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The Bihar Groundwater (Regulation and Control of Development and Management) Act, 2006

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[Bihar Act 4, 2007]

**THE BIHAR GROUND WATER
(REGULATION AND CONTROL OF
DEVELOPMENT AND MANAGEMENT)
ACT, 2006**

**AN
Act**

To regulate and control the Development and Management of Ground Water and matters connected therewith or incidental thereto.

Be it enacted by the Legislature of the State of Bihar in the fifty-seventh year of the Republic of India, as follows:

CHAPTER - I

PRELIMINARY

1. SHORT TITLE, EXTENT AND COMMENCEMENT.-

- (1) This Act may be called the Bihar Ground Water (Regulation and Control of Development and Management) Act, 2006.
- (2) It shall extend to the whole of the State of Bihar.
- (3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different areas of the State provided that different provisions of the Act may be notified under this section to be applicable from different dates.

2. DEFINITIONS.-

In this Act unless the context otherwise requires:

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- (a) **“Act”** means the Bihar Ground Water (Regulation and Control of Development and Management) Act, 2006.
- (b) **“Artificial Recharge to Ground Water”** means the process by which ground water reservoir is augmented at a rate exceeding that under natural condition of replenishment.
- (c) **“Authority”** means Bihar State Ground Water Authority established in accordance with the provisions of this Act.
- (d) **“Drinking Water”** means water for consumption or use by human population for drinking and for other domestic purposes, which shall include consumption or use of water for cooking, bathing, washing, cleaning and other day to day activities. It shall also include water meant for consumption by the livestock.
- (e) **“Government”** means the Government of the State of Bihar.
- (f) **“Ground Water”** means the water which exists below the ground surface in the zone of saturation and can be extracted through wells or any other means or emerges as springs and base flows in streams and rivers.
- (g) **“Municipality”** means an institution of self Government constituted under Article 243 Q of the Constitution of India.
- (h) **“Panchayat”** means an institution of self Government constituted under Article 243 B of the Constitution of India.
- (i) **“Prescribed”** means prescribed by rules made under this Act.
- (j) **“Rain Water Harvesting”** means the technique of collection and storage of rain water at surface or in sub-surface aquifer.
- (k) **“Sink”** with all its grammatical variations and cognate

expressions in relation to a well includes digging, drilling or boring of new well or in existing well, deepening and modification (of radials and galleries) of the existing wells.

- (l) **“User of Ground Water”** means the person or persons or any institution including a company or an establishment, whether Government or non-governmental, who or which extract or use or sell ground water for any purpose including domestic use made either on a personal or community basis.
- (m) **“Well”** means a structure sunk for the search or extraction of ground water by a person or persons except by the authorised officials of the State or Central Governments for carrying out scientific investigations, exploration, development, augmentation, conservation, protection or management of ground water and shall include open well, dug well, bore well, dug-cum-bore well, tubewell, filter point, collector well, infiltration gallery, recharge well, disposal well or any of their combinations or variations provided that it will exclude the wells from which ground water is drawn by manual devices, i.e., hand pump or rope and bucket used by a person or persons.

CHAPTER - II

3. ESTABLISHMENT OF A GROUND WATER AUTHORITY.-

- (1) The State Government shall, by notification in the Official Gazette, establish with effect from such date as may be specified in the notification, an Authority to be known as the Bihar State Ground Water Authority.
- (2) The Authority shall consist of the following:
- (a) A Chairman not below the rank of Chief Engineer to be appointed by the State Government.
- (b) A representative of the Central Ground Water Board (CGWB) to be nominated by the Chairman, CGWB.

- (c) Four ex-officio members who will be representatives of the following departments which are concerned with survey, exploration, development and management of ground water of the rank as stated here under to be appointed by the State Government:
- (i) Minor Irrigation Department : Director, Ground Water Directorate or a person not below the rank of Superintending Engineer
- (ii) Public Health Engineering Department : A person not below the rank of Superintending Engineer
- (iii) Water Resources Department : A person not below the rank of Superintending Engineer
- (iv) Science and Technology Department (Remote Sensing) : Incharge, Bihar Remote Sensing Application Centre
- (d) Such number of other members, not exceeding five, who in the opinion of the Government have special knowledge or practical experience in matters relating to ground water to be appointed by the Government.
- (3) The term of office and the manner of filling the vacancies and other conditions of service of the Chairman and other members shall be such as may be prescribed.
- (4) The Members will advise the Chairman who will be the Chief Executive of the Authority.
- 4. STAFF OF THE AUTHORITY.-**
- (1) In order to enable the Authority to properly function or exercise the powers under the Act, the Government may appoint such number of technical personnel and other staff as it may consider necessary.

- (2) The functions and the terms and conditions of service of such employees shall be such as may be prescribed by the Government.

5. POWERS TO NOTIFY AREAS TO REGULATE AND CONTROL THE DEVELOPMENT AND MANAGEMENT OF GROUND WATER.-

- (1) The Authority shall function under the overall control and supervision of the Government.

- (2) If the Authority, after consultation with various expert bodies, including Central Ground Water Authority (CGWA) is of the opinion that it is necessary or expedient in the public interest to control and/or regulate the extraction or the use or both of ground water in any form in any area, it will advise the Government to declare any such area to be notified area for the purposes of this Act with effect from such date as may be specified therein. This declaration will be notified in the Official Gazette.

Provided that the date so specified in the notification shall not be earlier than three months from the date of the publication of the said notification.

- (3) Every such notification shall, in addition to its publication in the Official Gazette, be published in not less than one daily regional language newspaper having wide circulation in the State, and also be served in such manner as the Government may think fit and all or any of the following modes may be followed in effecting such service, namely;
- (a) by affixing a copy of the notification to some conspicuous part of the offices of the village Panchayats located in the said area.

- (b) by proclaiming by beat or drum or by means of loudspeakers the contents of the notification in the said area.
- (c) in such other manner as may be prescribed.
- (4) If in the opinion of the Authority, the availability of the ground water has improved in a notified area, it may, in consultation with various expert bodies including CGWA, advise Government to de-notify such area and the Government may do so according to the procedure prescribed above under section 5(3) of the Act.
- (5) The Authority will also take steps to ensure that exploitation of ground water resources does not exceed the natural replenishment to the aquifers. Wherever, there is mismatch, steps will be taken to ensure augmentation of ground water resources in addition to regulatory measures.
- (6) The Authority shall maintain and upkeep the data base of ground water related information.

6. GRANT OF PERMIT TO EXTRACT AND USE GROUND WATER IN THE NOTIFIED AREA.-

- (1) Any user of ground water as defined under section 2(1) desiring to sink a well in the notified area for any purpose either on personal or community basis, shall apply to the Authority for grant of a permit for this purpose, and shall not proceed with any activity connected with such sinking unless a permit has been granted by the Authority.

Provided that the person or persons will not have to obtain a permit if the well is proposed to be fitted with a hand operated manual pump or water is proposed to be withdrawn by manual devices.

(2) Every application under sub-section (1) shall be made in such form, shall contain such particulars and in such manner as may be prescribed in the rule framed under this Act by the Government.

(3) On receipt of an application under sub-section (1), if the Authority is satisfied that it shall not be against public interest to do so, it may grant subject to such conditions and restrictions as may be specified, a permit authorising the extraction and use of ground water. The Authority may impose condition of providing artificial recharge structures of appropriate size to be constructed by the applicant within a period as specified by the Authority.

Provided that no person shall be refused a permit unless he has been given an opportunity of being heard.

(4) The decision regarding the grant or refusal of the permit shall be intimated by the Authority to the applicant within a period of 90 days from the receipt of the application.

(5) In granting or refusing a permit under sub-section (3), the Authority shall have regard to;

- (a) the purpose or purposes for which ground water is to be used,
- (b) the existence of other competitive users,
- (c) the availability of ground water,
- (d) quantity of ground water to be drawn,
- (e) quality of ground water with reference to use,
- (f) spacing of ground water structures keeping in consideration the purpose for which ground water is to be used,

- (g) long-term ground water level behavior,
 - (h) its likelihood of adversely affecting water availability of any drinking water sources in its vicinity,
 - (i) any other factor relevant thereto.
- (6) The permit shall be in such form as may be prescribed.

7. REGISTRATION OF EXISTING USERS IN NOTIFIED AREA.-

- (1) Every existing user of ground water in notified areas under section 5(2) in the State shall, within a period of one hundred twenty days from the date of notification of areas by the Government, apply to the Authority for grant of a certificate of Registration recognizing its existing use in such form and in such manner as may be prescribed:

Provided that the Authority may entertain any such application after the expiry of the said period of one hundred twenty days, if it is satisfied that the user was prevented by sufficient cause from filing application in time.

- (2) the details to be furnished in an application under subsection (1) shall include the following, namely:
- (i) the description of the source of ground water, such as type of well, its exact location,
 - (ii) the device used for lifting water,
 - (iii) the quantity of ground water withdrawal and hours of operation per day,
 - (iv) the total period of use in each year,
 - (v) the purpose or purposes for which ground water is being extracted.

- (vi) in case the requirement of ground water is for purpose of drinking water, the approximate population to be served,
- (vii) in case of irrigation well, the location and extent of area irrigated, and
- (viii) in the case of State, Municipal or Community run water supply schemes, the details of the services involved in addition to the quantities of ground water extracted, the diversion or the pumping points and their locations.

(3) On receipt of an application under sub-section (1), if the Authority is satisfied that it shall not be against the public interest to do so, it may grant, subject to such conditions and restrictions as may be specified, a certificate of Registration authorizing the continued use of ground water.

Provided that no person shall be refused a certificate of Registration unless he has been given an opportunity of being heard.

- (4) The decision regarding the grant or refusal of the certificate of Registration shall be intimated by the Authority to the applicant within a period of ninety days from the receipt of the application.
- (5) In granting or refusing a Certificate of Registration under sub-section (3), the Authority shall have regard to:
 - (a) the purpose or purposes for which ground water is to be used,
 - (b) the existence of other competitive users,
 - (c) the availability of ground water,
 - (d) quality of ground water with reference to use,

- (e) spacing of ground water abstraction structures keeping in consideration the purpose for which ground water is to be used,
 - (f) long term ground water level behavior, and
 - (g) any other factor relevant thereto.
- (6) The certificate of Registration shall be in such form as may be prescribed.
- (7) Pending the communication by the Authority of the decision on an application under sub-section (1), every existing user of ground water in the notified area shall be entitled to the continued use of the ground water in the same manner and to the same quantity as he was entitled prior to the date of his application.
- (8) If a registered well becomes defunct, this fact should be immediately brought to the notice of the Authority by the user of ground water.

8. REGISTRATION OF DRILLING AGENCIES.-

- (1) Every Rig owner shall register his machinery with the Authority in such manner and/ or on payment of such fee as may be prescribed.
- (2) Every Rig owner or operator shall follow the instructions issued by the Authority from time to time.

9. POWER TO ALTER, AMEND OR VARY THE TERMS OF THE PERMIT/ CERTIFICATE OF REGISTRATION.-

At any time after a Permit or Certificate of Registration, as the case may be, has been granted, the Authority may, for technical reasons, alter, amend or vary the terms of the Permit or Certificate of Registration, as the case may be,

provided the user of ground water has been given an opportunity of being heard.

Provided further that before taking such action, the Authority shall ensure that the standing crop(s) are not damaged.

10. CANCELLATION OF PERMIT/CERTIFICATE OF REGISTRATION.-

If the Authority is satisfied either on a reference made to it in this behalf or otherwise, that:

- (a) the Permit or Certificate of Registration granted, under sub-section (3) of section 6, or sub-section (3) of section 7, as the case may be, is not based on facts,
- (b) the holder of the Permit or Certificate of Registration has without reasonable cause failed to comply with the conditions subject to which the Permit or Certificate of Registration has been granted or has contravened any of the provisions of this Act or the rules made thereunder;

or

- (c) a situation has arisen which warrants limiting of the use or extraction of ground water;

then without prejudice to any other penalty to which the holder of the Permit or of the Certificate of Registration may be liable under this Act, the Authority may after giving the holder of the Permit/Certificate of Registration, an opportunity to show cause, cancel the Permit, Certificate of Registration, as the case may be.

11. POWERS OF THE AUTHORITY.-

- (1) The Authority or any person authorised by it in writing in this behalf, shall have power:

- (a) to enter any property (Private or Government owned) with the right to investigate and make any measurements concerning the land or the water located on the surface or the under ground,
- (b) to inspect the well which has been or is being sunk and the soils and other materials excavated therefrom,
- (c) to take specimens of such soils or other materials or of water extracted from such wells,
- (d) to order in writing the persons sinking a well to keep and preserve in the prescribed manner specimens of soils or any material excavated therefrom for such period not exceeding three months from the date of completion or abandonment of the work as may be specified by the Authority and such person shall comply with such requisition,
- (e) to inspect and to take copies of the relevant records or documents and ask any question necessary for obtaining any information (including diameter or depth of the well which is being or has been sunk, the level at which the water is or was struck and subsequently restored/rested, the types of strata encountered in the sinking of the well and the quality of the ground water struck etc.) required for carrying out the purposes of this Act,
- (f) to direct the user of ground water to install water measuring devices on any ground water abstraction structures:

Provided that where the user of ground water does not comply with the directions issued to him within a period of sixty days, the Authority itself may install such water measuring device and recover the cost from the defaulting user of ground water,

- (g) to seize any equipment/device utilized for illegal sinking and demolish the work executed fully or partly,
 - (h) to direct any user of ground water who does not comply with the provisions of this Act and rules framed thereunder to close-down the extraction of ground water, disconnect its power supply and demolish any hydraulic work found to be illegal according to the provisions of this Act and the rules framed thereunder,
 - (i) to enter and search with such assistance, if any, as it considers necessary, any place in which it had reason to believe that offence under this Act has been or is being committed and order in writing the person who has been or is committing the offence not to extract or use the ground water for a specified period not exceeding thirty days,
 - (j) to exercise such other powers as may be necessary for carrying out the purposes of this Act or any rules made thereunder.
- (2) The power conferred by sub-section (1) of this section includes the power to break open the door of any premise where sinking, extraction and use of ground water may be going on:
- Provided that the power to break open the door shall be exercised only after the owner or any other person in occupation of the premises, if he is present therein, refuses to open the door on being called to do so.
- (3) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall so far as may apply to any search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued under section 93 of the said Code.

- (4) Where the Authority seizes any mechanical equipment/ device under clause (g) of sub-section (1) it shall as soon as may be, report to Magistrate and take his orders as to the custody thereof.

12. SERVICES OF ORDERS, ETC.-

- (1) Every order under clause (d) of sub-section (1) of section 11 shall be served:
- (a) by giving or tendering the order of notice or by sending it by post to the user for whom it is intended, or
- (b) if such user cannot be found, by affixing the order of notices on some conspicuous part of his last known abode or place of business or by giving or tendering the order of notice to some adult member or servant of his family or by affixing on some conspicuous part of the land or building in which the well is being sunk.
- (2) Where the person on whom an order or a notice is to be served is a minor, service upon his guardian in the manner provided in sub-section (1) shall be deemed to be service upon the minor.

13. BAR TO CLAIM COMPENSATION.-

No person shall be entitled to claim any damages or compensation from the Government for any loss sustained by him by virtue of any action taken under this Act.

14. DELEGATION OF POWERS AND DUTIES.-

The Authority may, by general or special order in writing, direct that all or any of the powers or duties which may be exercised or discharged by it shall, in such circumstances and under such conditions and with such terms and conditions, if any, as may be specified in its order, be

exercised or discharged also by any Municipality, Panchayat, Institution or any employee of the Authority specified in this behalf in the order.

15. MEMBERS AND EMPLOYEES OF THE GROUND WATER AUTHORITY TO BE PUBLIC SERVANTS.-

All members and employees of the Authority shall, when acting or purporting to act in pursuance of the provisions of this Act or of any rules made thereunder, be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

16. PROTECTION AGAINST ACTION TAKEN IN GOOD FAITH.-

No prosecution, suit or other legal proceedings shall be instituted against the Government, the Authority or any other officer of the Government or any member or other employees of the Authority for anything done or intended to be done in good faith under this Act, or the rules made thereunder.

17. COGNIZANCE AND TRIAL OF OFFENCES.-

- (1) No prosecution for an offence under this Act shall be instituted without the written consent of the Authority or a person authorised in this behalf by the Authority.
- (2) No court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence under this Act.

CHAPTER - III

18 RAINWATER HARVESTING FOR GROUND WATER RECHARGE.-

- (1) To improve the ground water situation, the Authority may identify the recharge worthy areas in the State and issue necessary guidelines for adoption of rain water harvesting for ground water recharge in these areas. In rural areas, watershed management to facilitate ground water recharge may be encouraged through community participation. The Authority may give appropriate directions to the concerned departments of the State Government to include Rain Water Harvesting in all developmental schemes falling under notified areas. In urban areas, falling in notified areas, the Authority may issue directives for constructing appropriate rain water harvesting structures in all residential, commercial and other premises having an area of 1000 Sq. metres or more in manner prescribed within the stipulated period, failing which the Authority may get such rain water harvesting structure constructed and recover the cost incurred along with a penalty as may be prescribed.
- (2) Notwithstanding anything contained in the relevant laws, the Municipal Corporation or any other local Authority as the case may be, may impose stipulated conditions for providing roof top rain water harvesting structures in the building plan in an area of 1000 Sq. Metres. or more while according approval for construction, and permanent water and electricity connections shall be extended only after compliance of the directions given in this regard.
- (3) The Authority shall take steps for promotion of Mass Awareness & Training Programmes on Rain Water Harvesting and Artificial Recharge to Ground Water through Government Agencies/Non Government Organisations (NGOs)/Voluntary Organisations (VOs)/Educational Institutions/Industries/Individuals.

CHAPTER - IV

MISCELLANEOUS

19. POWER TO REMOVE DIFFICULTIES.-

If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion arises, by order, do anything, which appears to it, to be necessary or expedient to remove the difficulty:

Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.

20. OFFENCES AND PENALTIES.-

If any user of ground water:

- (a) contravenes or fails to comply with any of the provisions of this Act or any rule made thereunder,
- (b) obstructs the Authority or any other person authorized by it to exercise any of the powers under this Act, he shall be punishable,
 - (i) for the first offence with fine which may extend to five thousand rupees, and
 - (ii) for the subsequent offence, with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees or both.

21. COMPOUNDING OF OFFENCES.-

Any offence under this Act may be compounded by the Authority as prescribed, either before or after the institution of the proceedings subject to such conditions as may be prescribed.

22. OFFENCES BY COMPANIES.-

(1) Whenever an offence under this Act has been committed by a company, every person who at the time of the commission of offence was in charge of, or was responsible to the company for the conduct of the business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent or connivance of, or is attributable to any neglect on the part of any Director, Manager, Secretary or other Officer of the Company, such Director, Manager, Secretary or other Officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment under this Act if he proves that offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Explanations : For the purpose of this section;

- (1) "Company" means any body corporate and includes a firm or other association or individuals, and
- (2) "Director" in relation to a firm, means a partner in the firm.

23. APPEALS.-

(1) Any person aggrieved by a decision or action of the Authority under this Act may, within a period of sixty days from the date on which the action is taken or the


decision is communicated to him and on payment of such fees as may be prescribed, prefer such an appeal to such Appellate Authority as may be specified by the State Government in this behalf.

Provided that the Appellate Authority may entertain an appeal after the expiry of the said period of sixty days, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal in time.

- (2) On receipt of an appeal under sub-section (1), the Appellate Authority shall, after giving the applicant an opportunity of being heard, dispose of the appeal as expeditiously as possible.

24. POWER TO MAKE RULES.-

- (1) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for:
 - (a) the term of office and manner of filling vacancies and other conditions of service of the Members and Chairman of the Authority;
 - (b) the functions and the terms and conditions of service of the employees of the Authority;
 - (c) any other manner of effecting service of the notification under clause (c) of sub-section (3) of Section 5;
 - (d) the form of application under sub-section (2) of Section 6 and the particulars that may be furnished with these applications;
 - (e) the form of application under sub-section (1) of section 7;

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- (f) the form of the Permit and Certificate of Registration under sub-section (6) of Section 6 and sub-section (6) of Section 7;
- (g) the manner in which the specimens of soils or other materials shall be kept and preserved under clause (d) of sub-section (1) of Section 11;
- (h) specifying the Appellate Authority under sub-section (1) of Section 23 and the fees to accompany the application for appeal;
- (i) any other matter which is to be or may be prescribed.
- (3) Every rule made under this section shall be laid, as soon as may be after it is made, before both Houses of the Legislature while it is in session for a total period of fifteen days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, both Houses of the Legislature agrees in making any modification in the rules or agrees that the rules should not be made, the rules thereafter shall have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.
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Aims & Objectives

Due to continuous population increase in the country, the exploitation of ground water is also increasing for the purpose of drinking, industrial use and irrigation water. In order to control the exploitation of ground water as per availability, the Government of India had circulated a draft model bill for enacting law on control of ground water. The Government of India has been requesting regularly for enactment of such a law.

2. This bill is being presented with an objective to keep control on exploitation of ground water in those regions of the state where ground water exploitation exceeds its availability. In addition to this, provision is being made to improve the ground water status in the critical areas by adopting methods which can conserve the rain water and ensure the recharge of ground water. The control over ground water is essential for meeting the needs of future generations.

The bill is aimed to notify the critical regions of the state fully or partially and controlling the ground water by grant of the permission for establishment of future ground water structures.

(Vishwa Mohan Kumar)

बिहार गजट (असाधारण), 29 जनवरी 2007

बिहार गजट (असाधारण), 100—भा.मो.—571—400—