works must comply with the planning of the river basin and the prescriptions on environmental protection.*
- *Item 3: Organizations and individuals that exploit and use water sources for hydroelectricity must comply with the process of operating and regulating water ratified by the competent State agency, ensure the integrated use of the water sources except for the exploitation and use of water sources for hydroelectricity on small scale for family use.*

Article 30 on water resources exploitation and utilization for navigation:

- *Item 1: The State encourages the exploitation and use of water sources to develop water navigation*
- *Item 2: Water navigation activities must not cause pollution of the water sources, or hamper the current or damage the bed and banks of the current and constructions on the current in case of damage compensation must be paid according to prescriptions of law.*
- *Item 3: The building of constructions and the planning of water navigation lines must comply with the planning of the river basin the planning of the development of the coastal areas.*
- *Item 4: The building and management of other constructions related to the water source must ensure safety and normal operation of the water transport means and must not adversely affect the environment.*

Article 31 on water resources exploitation and utilization for other purposes: *Organizations and individuals exploiting and using water resource for scientific research, medicine, health rehabilitation, sport, entertainment, tourism, the building of houses on water surface and for other purposes must ensure rational and economical use of water, must not cause deterioration or depletion of the water source, or impede the current or cause salinisation and other adverse effects on the water source.*

Above mentioned provisions reflect very clearly the viewpoints of the State of Viet Nam that: the State encourages organizations and individuals to exploit and utilize water resources for purposes, they are not entitled to affect legitimate water rights of other organizations and individuals, at the same time the state protects their legitimate rights and interests.

3. The right to discharge wastewater into water sources

- a. Water rights do not solely comprise water ownership, water exploitation and utilization but also include the right to discharge wastewater into water sources in following strict regulations for the sake of environment protection.

1st Item, Article 19 – Law on Water resources stipulates the organizations and individuals who discharge wastewater have the following rights:

- *To be paid compensation for damage according to the provisions of law if the competent agency that issues the permit for waste water discharge changes the location or shortens the time-limit during which the discharge of waste water is permitted.*
- *Have rights to complaint or file a legal action against an act violating the right to discharge waste water and other legitimate interests as prescribed by law.*

In view of obligations, in parallel with rights, organizations and individuals have the following obligations:

Item 2:

- *To process waste water in order to reach the permissible criteria before discharging waste water into the water source: they shall have to pay compensation for damage if they violate the prescriptions on the discharge of waste water and cause damage.*
- *To pay the fee for permit issuing, the fee for discharging waste water into water source as prescribed by law.*

Article 18: Permission to discharge wastewater into water sources:

Organizations and individuals using water for production, business and other activities must have permission of the competent State agencies when they discharge waste water into the water source.

Permission to discharge wastewater into water sources is specified in Article 5 Decree No. 179 as follow:

Item No 1: Subjects to be granted permits:

Organizations and individuals using water for production, commercial, scientific research activities, hospitals, urban areas, centralized residential areas and other activities if discharge wastewater into water sources must submit application for permission to the competent authorities as stipulated in Item 5 of this Article.

+ Item No 2. Conditions for granting permits:

The granting of permits for discharge of waste water into water sources must be based on the following conditions:

- a. The Law on Water Resources and other relevant legislation;
- b. The planning for protection, exploitation and use of water sources and prevention of and combat against harmful effects caused by water in river basins, as well as the planning on systems of water conservancy works;
- c. The water sources' capacity to take in waste water; and the criteria of waste water;
- d. Proposals of the agency(ies) managing the river basin zoning; and organizations and individuals managing and exploiting water conservancy works.

+ Item No 3: Duration of permits:

- a. Permits for discharge of waste water into water sources shall be valid for from 3 to 5 years;
- b. For a permit of which the use duration has expired, the agency competent to grant such permit shall decide its extension but each extension must not exceed 3 years;
- c. The use duration of a permit may be changed in one of the following cases:
 - The water source is incapable of taking in waste water;
 - The water use demand is on a sharp rise, thus leading to much larger volume of waste water, but no remedial measure has been taken to overcome this situation;
 - Other extraordinary circumstances occur, under which the discharge of waste water must be restricted.

+ Item No 4: The withdrawal and suspension of permits:

The withdrawal or suspension of use validity of permits for discharge of waste water into water sources shall be effected in the following cases:

- a. Organizations and/or individuals that discharge waste water breach contents stipulated in their permits;
- b. Organizations and/or individuals that discharge waste water violate the provisions in Clause 2, Article 19 of the Law on Water Resources;
- c. Organizations and/or individuals that discharge waste water into water sources are dissolved, transferred or declared bankrupt;
- d. Such permits have been granted ultra vires;
- e. Such permits have been left unused for 1 year without any plausible reasons;
- f. The competent State agencies deem it necessary to withdraw or suspend such permits for reasons of national defense or security, or for national or public interests.

Item No 5: The competence to grant and/or withdraw permits:

a. The Ministry of Agriculture and Rural Development shall grant and withdraw permits for discharge of waste water into water sources and inter-provincial water conservancy work systems.

b. The People's Committees of the provinces and centrally-run cities shall grant and withdraw permits for discharge of waste water into water sources and water conservancy work systems under the provincial/municipal management; as well as permits for discharge of waste water into water sources and inter-provincial water conservancy work systems under the provincial/municipal management, with written consents of the Ministry of Agriculture and Rural Development;

c. The agency(ies) in charge of State management over water resource shall be competent to withdraw those permits they are competent to grant.

4. Authority to supplement, change purposes, water resources exploitation scope and utilization

Organizations and individuals permitted to exploit and use water resources when supplementing, changing purposes, exploitation scope and utilization which had been permitted by competent authorities must be allowed by the competent authorities; if those organizations and individuals cause negative affects they must compensate as specified by the Law.

5. Priority right

Pursuant to Viet Nam's laws, water is used for domestic, agriculture, industry, navigation, hydroelectricity generation, aquaculture and tourism as stipulated in Article 22 of the Law on Water resources. As mentioned above, among water use purposes, *water exploitation and utilization for domestic consumption is given the first priority*. This reflects the human viewpoints in water utilization. Water is supplied for drinking, cooking, and domestic uses must be of the highest priority.

However, water resources regulation and allocation as provided for in Article 20 of the Law on Water resources must be strictly implemented with specific plans.

Article 7- Decree No. 179 specifies:

Item 1: The state management organization for water resources basing on river basin planning and actual water resources availability shall inform water availability for relevant sectors and localities to prepare their population settlement, socio-economic plant in conformity with the available water sources.

When water resources can not meet water demands, relevant sectors and localities have to adjust their settlement and socio-economic plant to adapt to the actual water availability.

Item 2: In case of drought causing serious water shortage, the state management organization for water resources shall regulate, allocate water resources basing on the following principles:

- to ensure domestic water supply at minimum standard;
- to meet water requirements for cattle and poultry, and aquaculture;
- to ensure water supply for important industrial bases and scientific research bases;
- to ensure water supply for food security program and high economic value crops;
- Water supply for other water exploitation and utilization purposes.

Giving priority to domestic water supply is reflected in following contents: water resources planning for domestic water use, hydraulic work construction plan, and capital investments. In water shortage circumstances, domestic water supplied is always given the highest priority.

6. Right-of-ways For Water Conveyance

Article 33 of the Law on Water resources specifies the right to conduct water through: Organizations and individuals exploiting and using water resource and discharging waste water into the water source legally are entitled to conduct water

through the continent land or property under the management and use right of other organizations or individuals as stipulated in this Law and the Civil Code.

7. The right to supply and dispose water through adjacent real estate/properties

This right is also stipulated in the Civil Code. Depending on natural location of the property, water supply and discharge must not hinder or impede the flow of water course. Those who use water supply and discharge routes have obligation to minimize damages to the property owners where the water supply and discharge routes go through during installation of water pipes. In case of damages, compensation is compulsory. In case of natural gravity flow from higher locations to lower locations causing damages to the property owners where the water pipes go through, the users of water supply and discharges shall not compensate for caused damages.

8. The right for water irrigation, drainage in cultivation

Cultivated land use right holders who have requirements for water irrigation and drainage have right to request neighboring land users to leave an appropriate waterway convenient for irrigation and drainage. The requested land users have obligations to meet that request; in case the waterway users cause damages to neighboring land users they have to compensation for those damages.

II. Some discussion about water use right

There exist issues about improvement of water resources management and the prevention, fight against and overcoming the consequence of harmful effects of water. In this workshop on “Water right and Water Allocation” of the NARBO, we would like to further discuss on the followings:

a. Advantages in water resources management in Viet Nam

Viet Nam is promoting water resources management activities. The Government of Viet Nam has policy to intensify preparation of legislations relating to water resources exploitation, utilization and protection as well as to prevention and fight against water-caused harms.

+ In view of legislations, Viet Nam has so far promulgated following legislations:

- *Law on Water resources* (No.08/1998/QH₁₀) was endorsed by the National Assembly on May 20, 1998 and has taken effect since January 1st 1999;

- *Government Decree* (Decree No. 179/1999/ND-CP) signed by the Prime Minister on December 30, 1999 on implementing the Law on Water resources. This Decree has taken effect since January 15, 2000;

- *Government Decree No. 34/2005/ ND-CP dated March 17, 2005 specifying administrative fines in water resources sector;*

- *Ordinance on hydraulic work exploitation and protection (Ordinance KT-BV CTTL)* (No.32/2002/PL-UBTVQH10) endorsed by the National Assembly Standing Committee on April 4, 2001 and has taken effect since July 1st, 2001;

- *Ordinance on dikes* (No. 26/2000/PL-UBTVQH10) endorsed by the National Assembly Standing Committee on August 24, 2001 and has taken effect since January 1, 2001;

- *Decision No. 67/2000/QD-TTg*, dated 1 June 15, 2000 by the Prime Minister on establishment of the National Water resources Council;

- *Decision No. 99/2001/QD-TTg*, dated June 28, 2001 by the Prime Minister on the Statutes on Organization and Operation of the National Water resources Council;

- *Decisions* by Minister of Agriculture and Rural Development: No.37/2001/QD/BNN-TCCB, dated April 9, 2001 on establishment of *Cuu Long RBO*, No.38/2001/QD/BNN-TCCB, on April 9, 2001 on establishment of *Dong Nai RBO*, No. 39/2001/QD/BNN-TCCB dated April 9, 2001 on establishment of *Red-Thai Binh RBO*, No. 13/2004/QD-BNN on April 8, 2004 on establishment of the *General Offices of RBOs*, No. 14/2004/QD-BNN-TCCB issuing the *Statutes on Organization and Operation of the General Office of RBOs*; and No. 20/2005/QD-BNN dated April 13, 2005 on establishment of *Vu Gia – Thu Bon RBO*;

- *Government Decree No. 143/2003/ND-CP* dated November 28, 2003 specifying implementation of provisions of the Ordinance on Hydraulic work exploitation and protection and water tariff and irrigation water fee as well;

Above mentioned legislations constitute sound legal bases for effective water resources management nationwide. In addition, water infrastructure has been given priority by the Government to make a firm foundation for water resources management, especially river basin water resources.

Besides those advantages, support and assistance from international organizations and donors are significant. Active community participation in water resources management is also very important.

In our view, water resources management has known positive progress with promulgation of water resources legislations. Awareness enhancement has been strengthened in view of water environment protection. Water resources exploitation and utilization activities have been more orderly implemented, especially for groundwater exploration, exploitation and protection. Domestic water supply, particularly rural water supply has been promoted. Viet Nam is among very few countries that have realized active activities in rural drinking water supply with development and implementation of the National Rural Water Supply and Sanitation Program (approved in the year 2000 and an implementation plan for the 2006-2010 periods under preparation). This confirms the priority policy for domestic water supply.

b. Difficulties

- Constraints in implementing state management for water resources

As discussed above, there are many agencies involved in water resources management in Viet Nam. MARD and Ministry of National Resources (MONRE) are however the two key agencies responsible for water resources and water infrastructure management. Pursuant to Article 57 of the Law on Water resources, there are 8 Items stipulating the state management for water resources as shown in the following table:

No	State management contents	Assigned agency
1	Development of strategic planning, development policy and plan and implementation guidelines on:	

No	State management contents	Assigned agency
	- water resources - exploitation and utilization, prevention and overcoming water-caused harms	- MONRE - MARD
2	Issuing and implementation of by-laws, norms, standards and procedures on - water resources - development, exploitation, utilization and protection, and prevention and overcoming water-caused harms	- MONRE - MARD
3	- Management of water resources baseline investigation and hydro-meteorological forecast - Prediction of drought, floods and water-caused harms, application of science and technology advances in water resources data archives	- MONRE - MARD
4	- Issuing and withdrawing water resources permission	- MONRE
5	- Deciding measures, mobilizing forces and materials for prevention, fight against and overcoming drought, flood damages and other water incidents	- MARD
6	- Supervision, inspection and resolution of water disputes and violations in: - water resources - hydraulic work exploitation and protection, dike protection and disaster prevention and mitigation	- MONRE - MARD
7	- International relations in water resources sector	- mainly MARD
8	- Staff training, organization, education on Water resources law	- mainly MARD

Following conclusions can be withdrawn from the table:

- State management for water resources has not followed the integrated management principle yet. The fact that two institutions (two ministries) are assigned to be responsible for the same sector is scientifically improper and unconfirms with the administrative reform trends.

- Assignment of state management is not well coordinated in view of their implementation capability that cause inconsistency in implementation, conflicts in their mandates, decreasing state management efficiency and slow realization of water rights in Viet Nam

- Legal procedures in assigning responsibility are not proper even contrary to legislations

+ Implementation of Law on Water resources and Water rights: So far, after 4 years of implementation of the Law on Water resources and other water resources legislations there has not any official government report on water resources management, especially implementation of water rights in Viet Nam. The human resources working in water resources management are abundant, experienced and capable but scattered in different agencies without an integrated water resources management agency that covers all from water resources inventory, investigation, and assessment to feasibility study, construction and operation and maintenance for hydraulic works and water supply and discharge in the whole

country. Water rights as noted above are realized pursuant to legislations but still need technical guidelines. Some water rights are limited. The State encourages different water exploitation and utilization activities but adequate attention on how to promote and enhance those rights has not been paid.

+ ***Investments in water infrastructure:*** Investments in water infrastructure are decreasing compared to market prices but higher than those of previous years. In particular investments in water resources development have reduced since 2001 whilst capital requirements for water resources development for the next stage are huge. Budget funds may not be sufficient so this can importantly affect water use by sectors and by water users' community as well.

Conclusions:

As discussed above, many countries and organizations have organized activities to improve water rights in water resources management. Protection and enhancement of water access for poor people is essential for their life. Water resources transparency and security is very important for poor farmers and investors who rely on reliable water sources. Flows for aquatic environment should be ensured to maintain ecologies and species and are essential for water quality and other purposes.

Institutional regulations are applied to solve water claims including management rights of the community, organization management and water market. Different river basins are characterized by different natural and social conditions, and they also have different issues and priority and different solutions. There is not any common formula for improvement of water right but a series of options for the optimal one is required.

Methods for improvement of water right and allocation institutions include setting up of forums, clarifying water rights, planning and modeling, and capacity building for specialized agencies. Those methods can be introduced in chains with different combinations depending on issues and priority targets of localities in order to develop the legal frame on water right in optimally maximizing strengths of different water allocation institutions./.