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“CLEAN ENERGY AND WATER” PROGRAM

Towards Improved Integrated Water Resources Management in Armenia:

Identification of key legal and regulatory issues with recommendations for improvement

APRIL 2015

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CLEAN ENERGY AND WATER PROGRAM

DRAFT

April, 2015

Report N.

Contract No. AID-EPP-I-00-05-00010/AID-111-TO-11-00001

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Introduction

The purpose of this Report is to investigate the current legal regulation of water use permit issuance process in the Republic of Armenia, exercising control/supervision over implementation thereof; suspension, amendment, revocation or termination of their validity period (hereinafter, issue of water use permit), the current problems available; the conditions necessary for decentralization thereof; summarizing the preconditions of the decentralization process and the efficiency of the adjacent sectors' activity thereon, and to make legislative reform recommendations taking into consideration the best international practice.

Decentralization of each process, without exception of decentralization of the water use permit issuance process, serves for resolution of the following issues:

- Improve the service quality, simplify and facilitate the process for those being serviced;
- Reduce any excessive waste of time;
- Save financial resources;
- Reduce the load of the central body in some areas, simultaneously enabling territorial bodies to improve the quality of management, control/supervision in relation to exercising their own authorities;
- Enhancement of the role of territorial bodies, intensification of the professional knowledge and skills;
- Increase the activity of public participation in the process on the water basin level; ensure the possibility of public control.

While Armenia has adopted the principle of decentralization of water resource management since 2000s and incorporated it in the national legislation on the basis of comprehensive water resource management on water basin level, the problem of decentralization of the water use permit issuance process is still a problem of today. The players, specialists and water users of this area share this opinion. According to Subparagraph 2.4 of Paragraph 4.3.10 of the RA Government Decree No. 878-N "On approval of the action plan of the RA Government activity for 2008-2012", as of

24.07.2008, establishment of the basis for decentralization of the water resource management is provided for under the activity action plan.

Water Resources Management Agency of the Staff of the RA Ministry of Nature Protection (hereinafter, Agency) *is vested with the authority to issue water use permits*, and its procedure and structure are defined under the Charter approved in the RA Government Decree No. 649, dated 14.04.2004.

The bridging role between Agency and serviced communities is attributable to Agency's basin management organizations (basin management organizations), which, according to the regulation on the activity of basin management organizations approved by the RA Prime Minister's Decree No. 5, as of 10.01.2003, act in the process of water use permit issuance as bodies accepting requests for water use permits, registering those by sectors and submitting to Agency for further processes, as well as registering the issued water use permits, categorizing those by areas and sectors of use, and exercising control over compliance with the conditions provided for under water use permit and observance of the standards.

According to Article 5 of Water Code, one of the basic principles of management, use and protection of water resources and water systems is regulation *of water use through water use permits*. To implement this principle, availability of legal regulation in relation to the following preconditions and components in the RA legislation is a must:

1. Definition of and compliance with water standards;
2. Performing regular monitoring of water resources;
3. Operation of the water cadastre information system and summary of the data recorded therein;
4. Availability of water basin management plans; ensuring development and implementation thereof;
5. Regulation of issue, amendment, suspension and revocation of water use permits, as well as dispute resolution;
6. Introduction of effective mechanisms to ensure reliability guarantees and regulation of application;

7. Opportunity of active public participation and ensuring increase in the awareness level;
8. Exercising control/supervision;
9. Settlement of disputes related to water use permits; securing legal consequences contingent on violations and the mechanisms for holding liable.

In addition, the efficiency of water resource management through water use permits is directly interconnected with the level of regulation in the above stated areas referred to in the RA legislation and the working mechanisms in place. Hence, it would be inappropriate to view decentralization of the water use permit issuance process only as delegation, by Agency, of the appropriate authority to its BMOs. This process requires also efforts to be made in other directions – enhancement of authorities of the Agency's BMOs in terms of summary of the data obtained as a result of water resource monitoring, administering the information system, exercising control, as well as strengthening BMOs with specialists, technical enhancement, etc.

When preparing this Report, the following international and national legal acts have been used:

- The EU Water Framework Directive (2000/60/EC)
- Common Implementation Strategy for the Water Framework Directive, Guidance Document No. 2, Identification of Water Bodies.
- The UN Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 1998.
- The RA Water Code
- The RA Law “On National Water Policy”
- The RA Law “On National Water Program”
- The RA Government Decree No. 217-N “On approving the procedure of public notification and publicity of documents developed by the Water Resources Management and Protection Body” (07.03.2003).
- The RA Government Decree No. 354-N “On approving the procedure of determining water intake quantities allocated to water users from water resources and the regime” (13.03.2003).

- The RA Government Decree No. 218-N “On approving the procedure of water use permit issuance” (07.03.2003).
- The RA Government Decree No. 639-N “On approving the procedure of conducting monitoring of water resources and registering of reports” (22.05.2003).
- The RA Government Decree No. 315-N “On defining bodies exercising state control in the area of protection of water resources and water systems, and the functions thereof” (20.03.2003).
- The RA Government Decree No. 147-N “On regulations of defining water standards” (28.07.2005).
- The RA Government Decree No. 174-N “On procedure of full or partial assessment of water resources upon request of the RA Government or water users, and definition of the mechanisms thereof” (09.02.2006).
- The RA Government Decree No. 649-N “On approving the Charter and the structure of the Water Resources Management Agency of the Staff of the RA Ministry of Nature Protection” (14.04.2004).
- The RA Government Decree No. 191-N “On approving the program for 2007-2011 of activities for implementation of objectives stemming from the Concept Paper on the RA State Environmental Monitoring” (15.02.2007).
- Excerpt from Protocol No. 19 of the RA Government Session “On approving the Concept Paper on the RA State Environmental Monitoring” (18.05.2006).
- The RA Government Decree No. 23-N “On defining the requirements of use and protection of water resources by classification” (14.01.2010).
- The RA Government Decree No. 927-N “On defining the demand for drinking-domestic and agricultural water, as well as assessments of ecological releases” (30.06.2011).
- The RA Government Decree No. 878-N “On approving Action Plan for the RA Government activity for 2008-2012” (24.07.2008).
- The RA Government Decree No. 1224-N “On approving the procedure of performing hydro-geological investigations of fresh ground water in the Republic of Armenia and development of water basin management plans” (01.10.2009).

- The RA Government Protocol Resolution No. 4 “On Model Water Basin Management Plan” (03.02.2011).

- The RA Government Decree No. 118-N “On defining activities for application of contemporary technology, improvement of water resource monitoring, and pollution reduction and prevention” (14.01.2010)

- The RA Government Decree No. 1484-N “On defining the procedure for activities of required monitoring observations during exploitation of ground mineral water pits, activities of protecting water resources from depletion and pollution” (22.11.2012).

- The RA Government Decree No. 75-N “On defining norms to secure water quality in each water basin management area contingent on the peculiarities of terrain” (27.01.2011).

- The RA Prime Minister's Decree No. 5-N “On approving the list of basin management organizations of the Water Resources Management Agency at the RA Ministry of Nature Protection, the Agency's Charter and the timetable for switching to water basin management” (10.01.2003).

- The RA Government Decree No. 1111-N “On flow period and drought in Araratyan, Hrazdan and Akhuryan basin management areas” (18.09.2014).

- Order No. 330-A by the RA Ministry of Nature Protection “On activities ensuring compliance with the requirements of the RA Government Decree No. 1111-N, as of September 18, 2014” (03.11.2014).

- Order No. 464-N by the RA Ministry of Nature Protection “On approving the methodology of calculating the permissible marginal outflow quantities of wastewater running into water resources” (10.12.2003).

1. Definition of and Compliance with Water Standards

1.1 Analysis of the Current Legal Regulation

Necessary precondition for the water use permit issuance process is availability of water standards defined by law and compliance with them. For example, Article 29 of Code stipulates that one of the criteria of assessing water use permit application is ensuring water standards; this means

that the application may be turned down, if water use required thereby fails to be in conformity with water standards. Water standards shall be incorporated also in water use permits.

Moreover, Agency may suspend the water use permit by the procedure defined under Law, should there be the need of protecting public interest, compliance with water standards and the environment.

By virtue of Article 1 of Code, water standards are water qualitative and quantitative criteria and requirements necessary to protect the quantity of water resources (including national water reserves) and to improve water quality.

Article 99 of Code defines the primary requirements towards the protection of water resources: 1) the use of water resources is permitted only in conditions of their protection and restoration; 2) the water resources are a constituent part of the ecosystems and the natural landscapes, and their protection shall be stipulated by the maintenance of balance within the given ecosystem; 3) the water resources shall be subject to protection when used, as well as when not used; 4) if not used, the protection of water resources must maintain the balance and welfare in the given ecosystem completely, when it comes to the water issue; 5) if used, the protection of water resources must maintain the balance in the given ecosystem.

Point 2 of Paragraph 1 of Article 6 of the RA Law “On National Water Policy” stipulates the principle of securing water resources (quantity and quality) necessary for vital activity of the present and future generations.

1) Legal safeguards to ensure water qualitative standards represent a set of norms in the national legislations. Chapter 8 of Code is dedicated to water quality standards. The water qualitative standards have been addressed under the RA Law “On National Water Program”, the RA Government Decree No. 1147-N “On regulations of defining water standards”, dated as of 28.07.2005; Decree No. 1484-N “On defining the procedure for activities of required monitoring observations during exploitation of ground mineral water pits, activities for protecting water resources from depletion and pollution”, dated 22.11.2012; Decree No 75-N “On defining norms to secure water quality in each water basin management area contingent on the peculiarities of terrain”, dated 27.01.2011; Order No. 464-N issued by the RA Ministry

of Nature Protection “On approving the methodology of calculating the permissible marginal outflow quantities of wastewater running into water resources”, dated 10.12.2003, etc.

2) Ensuring water quality standards is interconnected with two concepts used in the RA legislation – *ecological release* and *ecological flow*.

2.1) Definition of the concept of ecological release is referred to in Article 1 of Code as minimum flow of water through which ecological balance and self-recovery capability of a water resources are secured.

According to Paragraph 2 of the RA Government Decree No. 23-N “On defining the requirements of use and protection of water resources by classification”, dated 14.01.2010, the management of all rivers is carried out by the inseparability principle of ecological release. In its turn, Article 10 of the RA Law “On National Water Policy” defines that the supply of water is established on the basis of the results of water resources assessment, reassessment, and calculation of the national water reserve and environmental (ecological) releases. According to Point 7 of Paragraph 1 of Article 30 of the RA Law “On National Water Program”, the demand for the water resources of the Republic of Armenia is assessed in view of a set of standards, including those by ensuring ecological release, flow transfer, etc.

The RA Government Decree No. 354-N “On approval of the procedure of determining water intake quantities allocated to water users from water resources and the regime”, dated 13.03.2003, regulates the regime of extraction of water allocated from water resources to water user, which is determined based on the ecological release in the given segment of water resource. The RA Government Decree No. 927-N “On defining the demand for drinking-domestic and agricultural water, as well as assessments of ecological releases”, dated 30.06.2011, defines the methodology of defining the sizes of environmental (ecological) releases.

2.2) In contrast to ecological release, the definition of the concept of ecological flow is not set forth under the national law. Nevertheless, in a set of legal acts it is used as a concept equivalent to ecological release; for example, in Article 1 of Code¹ or in Point 6 of Paragraph 1 of Article 10 of the

¹ *Standardization of Maintenance of Water Resources*: Establishment of marginal allowed human-made loads; establishment of maximum allowable concentrations of wastewaters and composition of substances included in them discharged into water resources; establishment of ecologically safe quantities of water use and wastewater discharge;

RA Law “On National Water Program”, where water resource is classified by annual flow distribution, as well as in Chapter 12 of the RA Government Protocol Resolution No. 4 “On Model Water Basin Management Plan” dedicated to the issues of determination of ecological flows. Given this situation, it is appropriate to clarify the definitions of ecological release and ecological flow concepts in terms whether it is justified to use both concepts in law at the same time.

In the first instance, it should be stated that international literature and legal acts use the concept of ecological flow² as such quantity of water flow, where water resource (particularly, river) has already functioned under the natural conditions and assurance of which is required for protection of ecological balance and self-recovery.

Different meanings for the concepts of ecological flow and ecological release are suggested in the Russian literature³. Ecological flow is presented as influx of non-regulated river segments in case of irreversible acceptable removal of river flow, ensuring conditions necessary for sustainable and secure functioning of water ecosystems⁴.

According to the same source, ecological release is water discharge from water basin that secures sustainable and secure functioning of the ecosystem in a river segment that is located in the downstream reaches of reservoir. Ecological release is formed taking into account various types of water discharge, including that for fishery, river bed formation, sanitary, etc., ensuring sustainable and secure functioning of water ecosystems, and not only the water ecosystems.

Given the aforementioned, one may infer that the essential difference between ecological release and ecological flow is in the mode of water discharge, where in case of the former it is the human's decisions on discharging water of some quantity, and in the second case it is ensuring natural

establishment of rules for water resources protection; establishment of quantities of maximum water intake from water resources and minimum environmental flow rates based on time sections.

² Environmental flow assessments for rivers: Manual for the Building Block Methodology. - JM King, RE Tharme & MS de Villier (Editors), Report to the Water Research Commission by Freshwater Research Unit University of Cape Town WRC Report No TT 354/08 August 2008.

³ Методические указания по нормированию допустимого безвозвратного изъятия речного стока и установлению экологического стока (попуска).- Авторский коллектив: д.г.н. Дубинина В.Г. (руководитель и ответственный исполнитель) д.т.н. Косолапов А.Е., д.г.н. Коронкевич Н.И., д.б.н. Чебанов М.С., Москва, 2009

⁴ Ibid. See page 2.

river flow – limiting the level of human impact on water resource, as a result of which the protection of ecological flow is ensured.

The efficiency of ecological flow is connected with the methodology of its calculation. According to Article 19 of the RA Law “On National Water Program”, the list of activities of Program implementation envisages development and calculation of the methods of its determination.

As mentioned above, the RA Government Decree No. 927-N “On defining the demand for drinking-domestic and agricultural water, as well as assessments of ecological releases”, dated 30.06.2011, provides for the calculation methodology of the ecological release. However, the players in the spheres of water resources management and protection and other specialists think that it needs revision and redrafting.

The national legislation does not define the methodology for calculation and assessment of ecological flow.

1.2 Recommendations on the RA legislation reform

- Define the concept of ecological flow.
- Introduce a new ideology, according to which ecological flow, as a precondition for sustainable and secure functioning of water and not only water ecosystems, is formed irrespective of the human's decision on discharging some quantity of water.
- Develop and adopt an efficient methodology for calculation and assessment of ecological flow.

2. Conducting Regular Water Resources Monitoring

2.1 Analysis of the Current Legal Regulation

For any type of water use, each person in Armenia must be issued water use permit, except for cases provided for under Code; e.g. in case of free water use (Article 22 of Code), etc. According to Article 29 of Code, water use permit is issued based on applicant's request; the latter may be turned down by Agency, where water use requested thereby is not in conformity with the requirements of protection of the national water reserve, water standards. The preliminary evaluation of request

includes also the water use impact on the environment. According to Article 30 of Code, in cases required by Law, applicant of a water use permit shall submit an environmental impact assessment. If necessary, time allowed for application review shall be adjusted to comply with the time periods needed for conducting environmental impact assessment.

Agency shall possess the water resources monitoring data, particularly water qualitative and quantitative data 1) to issue water use permit when reviewing the request and 2) when exercising control after issue of water use permit. In course of the review of the filed request, possessing the regular monitoring data enables Agency to comply with the requirement referred to in Article 31 of Code - “water use permit shall not be issued, if such water use may reduce the national water reserve⁵ or cause violation of water standards”. According to Paragraph 1 (1) of Article 16 and Article 18 of Code, quantities of the national water reserve and water resources by water resources, as well as activities directed at protection and increase of national water reserve shall be defined by the National Water Program. In its turn, Paragraph 1 of Article 8 of the RA Law “On National Water Program” stipulates that the national water reserve shall be formed as the difference between the water resources in the Republic of Armenia and usable water resources and strategic water reserve. Assessment of the components of water resources and water reserve, incorporation of its quantity and quality characters in water basin management plans is envisaged in multistage program of activities for implementation of the National Water Program.

Article 1 of Code defines the *concept of monitoring of water resources* as a regulated system of observations (and subject to dissemination) of hydrological, hydro-geological, hydro-physical and hydro-chemical indices, which ensures collection and analysis thereof. In accordance with Article 19 of Code, monitoring shall provide data also on water use permits for inclusion in the water cadastre. According to Article 16 of the RA Law “On National Water Program”, ensuring the conduct of water resource monitoring, is, inter alia, among the primary problems in water supply and sanitation area.

According to Paragraph 4 of the RA Government Decree No. 639-N “On approval of the procedure of conducting monitoring of water resources and registration of reports”, dated as of

⁵ Article 1 of the RA Water Code: *national water reserve*. the quality and quantity of water that are required to satisfy present and future basic human needs, as well as to protect aquatic ecosystems and to secure sustainable development and use of that water resource.

22.05.2003, monitoring of surface water resources is conducted by an appropriate separated subdivision at the RA Ministry of Nature Protection. *Quality* monitoring of surface water resources is conducted by “Environmental Effect Monitoring Center” SNCO⁶, whereas *quantity* monitoring is conducted by “Armenian State Hydrometeorological and Monitoring Service” (Armstatehydromet) SNCO, and regular monitoring of quality and quantity of ground water resources is conducted by “Hydrogeological Monitoring Center” SNCO at MNP⁷. The monitoring of water resources is conducted in accordance with the RA Government Decree No. 639-N “On approval of the procedure of conducting monitoring of water resources and registering reports”, dated 22.05.2003; Decree No. 118-N “On defining activities for application of contemporary technology, improvement of water resource monitoring, and pollution reduction and prevention”, dated 14.01.2010; Decree No. 191-N “On approving the program for 2007-2011 of activities for implementation of objectives stemming from the Concept Paper on the RA State Environmental Monitoring”, dated 15.02.2007, that is related to annual monitoring programs as approved by the Head of Staff of the RA Ministry of Nature Protection. The monitoring plans are prepared on the basis of information needs and strategy in view of the data requirements needed for development and implementation of water basin management plans. Article 21 of the RA Law “On National Water Program” defines the requirements to monitoring programs.

In accordance with Point 12 of Paragraph 1, Article 10 of Code, Agency shall *assist in* implementation of water resources monitoring. The analysis of the legislation shows that assisting shall mean:

1. Ensuring the formation of the demand for qualitative and quantitative water resource monitoring⁸ through:
 - Formation of tasks for conducting monitoring of water resources;
 - Registration of reports thereon;
 - Posting the order of monitoring (quantity and quality) of water resources⁹.

⁶ The RA Government Decree No. 411-N “On making supplement to the RA Government Decree No. 199, dated March 6, 2002 and establishment of “Environmental Effect Monitoring Center” SNCO”, dated as of 03.04.2003.

⁷ The RA Government Decree No. 1616-N “On establishment of Hydrogeological Monitoring Center” SNCO, dated 08.09.2005.

⁸ Subparagraph g) of Paragraph 7 of the RA Government Decree No. 649-N “On approving the Charter and structure of the Water Resources Management Agency of the Staff of the RA Ministry of Nature Protection”.

2. Initial assessment of quantity and quality of usable water, and ensuring the outline of the present and future demand of the population and the economy for water¹⁰.
3. Ensuring administration of the State Water Cadastre and compilation of water balance through:
 - Documentation registration in the State Water Cadastre;
 - Providing information.
1. The task of conducting the monitoring of water resources is formed in view of the requirements of implementation of basic provisions of the National Water Policy and the National Water Program. Quoting Paragraph 4 of the RA Government Decree No. 174-N “On procedure of full or partial assessment of water resources upon request of the RA Government or water users, and definition of the mechanisms thereof”, dated 09.02.2006, according to which “Where multiannual monitoring data in the particular water basin area or the water resource segment under assessment is missing, prior to the assessment of the required water resource, the water resources management and protection body shall, as necessary, adopt a decision on conducting monitoring for a 3-year period for drinking-domestic and recreation water, and for one-year period for water resources used for other purposes”, it should be stated that a) Agency is not vested with the power to conduct monitoring as per Code, b) Agency does not have any resource, including professional and technical ones, to conduct monitoring on its own. In cases defined by the above Government Decree, Agency should have an opportunity of formation of task and order to conduct the monitoring of water resources.

Given the same reasoning and to avoid excessive confusion, it is advisable that the name of the Division of Agency’s Water Resource Cadaster Administration and Monitoring, as provided for under Article 2 of the RA Government Decree No. 649-N “On approving the Charter and the structure of the Water Resource Management Agency of the Staff of the RA Ministry of Nature Protection”, dated 14.04.2004, be adjusted to the function implemented by Division, as the Division of Water Resources Cadaster Administration and Registered therein Data Summary.

⁹ See the same Decree.

¹⁰ See Subparagraph c) of Paragraph 7 of the same Decree.

The monitoring of surface and ground water resources is conducted at the expense of the RA State budget. For the rest of water resources beyond the scope of the water resource monitoring conducted at the expense of the RA State budget, the observations of the given water resource or its segment upon the water use request shall be conducted by the RA Ministry of Nature Protection or an organization holding appropriate license in accordance with the applicant's application at his/her expense.

Thus, monitoring of water resources can be conducted 1. on the basis of the Agency's task; 2. by Agency's order; 3. by application filed by applicant, which through involvement of Agency or directly shall be submitted to an organization having authority to conduct monitoring.

In view of the aforementioned, one can infer that in the process of ensuring formation of demand for qualitative and quantitative monitoring of water resources, Agency plays two roles – as a direct customer of conducting the monitoring of water resources, or as a mediator between person filing request and an organization vested with the authority to conduct monitoring. The current legislation does not provide for cases, where person filing an application prefers to file the application on conducting the monitoring of water resources with Agency's mediation and does not regulate the particularities of such process. In the meantime, there might be cases, where the demand for conducting monitoring of water resources derives from public¹¹ vs. private interest, where the initiator is natural or legal person. In such cases, the law shall provide for an opportunity of conducting the monitoring of water resources at the expense of the RA State budget resources; e.g. by filing an application on conducting monitoring to Agency and with the latter's mediation.

2. The preliminary quality and quantity assessment of water resources is defined under the RA Government Decree No. 649-N "On approving the Charter and the structure of the Water Resources Management Agency of the Staff of the RA Ministry of Nature Protection", dated as of 14.04.2004, as the Agency's objective. According to the RA Government Decree No. 174-N "On procedure of full or partial assessment of water resources upon request of the RA Government or water users, and definition of the mechanisms thereof», dated 09.02.2006, the demand by the RA Government or water user shall be the basis for full or partial assessment of

¹¹ Article 1 of the Water Code – Public interest - Such type of activity in water relationships, the main purpose of which is to be useful to the public.

water resources. While conducting assessment of water resources, Agency shall be based on the following: a) quantitative and qualitative data of the water resources monitoring (if available); b) the amount of the water resource self-recovery capability coefficient against some polluters; c) the area of watershed; d) the current native and human-made loads to water resources. Upon request of water user, full or partial assessment of water resources can be conducted by an assessing organization at the expense of the given water user in compliance with the procedure defined under the RA legislation.

3. See Chapter 3 for the analysis of the issues related to the administration of State Water Cadastre.

2.2 Recommendations on the RA Legislation Reform

- Define the real role of Agency in the process of conducting the monitoring of water resources in terms of ensuring the demand for qualitative and quantitative monitoring of water resources and the data summary monitoring, preliminary quality and quantity assessment of water resources, and administration of the information system.
- Classify the types of formation of the demand for qualitative and quantitative monitoring of water resources, define the entities vested with the authority of filing tasks, applications and orders, as well as applications, particularly the cases and the procedure of filing through Agency's mediation.
- In addition, vest BMOs with authorities of establishing the demand for qualitative and quantitative monitoring of water resources, initial assessment of quantity and quality of usable water, and administration of State Water Cadastre and compilation of water balance.
- Decentralization of the Agency's functions of establishing the demand for qualitative and quantitative monitoring of water resources, initial assessment of quantity and quality of usable water, and administration of the State Water Cadastre and compilation of water balance requires professional and technical strengthening of BMOs.

3. Operation of the Water Cadastre Information System and Summary of Data Recorded therein, including the Monitoring Data

3.1 Analysis of the Current Legal Regulation

The main goal of the State Water Cadastre is creation of an information basis with the view of implementation of a uniform state strategy in the sphere of water resources, and management and protection of hydro-technical structures promoting their effective use within the frameworks of the national water policy.

In accordance with Point 12 of Paragraph 1 of Article 10 of Code, Agency shall incorporate the water resources monitoring data in the water resources planning and management process. According to Paragraph 4 of Article 21 of the RA Law “On National Water Program”, improvement of the water resources monitoring creates an information system necessary for decision-making on and planning the use, development and management of water resources. Each year, the State authorized body conducting the monitoring of water resources submits to Agency a complex report on the monitoring of water resources, which is incorporated in the Government's annual communication on execution of the National Water Program.

Thus, necessary condition for planning and management of water resources is water resource monitoring data summary and administration of their information system. The national legislation does not directly define any authority of the water resource monitoring data summary to be exercised by Agency. However, Sections 3 and 4 of the RA Government Decree No. 1060-N “On approving the procedure of registering documents in the State Water Cadastre and providing information”, as of 23.07.2003, are dedicated, inter alia, to the issues of data summary, and taking into account the fact that administration of cadastre is the Agency’s function, it can be inferred that summary of the data available therein shall also be the Agency’s function.

Article 1 of Code defines *the concept of State Water Cadastre* as a permanently operating system that keeps comprehensive data on quantitative and qualitative indices of water resources, watersheds, composition and quantities of materials and biological resources, which are extracted from water basin beds and coasts, as well as records of water users, water use permits and water system use permits. According to Paragraph 16 of the RA Government Decree No. 1060-N, as of

23.07.2003, registration of the data incorporated in the State Water Cadastre is viewed as a permanently operational, complemented and adjusted (as necessary) system, which should ensure classification, storage and provision of data in the information collection registries, as well as in the computer data base (data bank) through operative entry of amendments and supplements.

According to Article 22 of the RA Law “On National Water Program”, the State Water Cadastre information system serves as an official data bank for water resources and water systems, and incorporates administrative-legal and technical data on water resources and systems. The State Water Cadastre information system is comprised of summary information received from thematic databases that are developed and stored on national and water basin levels by state authorized bodies of the water sector.

Quantitative and qualitative indices of water resources are incorporated in the State Water Cadastre upon submission by the body conducting water resources monitoring. The data on composition and quantities of materials and biological resources extracted from watersheds and their beds and coasts are incorporated in the State Water Cadastre upon submission by water basin management bodies. The data on water use permits and the rights to use water systems, as well as their transfer are respectively incorporated in the State Water Cadastre on the basis of the requests filed by water users and administrators.

Data bases comprising the component part of the State Water Cadastre information system are interconnected with each other through the water resources coding system adopted by the RA Government as a tool of integration and charting of information pertaining to each water basin. While conducting decentralization of the process of administering the cadastre and summarizing the data therein, one should keep in mind that for the time being direct access to the State Water Cadastre information system is allowed only by the administrator of the State Water Cadaster, i.e. only by Agency¹². Taking into account the aforementioned, the provision of Paragraph 2 (3) of Article 11 of Code, according which basin management bodies register water use permits that are issued by

¹² Paragraph 19 of the RA Government Decree No. 1060-N “On approving the procedure of registering documents in the State Water Cadastre and providing information”, dated 23.07.2003.

Agency, while lacking an authority to enter information thereon in State Water Cadastre, is more than implicit.

Quite a different approach is shown in Subparagraph 2.4, Paragraph 4.3.10 of the Annex of the RA Government Decree No. 878-N "On approving the action plan of the RA Government activity for 2008-2012", as of 24.07.2008, according to which establishment of the State Water Cadastres by water basins, streamlining the State Water Cadastre, as well as technical enhancement of basin management organizations are envisaged by the action plan of the Government activity.

The procedure of providing the information of the State Water Cadastre through information systems is defined under the RA Government Decree No. 1060-N "On approving the procedure of registering documents in the State Water Cadastre and providing information", as of 23.07.2003, Section 5 of which defines the list of the data to be provided and the forms for providing the data. Upon request of interested applicants not representing State administrative institution, information is registered, received in the State Water Cadastre, as well as the incorporated data are summarized within 10-day period of accepting the request.

3.2 Recommendations on the RA Legislation Reform

- For sake of planning and efficient management of water resources, vest Agency with the function of summarizing the data recorded in the State Water Cadastre, including the data on water resources monitoring, and define the mechanisms for its implementation.
- Vest also the BMOs with the authorities of administering cadastre and summarizing the data available therein.
- With the view of decentralization of the process of cadastre administration and summarizing the data therein, ensure access for BMOs to the State Water Cadaster information system and the data summary and ensure interconnection of the databases with each other.
- Decentralization of the Agency's function to summarize the data recorded in the State Water Cadastre, including the data on water resources monitoring, requires professional and technical strengthening of BMOs.

4. Water Basin Management Plans; Ensuring Development and Implementation thereof

4.1 Analysis of the Current Legal Regulation

Article 1 of Code defines the concept of water basin management plan, as a comprehensive document on water basin management, which shall describe the management and conservation activities to be implemented within a water basin in order to achieve the objectives of this Code.

According to Article 25 of the RA Law “On National Water Program”, the RA Government shall approve the list of specially protected basin areas or part thereof. Each water basin area shall have its own management plan, which shall be prepared taking into account peculiarities of the given water basin and the priorities referred to in the RA Law “On National Water Policy”.

Chapter 5 of the RA Law “On National Water Policy” comprised of one article (Article 15) is dedicated to water basin development. Paragraph 2 of Article provides for the content of water basin management plans: 1. Charting data; 2. Data on issued water use permits; 3. Data on water and coastal ecosystems; 4. Data on hydrotechnical structures; 5. Data on intake and removed wastewater from natural water resources; 6. List of the types of activities that are prohibited or have some limitations in the area. In the meantime, the RA Government Protocol Resolution No. 4 “On Model Water Basin Management Plan”, dated as of 03.02.2011 proposes to show a more detailed approach in the development of water basin management plans, by defining, in addition to the above stated elements, also the strategy of water basin water supply formation, the water resource quality and the scenario of its improvement, determining the ecological flow, the peculiarities of water resource management in water basin, identification of activities aiming at achievement of desirable condition in water basin, assessment of preliminary financial and current financial deficit thereof, assessment of the demand for water use in water basin by sectors, etc.

Hence, for the time being no uniform opinion on the content of water basin management plans has been formed either in the RA legislation or among specialists.

According to Subparagraph 2.4, Paragraph 4.3.10 of the RA Government Decree No. 878-N “On approving the action plan of the RA Government activity for 2008-2012”, as of 24.07.2008, one of

actions in the program activity is development of water basin management plans for water basin management areas.

1) According to Article 10 of Code, development of water basin management plans and implementation thereof shall be *ensured* by Agency. Article 17 of the same Code defines the Agency's authority in this area in a different way: “Based on the National Water Program, the Water Resources Management and Protection Body, i.e. Agency, *shall develop* water basin management plans that shall be approved by the Government.” A similar formulation is provided for under Paragraph 6 of the RA Government Decree No. 1224-N “On approving the procedure of performing hydro-geological investigations of fresh ground water in the Republic of Armenia and development of water basin management plans”, dated 01.10.2009: “Water basin management plans *shall be developed* by water resources management and protection body, i.e. Agency, in compliance with the requirements referred to in Article 16 of the RA Water Code”.

In accordance with Paragraph 1 of Article 11 of Code, water basin management bodies shall implement the water basin management plans, and as per Subparagraph 1 of Paragraph 2 of the same Article, they shall develop the water basin management plans.

According to Paragraph 1 of Annex 2 of the RA Prime Minister's Decree No. 5-N “On approving the list of basin management organizations of the Water Resources Management Agency at the RA Ministry of Nature Protection, the Agency's Charter and the timetable for switching to water basin management”, dated 10.01.2003, basin management organizations shall implement the water basin management plans.

In view of the aforementioned, the following questions are raised:

1. What is the Agency's actual role in the development of water basin management plans? I.e. does Agency directly act in the role of a draftsman of water basin management plans or does it ensure¹³ their development and implementation, thus, creating satisfactory conditions for development and implementation of the plans?

¹³ The Explanatory Dictionary of Modern Armenian by E. B. Aghayan provides the following explanation of the word “ensure” – create satisfactory material resources for life, provide, grant.

2. What is the actual authority of the water basin management bodies – to develop or to implement water basin management plans, or both are the authorities of the water basin management bodies?

3. Is it justified to define the authority of development of water basin management plans for both Agency and the water basin management bodies?

In light of the circumstances, that;

- through water basin management planning, the interconnected relationships of water users, including communities, energy, industry, agriculture and environment, are balanced;
- in course of development of water basin management plans, the territorial peculiarities of the given water basin area are taken into consideration;
- in water basin area, water basin management plans are implemented by the water basin management body,

it is advisable to grant the authority of development and implementation of water basin management plans to water basin management bodies, and the function of securing the latter – to Agency.

2) The next issue that is worth a separate investigation is that the definition of the concept of water basin management bodies is missing in the law. Article 1 of Code fails to define the concept of water basin management body, whereas it sets forth all the definitions of all water resources management bodies in the RA.

Paragraph 2 of Article 10 of Code stipulates that to promote a more effective, purposeful and decentralized management of water resources, water basin management bodies shall be established in the composition of the Water Resources Management and Protection Body according to the procedures established under the legislation of the Republic of Armenia. Paragraph 2 of Article 11 of Code provides for the authorities of water basin management bodies, and Paragraph 3 defines that their authorized representatives shall be appointed by Head of Agency. As the staff of structural and territorial units of Agency represents civil servants¹⁴, according to Point c/1 of Paragraph 3 of Article 15 of the RA Law “On Civil Service”, the Chiefs of Staff of the Republican Executive bodies of the

¹⁴ Paragraph 16 of the RA Government Decree No. 649-N “On approving the Charter and the structure of the Water Resource Management Agency at the RA Ministry of Nature Protection”, dated 14.04.2004.

Republic of Armenia appoint to the chief positions in the staffs of those bodies. Contradiction between Paragraph 3 of Article 11 of Code and Point c/1 of Paragraph 3 of Article 15 of the RA Law “On Civil Service” is evident.

Annex 2 of the RA Government Decree No. 649-N “On approving the Charter and the structure of the Water Resources Management Agency of the Staff of the RA Ministry of Nature Protection”, dated 14.04.2004, defines the Agency's BMOs that are established by water basin areas. Those are: 1. North; 2. Sevan; 3. Hrazdan; 4. Araratyan; 5. Akhuryan and 6. South water BMOs. The list and activity of such BMOs are defined by the RA Prime Minister's Decree No. 5-N “On approving the list of basin management organizations of the Water Resources Management Agency at the RA Ministry of Nature Protection, the Agency's Charter and the timetable for switching to water basin management”, dated 10.01.2003. The lists of basin management organizations as provided for under the RA Prime Minister's Decree and the RA Government Decree differ from each other, thus, making it necessary to bring those in line with each other.

Another legal inconsistency is attributable to the fact that different names are used in various legal acts in relation to the same entity: while the concept of water basin management bodies is used in Code, the above stated legislative acts use the concept of basin management organizations (BMOs). Unequivocally, both cases refer to the same entity, which is Agency's BMOs or otherwise stated – basin management organizations.

Paragraph 7 of the RA Government Decree No. 1224-N “On approving the procedure of performing hydro-geological investigations of fresh ground water in the Republic of Armenia and development of water basin management plans”, dated 01.10.2009, defines the component activities for the management process of water basin management plans, including characterizing water basin management area, water resources classification, defining the goals of water basin management plans, activity programming, analysis of social, economic and environmental situations, compiling water basin management plans and public consultation, regular control of the process of water basin management plan implementation and updating water basin management plans. In view of the aforementioned, while developing the plan, the entity developing water basin management plans shall need monitoring data, the summary thereof and public participation.

4.2 Recommendations on the RA Legislation Reform

- Define the content of water basin management plans, providing for the compulsory elements thereof.
- Clarify the entities securing the development and implementation of, developing, implementing and approving the water basin management plans.
- Exclude inconsistencies of the basin management organizations and divisions, including those related to the appointment of their supervisors.
- Provide the entities developing water basin management bodies with required additional authorities for efficient implementation of the given function.

5. Regulation of issue, amendment, suspension and termination of water use permits

5.1 Analysis of the Current Legal Regulation

The general legal regulation of issue, suspension, termination and other processes of water use permits is laid down in Chapter 4 of Code, the RA Government Decree No. 218-N “On approving the procedure of water use permit issuance”, dated 07.03.2003 and other RA Government Decrees.

Article 1 of Code provides for *the definition of water use permits*, as a document, which includes the rights and responsibilities of persons related to the extraction of water from and discharge of water into a water resource.

1) *By procedure defined under law, water use permits are issued by Agency to authorized persons, i.e. on the basis of requests on water use permits received through basin management organizations, hereinafter, BMOs.*

In accordance with Paragraph 2 (a)) of Regulation on the Activity of Basin Management organizations referred to in Annex 2 of the RA Prime Minister's Decree No. 5-N “On approving the list of basin management organizations of the Water Resources Management Agency at the RA Ministry of Nature Protection, the Agency's Charter and the timetable for switching to water basin management”, dated 10.01.2003, the BMOs shall receive from water users and authorized representatives, by procedure defined under law, requests on water use permits, register those by

sectors and file to Agency for further processes. Currently, the BMOs are not entitled to issue water use permits. Nevertheless, in case of decentralization of the process of issue, amendment, suspension and revocation of water use permits, it is advisable to vest the BMOs as well with appropriate authorities, as in the process of water use permit issuance those act as a link within legal relationships between Agency and Water User.

2) Articles 28 and 31 of Code define the criteria for issue of water use permit: 1) the requirements of Code, the National Water Policy, the National Water Program, water basin management plans and other legal acts; 2) direct and cumulative impact of envisaged water use on the quality and quantity of the national water reserve and water resources; 3) the conformity of envisaged water use with water distribution priorities and its significance; 4) potential impact of requested water use permit on the rights of the current water use permit holders; 5) social-economic and environmental impacts; 6) comments resulted from public notification; 7) conformity with the RA international agreements.

As per Paragraph 4 of the RA Government Decree No. 218-N “On approving the procedure of water use permit issuance”, dated 07.03.2003, filing, receiving and preliminary review of the water use permit application can be conducted electronically in addition to the paper based option, which raises the problem of the BMOs' technical potentials. The procedure of the electronic version of filing, receiving and preliminary review of the water use permit application is defined by the RA Minister of Nature Protections.

According to Paragraph 3 of Article 31 of Code, when considering applications for water use permits, Agency shall consider the following criteria to establish priority and equitable allocation of limited water resources to competing stakeholders: 1) the maintenance and enhancement of human welfare and ecological health shall be given the first priority (as indicated by the concept of national water reserve), thus providing first priority of drinking water supply and sanitation; 2) persons with a historic, non-extractive interest in the use of water resources within a natural stream-bed shall be given the second priority; 3) applications for water use providing maximum benefits for the public interest shall be given the third priority; and, 4) persons offering specific evidence of their taking

active measures related to the efficient use of water and improvement of water quality shall be given the forth priority.

Articles 32 and 37 of Code prescribe the requirement of water use by the purposes stated in water use permit. This means that, when reviewing the request, Agency shall take into consideration also the significance of water use and assess its expediency and efficiency for the given time period and in the given water basin. Article 10 of the RA Law “On National Water Program” addresses the issues of classification of water resources; Paragraph 1 (7) of the law defines water resources by the significance of use – drinking-domestic, irrigations, industrial, energy, fishery, recreation. The requirements of water resources use and protection by classification are defined under the RA Government Decree No. 23-N “On defining the requirements of use and protection of water resources by classification”, dated 14.01.2010.

Articles 22-26 of Code envisage the peculiarities of water use conditions, given their purposes – free water use, **shore and bank access, designation for fire prevention/suppression, ground water use, and desalinization of saline irrigated lands.**

According to Paragraph 3 of Article 25 of Code, Agency shall establish the sustainable maximum extraction rates for groundwater water resources with reference to the national water reserve.

Article 32 provides for the content of water use permit, which, inter alia, incorporates control mechanisms to support compliance with water use permit requirements, water standards and/or reference to publications listing these standards, any special measures to be taken to promote efficient water use, to protect and improve water quality, and to conserve wetlands, significant coastal habitats and associated biodiversity, etc.

Based on the aforementioned, it can be inferred that each body issuing water use permit should:

- possess appropriate information and required professional knowledge and skills to review the water use permit requests in accordance with the criteria defined under law.
- have technical potential to make use of the common information system.

Hence, decentralization of the authority to issue water use permits from the central level to BMOs requires the latter's professional and technical enhancement.

3) Article 30 of Code defines the procedure of being issued water use permit; Articles 34 and 36 provide for the procedure of suspending, amending, revoking and terminating water use permits, and Article 33 defines the procedure of renewal of water use permits; involvement of the BMOs in the above procedures is limited only to the receipt and registration of the requests filed to be issued water use permits and submission thereof to Agency. The analysis of revocation and termination of water use permits is laid down in Chapter 9 of this Report.

Article 8 of Code provides for cases, where the conclusions by the National Water Council are compulsory for water use permit issuance. Those are: 1. water use permit issuance for the purpose of building small hydroelectric power plants in areas lacking water basin management plan; 2. water use permit issuance for a period from 5 to 15 years for the purpose of operation of small hydroelectric power plants in areas lacking water basin management plan.

Thus, decentralization of the authority to issue water use permits entails:

1. review of the process of being issued water use permit, where BMOs should conduct preliminary review of requests, public notification, final consideration of request, etc.
2. development of a new procedure for interrelations between Agency, the BMOs and other water resources management bodies.

To comply with the requirement of recording water use permits as defined under Article 74 of Code, where the water use permit issuance authority is decentralized, the BMOs shall have direct access to the database of the State Water Cadastre and data summary; in the meantime, interconnection of the databases with each other shall be ensured.

4) Article 27 of Code addresses the conditions of validation of water use permits, according to which, to be valid, a water use permit must be signed by head of Agency and water use permit holder, approved by seal of Agency and duly recorded in the State Water Cadastre. The need to review the conditions of validity of water use permits is attributable to its advisability. We think that in the early stages of decentralization of the authority of the water use permit issuance process, it is appropriate to choose not to amend the conditions of validation of water use permits. It will

promote the exercise, by Agency, of a more effective control over the activity of BMOs, as well as the total process of water use permit issuance.

5.2. Recommendations on the RA Legislation Reform

- The authorities of water use permit issuance, extension of time limit, amendment, suspension and termination of water use permits shall be also granted to the basin management organizations – BMOs.
- Make amendments to the process of water use permit issuance aiming at securing participation of basin management organizations – BMOs - in water use permit issuance.
- Develop a procedure for the activity between Agency, BMOs and other water resources management bodies in the water use permit issuance process.
- Decentralization of the authorities to issue, amend, suspend, renew and terminate water use permits requires professional and technical enhancement of basin management organizations – BMOs.

6. Introduction of Effective Mechanisms to Secure Reliability Guarantees and Regulation of their Application

6.1 Analysis of the Current Legal Regulation

The idea of the concept of reliability guarantees has been introduced in Armenia ever since in 2002 under Code, Article 118 of which stipulates that in order to ensure the requirements under this Code, terms and conditions of water use permit or water systems use permits, the bodies authorized by this Code to issue any water use permits or water systems use permits may require an adequate guarantee of reliability as a condition for issue of a water use permit or water systems use permit. Any reliability guarantee may be in the form a letter of recommendation from any bank on granting a loan, bank guarantee, insurance or other accepted document of reliability guarantee.

Thus, reliability guarantee is a financial guarantee, the purpose of introduction of which is settlement of environmental issues resulting from failure to comply with the conditions of water use

permit or water system use permit by water user (compensation for loss) through contribution of guarantee amounts for more efficient management of water resources.

As per Code, the norm defining reliability guarantee is not of imperative nature. This means that securing financial guarantees for issue of water use permit or water system use permit is not a compulsory condition for persons filing request. The provision referred to in Code, as per which appropriate “authorized bodies *may* require adequate reliability guarantee as a condition for issue of a water use permit or water systems use permit”, leads to the following questions:

1) In which cases shall authorized bodies require from persons filing request for water use permit or water system use permit to secure reliability guarantees?

2) What are the criteria for choosing any forms of reliability guarantee?

3) How is conducted initial assessment of potential environmental risks and what are the methods of calculation of guarantee amounts?

4) What is the procedure to operate the reliability guarantees system and what are the state guarantees to return of outstanding guarantee amounts?

1) Unlike Article 118 of Code, in most of cases the international law and practice pursues another path, defining financial guarantees as a *compulsory* condition¹⁵ for using environmental resources, including water resources. It should be admitted that on behalf of the RA Government, Armenia also has accepted the need of introduction of financial guarantees in the sphere of water resources use. According to Point 8 of Activity Plan as defined under Annex enclosed with the RA Government Protocol Resolution No. 47 “On approval of the activity plan for implementation of issues deriving from the concept paper on innovative financial-economic mechanisms in the environmental sector”, dated 14.11.2013, the RA Ministry of Nature Protection has been tasked to develop and introduce, by the 4th quarter of 2015, a system for collection and use of guarantee amounts for compliance with water conditions by water users in the process of water use permit issuance aiming at ensuring a more efficient water resources management.

¹⁵ The Role of Tradable Permits in Water Pollution Control. R. Andreas Kraemer, Eleftheria Kampa, Eduard Interwies Ecologic, Institute for International and European Environmental Policy Pfalzburger Strasse 43-44, 10717 Berlin, Germany, <http://www.ecologic.de>.

Taking into consideration the fact that the system of securing financial guarantees is a novelty in the process of water use permit issuance in terms that it has not yet been implemented, it lacks any established practice and legal regulation, it is advisable to investigate the international practice, as well as the similar mechanisms of securing financial guarantees as applicable in other sectors in Armenia.

For example, according to the Regulation on Furnishing Guarantees defined under Annex 3 enclosed with Decision No. 374-N of the RA Public Services Regulatory Commission “On approving the procedure of licensing activity in energy sector and revocation of a number of decisions”, dated as of 01.11.2013, any person filing with the Commission a request on being issued electric (including combined production of electric and thermal energy) or thermal energy shall be obliged to furnish an appropriate guarantee to the Commission.

Securing financial guarantees is stipulated also under Annex 3 enclosed with Order No. 249-N issued by the RA Minister of Energy and Natural Resources “On requirements to initial assessment of the environmental impact, the environmental impact review and the mine closure plan enclosed with the application requesting the right to usage of the entrails of the earth” dated 30.12.2011.

Analysis of the international practice of operation of the system securing the financial guarantees, as presented below, has been developed in scope of “Clean Energy and Water” Program and is part of the Report “On potentials of introducing financial guarantees in the process of water resources use permit issuance”.

The EU environmental legislation regulates the financial guarantees mostly through directives on placement of wastes and environmental liabilities, and these are assumed to guarantee the availability of the sources of funds aiming at reduction of potential risks by polluter and resource user, including recultivation activities required after such actions.

Point 12 of the EU Commission Recommendation (2014/70/EU), dated January 22, 2014, provides for introduction of environmental liability and financial guarantees in case of resource extraction. According to Recommendation, the users of resources should furnish financial guarantees that are satisfactory to prevent any potential environmental damage.

The EU Environmental Liability Directive (ELD) - - (Directive 2004/35/EC.) obligates:

- remediation of damage caused to environment to be achieved through restoration of the environment to its baseline condition;
- implementation of different types of actions to assess ecosystem equivalence, including restoration activities, where it is impossible to perform the above activities,
- only where the above two activities are infeasible, collect fees to perform remediation actions.

The financial guarantees system for the resource use and pollution is applicable in the following EU countries – Austria, Belgium, France, Cyprus, Czech Republic, Netherlands, Poland, Spain and Great Britain.

In the French Republic, the financial guarantees are regulated by Environmental Damage Insurance Act, which, in turn, is regulated by the umbrella Environmental Liability Directive.

The British financial guarantees system relates to financial guarantees and insurance system within the system of natural resources use permits.

The joint report on water resources presented by the Ministries of Environment and Agriculture of Czech Republic in 2007 states that funds collected for emergency situations are also the basis for financial guarantees¹⁶. Since 2012, securing financial guarantees in Czech Republic by virtue of Water Act has been a compulsory requirement for water use.

The financial guarantees system has been more common on the state and municipal levels in the USA; however, it is not only limited by the sphere of issue water resources permits, and incorporates all actions that are connected with the use of natural resources, landscape and biodiversity.

¹⁶ [http://www.mzp.cz/C125750E003B698B/en/report_state_water/\\$FILE/OOV-Modra_zprava_GB-20081101.pdf](http://www.mzp.cz/C125750E003B698B/en/report_state_water/$FILE/OOV-Modra_zprava_GB-20081101.pdf)

The conditions of water use permits referred to in Section 11.1381 of the Water Code of the US Texas State, envisage also the concept of financial guarantees; it also states that the lack of the latter shall be the basis for rejecting water use permits.

To be issued a water use permit in the Maryland State, the USA, one should file financial management plan, where all potential costs required for water use, including financial guarantees, should be thoroughly stated¹⁷.

2) According to Article 118 of Code, the following can be considered reliability guarantees:

- a letter of recommendation from any bank on granting a loan;
- bank guarantee;
- insurance;
- or other accepted document of reliability guarantee.

Financial guarantees are classified into two major categories, of which:

- the first one is monetary payments made in the amount defined by natural or legal persons or water users that have applied to be issued water resources use permit. The amounts envisaged for financial guarantees of the sustainable water resources use are kept with body performing water resources management or supervisory body, and are used exceptionally by water user for the purpose of performing environmental activities included in the list of documents enclosed with application, assumed by project, but not fulfilled by him/her, and remediation of damages caused by the latter and not yet compensated by him/her. After fulfilling the obligations, the balance of the amount paid by water user for financial guarantees of sustainable water resources use shall be returned to the water user.

The financial guarantee is in effect unless proved by the monitoring results that there are no uncompensated damages caused to environment, and that performing recultivation and rehabilitation activities is satisfactory.

- The second category incorporates a document issued by any bank or credit or insurance organization that is submitted by legal or natural entities for the water use period and further

¹⁷<http://www.mde.state.md.us/programs/Permits/WaterManagementPermits/Documents/www.mde.state.md.us/assets/document/permit/MDE-WMA-PER018.PDF>

recultivation with the view of being issued water use permit, and represents a written obligation, according to which bank or credit or insurance organization transfers to the State budget the amount defined under commitment agreement for remediation of environmental damages caused as a consequence of violation of conditions of water use permit by water user in the time period and in compliance with the procedure referred to in law.

Besides the above stated forms of guarantees, the national legislation provides for another option – budget guarantee furnished by the RA Government¹⁸.

The forms of financial guarantees stated in the first and second categories differ from each other not only in terms of the entity furnishing those, the manner, content and the procedure of formulation thereof, but also in terms of the time period for securing guarantee amounts, as the guarantee monetary payments envisaged in the first category are given at the same time when water use permits are issued, are of preventive nature, i.e. it has a compulsory condition to be returned where not used for the purpose of prevention of potential risks and elimination of potential losses, and compensation thereof. Where the financial guarantees in the second category are used, the appropriate monetary compensation shall be made by water user in case of failure by water user to comply with obligations or non-proper compliance with such obligations, as well as in case of causing damages.

According to the Regulation on Furnishing Guarantees defined under Annex 3 enclosed with Decision No. 374-N of the RA Public Services Regulatory Commission “On approving the procedure of licensing activity in energy sector and revocation of a number of decisions”, dated as of 01.11.2013, guarantee is considered as a document issued by an operational bank or credit or insurance organization in the RA that is submitted by person filing with Commission for the period of construction, through which, where licensed person fails to comply with the conditions of license or in case of improper compliance, bank or credit or insurance organization shall assume a written obligation to transfer, by indisputable and irrefutable procedure, the amount calculated as per

¹⁸ Point 5 of the Regulation on Furnishing Guarantees defined under Annex 3 enclosed with Decision No. 374-N of the RA Public Services Regulatory Commission “On approving the procedure of licensing activity in the energy sector and revocation of a number of decisions”, dated as of 01.11.2013.

Regulation to the RA State budget within the time period defined by Commission, based on decision or note made by the Commission.

Point 21 of Annex 3 enclosed with Order No. 249 of the RA Minister of Energy and Natural Resources “On requirements to initial assessment of the environmental impact, the environmental impact review and the mine closure plan enclosed with the application requesting the right to usage of the entrails of the earth” stipulates that any acceptable financial guarantee shall be compulsorily issued by a reputable financial organization.

Thus, the types of financial guarantees classified in the 2nd category in the form of letters of recommendations issued by bank, credit or insurance organizations are more common in Armenia.

3) The methods of initial assessment of potential environmental risks in course of water resources use and calculation of guarantee amounts vary from country to country. The amount of financial guarantees cannot be unlimited and is contingent on the geographical location, the type and status of environmental resource, purpose of its use and other factors.

Remediation efforts to be made in the USA are guaranteed, for up to 150%, by financial guarantees dependent on the type of environmental resources, the area of used territory and other criteria.

In France, the amount of financial guarantees is calculated so that, when necessary, it would be possible to compensate for:

- loss assessment;
- ecological conditions remediation;
- administrative, operational and court;
- data collection;
- monitoring, control and other further costs.

For example, the limit of financial guarantees furnished for the damage caused to natural resources in Spain makes up 5 million Euro; in other European countries this amount ranges between 1-30 million Euro¹⁹.

¹⁹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52010DC0581>

In Czech Republic, as per the Water Act adopted in 2012, water users are obliged to pay in advance the amounts for water use for one year period.

According to Point 4 of the Regulation on Furnishing Guarantees referred to in Annex 3 enclosed to Decision No. 374-N of the RA Public Services Regulatory Commission “On approving the procedure of licensing of activity in energy sector and revocation of a number of decisions”, dated as of 01.11.2013, it is defined that the base for calculation of Guarantee is the amount of base duty as provided for under the RA Law “On State Duty”. The amount of guarantee must be equal to the product of the estimated capacity of constructed station (expressed in kilowatts) and the two-fold of the base duty defined under the RA Law “On State Duty”, which, however, should not be less than 500 000 AMD.

According Point 20 of Annex 3 enclosed with Order No. 249 of the RA Minister of Energy and Natural Resources “On requirements to initial assessment of the environmental impact, the environmental impact review and the mine closure plan enclosed with the application requesting the right to usage of the entrails of the earth”, dated 30.12.2011, the availability of realistic estimation of mine closure costs shall be the basis for financial guarantee of the mine closure plan (physical closure), remediation of environment and mitigation of impact on labor force.

As per Article 116 of Code, persons violating the requirements of this Code are obliged to compensate for the losses caused due to their activity by the procedure established by law.

Point 10 of Article 11 of the RA Law “On National Water Program”, providing classification of the RA water system, in view of, inter alia, the amount of damage caused to the environment and economy of the country in case of its failure, stipulates that:

- small amount of damage is considered the amount not exceeding thousand-fold of the minimum salary defined by law;
- average amount of damage is considered the amount not exceeding from thousand-fold to five thousand-fold of the minimum salary defined by law;
- large amount of damage is considered the amount not exceeding from twenty five thousand-fold to one hundred thousand-fold of the minimum salary defined by law;

- of particularly large amount of damage is considered the amount exceeding one hundred thousand-fold of the defined minimum salary.

Moreover, to calculate guarantee amounts in the sphere of water resources use, the purpose of use of water resource and its preliminary condition prior to water use permit issuance should be taken into account; it would be possible only where regular monitoring is available, initial assessment of quantitative and qualitative data and administration of State water cadastre are in place (see Chapters 2 and 3).

4) The procedure of application of reliability guarantees in water resources use, as well as the procedure of refunding the balance guarantee amounts are not defined under Code or another legal act. Presumably it should be separately regulated by an appropriate by-law, which must be prescribed under Article 118 of Code, by defining also the body that adopts it.

In Armenia, the procedure of securing guarantee in energy sector is defined under the Regulation on Furnishing Guarantees referred to in Annex 3 enclosed with Decision No. 374-N of the RA Public Services Regulatory Commission “On approving the procedure of licensing the activity in energy sector and revocation of a number of decisions”, dated as of 01.11.2013 (hereinafter, Regulation). According to Point 3 of Regulation, any person must make guarantees for the validity period of at least forty five days of the period requested by him/her for construction as prescribed under request of being issued a license for producing electric or thermal energy.

With this, the procedure of applying reliability guarantees in the above stated act is completed, which, we think, will cause many problems in course of practical activity. The procedure of securing reliability guarantees in the process of water use permit issuance should define also the body authorized to determine the type of reliability guarantees, the body authorized to register the guarantee amounts, the authorities thereof and the procedure of activity in that direction, etc.

Points 6-12 of Regulation regulate the issues of transfer of guarantee amounts to the RA State budget, or their return to persons that have submitted those amounts. Where the conditions of license are met in the defined time period or preliminarily, Commission shall, in accordance with application filed by licensed person, make a decision or issue a written permit on the refund of the guarantee to the person. The Commission shall make a decision on complete return of the guarantee to the licensed

person, where 1) the Commission has made a decision on revocation of the license of the licensed person or on termination of the license; 2) within the period of construction (reconstruction) as defined by license, the licensed person fails to complete the works of constructing (reconstructing) station and to file a request for extending the period of construction (reconstruction) defined under license or where the Commission has rejected the filed request. The Commission shall make a decision on returning the half of guarantee to the RA State budget, where 1) the Commission has made a decision on extending the period of construction of the licensed person as defined under the license; 2) the Commission has made a decision on extending, for the second time, the deadline of submission of the plan undergone environmental and technical expert review to the Commission.

The guarantee furnished by licensed person shall not be transferred to the RA State budget, if failure to comply by him/her with the conditions of license or non-proper compliance thereof is a consequence of force major or unpreventable cases and circumstances created beyond his/her will, and of which the licensed person must immediately notify to the Commission by stating possible timing of elimination of their consequences.

Point 23 of Annex 3 enclosed with Order No. 249 of the RA Minister of Energy and Natural Resources “On requirements to initial assessment of the environmental impact, the environmental impact review and the mine closure plan enclosed with the application requesting the right to usage of the entrails of the earth”, dated 30.12.2011, prescribes that financial guarantee shall be effective until the monitoring results (for average duration of 5 years) will evince that physical closure, remediation of environment and mitigation of impact on labor force are satisfactory.

According to the Water Act adopted in Czech Republic, where the amounts (financial guarantee) paid in advance for water use by water user is more as compared to the actually used water resource, the water use management body must return the additionally paid amount within 30-day period.

Hence, the procedures of the refund of the balance guarantee amounts are varied. However, irrespective of their types, in any case the system can effectively work only provided regular monitoring is conducted, and control and supervision are exercised (see Chapters 2 and 8).

6.2 Recommendations on the RA Legislation Reform

- Define bases and cases for introduction of compulsory condition to secure reliability guarantee in the process of water use permit issuance.
- Develop the criteria for choice of reliability guarantees forms; envisage bodies to approve the forms and the authorities thereof.
- Develop methods of initial assessment of potential environmental risks and the guarantee amounts calculation; provide for the authorized body and its authorities.
- Define the procedure of operation of the reliability guarantees system in the sphere of water resources use and the state guarantees for refund of outstanding guarantee amounts.
- Introduction of the system to secure reliability guarantees in the process of water use permit issuance requires professional enhancement of Agency and BMOs.

7. Ensuring Active Public Participation and Awareness Raising

7.1 Analysis of the Current Legal Regulation

Article 1 of Code defines *the concept of public notice* as informing the stakeholders about impact of proposed activity, which shall be published in a printing source having at least 1000 printings. The notice shall contain the introduction to decision on the proposed activity or the issue and a brief description of their possible effect; the location, where information on proposed activity or decision can be obtained; written comments on proposed activity or decision; the location, where the notices can be submitted and realistic terms of their submission, as well as the dates and places of public hearings of notices.

Recognition of importance of public participation and awareness in the processes of management and protection of water resources is provided for under Paragraph 1 of Article 5 of Code and is one of key principles of management, use and preservation of the RA water resources and water systems. The same approach is presented also in Point 17 of Paragraph 1 (17) of Article 6 of the RA Law “On National Water Policy”, which prescribes the principle of ensuring access to information in the sphere of national policy as defined by law.

In Point 8 of the RA Government Decree No. 649-N “On approving the Charter and the structure of the Water Resource Management Agency of the Staff of the RA Ministry of Nature Protection”, dated 14.04.2004, the Agency's functions are listed, including those in the sphere of ensuring public participation and awareness. These are: 1. registration of documents at the State Water Cadastre and providing information; 2. organizing public notice of the documents developed by it pursuant to the procedure defined under the RA legislation.

In view of the aforementioned, for the benefit of public participatory management, Agency guarantees and ensures:

- 1) Accessibility of information related to water sector;
- 2) Opportunity to participate in the activity carried out in the water sector.

It should be noted that it is impossible to completely put into practice public participation in the activity of water sector without creating bases to ensure accessibility to the information on the water sector. In turn, public awareness serves for public participation in the activity carried out in the water sector. Thus, participatory management in water sector is possible provided the above stated two elements are in place.

1) Article 20 of Code regulates the issues of public participation. In order to get information in the water sector, any person is entitled to apply to the appropriate body and to obtain, within 30 days, that information in compliance with the procedure defined by the RA Government, except for cases established by the legislation; e.g. in case of information constituting state and official secret.

In accordance with Subparagraph 16, Paragraph 1 of Article 10 of Code, Agency shall ensure publicity and public notice of the documents it has developed in compliance with the procedures established by the Government. This norm is in conformity with Paragraph 1 of Article 3 of the UN Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.

Agency shall immediately inform the public about contaminated water resources posing a threat to human life and safety, by guaranteeing the level of risk to people being exposed and informing about the possible consequences.

As already stated in Chapter 3 of this Report, the information available in the State Water Cadastre Information System is also accessible to each person. According to Points 6 and 7 of the RA Government Decree No. 639-N “On approving the procedure of conducting monitoring of water resources and registering reports”, dated as of 22.05.2003, reports on conducting monitoring of water resources shall be registered in the State Water Cadastre in compliance with the requirements of registration of documentation and provision of information, and are provided to applicants in accordance with the procedure of registration of documents at the State Water Cadastre and providing information. To obtain any information recorded at the Cadastre in accordance with Point 4 of the RA Government Decree No. 1060-N “On approving the procedure of registering documents in the State Water Cadastre and providing information”, as of 23.07.2003, applicant (natural or legal person) must submit a written request, where it should write down its name (first name and surname), address, and the purpose of making use of the State Water Cadastre. Point 8 defines also another way of providing information by the Cadastre through information systems. For example, where there is risk of dam break, population and organizations of the areas of the possible flood shall be notified of it through special information system²⁰, or the information system of flood forecast or waterlogged areas in the result of destruction of HTSs provides people with prompt information on possible extension of the wave occurred in the result of dam destructions as well as on borders and damage level of possible floods²¹; as a primary measure to bring the harm caused by disasters to minimum on a timely basis, the information system on struggle against disasters has been established by the decision of the Government of the Republic of Armenia, aimed at preparation of forecasts on possibilities of occurrence of disasters in the water field²².

Point 21 of the RA Government Decree No. 1060-N “On approving the procedure of registering documents in the State Water Cadastre and providing information”, as of 23.07.2003, defines the forms for providing the data of the State Water Cadastre to applicant, representing periodic quarterly, annual and five-year publications, which should provide the public with information on characters of indices stated in Regulation in absolute, relative and dynamic terms.

²⁰ Paragraph 2, Article 84 of the RA Water Code.

²¹ Paragraph 1, Article 87 of the RA Water Code.

²² Paragraph 1, Article 91 of the RA Water Code.

As the RA Government Decree No. 1060-N “On approving the procedure of registering documents in the State Water Cadastre and providing information”, as of 23.07.2003, does not provide for separate time limits for providing information, it is assumed that the 30-day period referred to in Article 20 of Code should also apply to provision of information recorded at the State Water Cadastre. We think that, it is advisable to view the 30-day period as the maximum time period for providing information, and, as per the above stated government decision, to conduct information classification by the priority of its provision, complexity of index calculation therein, etc., that will enable defining various time periods for providing information. This proposal completely derives from the provisions of Paragraph 2 of Article 4 of the UN Convention on “Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters”²³.

2) According to Article 106 of Code in Chapter 15 “On Protection and State Supervision of Water Resources”, non-governmental organizations and citizens are entitled to participate in the discussions relevant to the water resources and water systems and to provide comments. When carrying out actions of protection of water resources and water systems, authorized State government bodies are entitled to discuss the recommendations obtained from non-governmental organizations and citizens. It stems from Article 106 that both parties of the particular legal relation have *rights* in scope of state supervision aiming at protection of water resources: representatives of public - in terms of discussion of issues related to water resources and water systems and presentation of comments, and authorized state government bodies – in terms of consideration of these comments. It would have been more constructive, if the right of one entity in scope of the same legal relation could cause the liability of the other entity, in the particular case - discussion of comments provided by non-governmental organization and citizens. Such approach is in conformity with Paragraph 2 of Article 3 of the UN Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, according to which each Party of Convention shall endeavor to ensure that officials and authorities assist and provide guidance to the public in seeking access to

²³ The environmental information referred to in paragraph 1 above shall be made available as soon as possible and at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two months after the request. The applicant shall be informed of any extension and of the reasons justifying it.

information, in facilitating participation in decision-making and in seeking access to justice in environmental matters.

According to Paragraph 1 of Article 20 of Code, the following items are subject to public notice by the state authorized bodies: 1) Draft National Water Policy General Concepts; 2) Draft National Water Program; 3) Draft Water Basin Management Plans; 4) Pending Water Use Permits; 5) Pending Water System Use Permits; 6) Draft Water Standards and 7) Draft Water Tariff Strategy. In accordance with Paragraph 3 of the RA Government Decree No. 217-N “On approving the procedure of public notification and publicity of documents developed by the Water Resources Management and Protection Body”, dated as of 07.03.2003, such documents shall be submitted by authorized body for public notification in the phase of drafting. Regarding the documents referred to in Points 1, 2, 3 and 6 of Paragraph 1 of Article 20 of Code, the deadline for receipt of public opinion is the 10-day period of the date of publication of notice, and regarding the documents defined under Point 4, the deadline is the 5-day period of the date of publication of notice. As per Point 4 of the RA Government Decree No. 217-N “On approving the procedure of public notification and publicity of documents developed by the Water Resources Management and Protection Body”, as of 07.03.2003, information media for notice can be any press with press run of at least 1000 copies. Notice shall contain (if necessary, without limitation) the information included in the form of public notice (to be enclosed). Comments received in course of notification shall be summarized and incorporated by Agency in the comment summary on the particular document of beneficiary ministries. Comments that have not been taken into consideration in the received and developed documents in course of notification shall be subject, upon the request of their authors, to clarification and justification by Agency, in the same press, where they have been published. Where the conditions of the final version of the documents developed by Agency fails to satisfy the public, accountable for by enforcement of the document, the potential stakeholders may appeal the document by the procedure defined under Law.

2.1) In accordance with Paragraph 1 of Article 10 of Code, the mechanisms to ensure public awareness shall be incorporated in the National Water Program. As per Subparagraph 9 of Paragraph 1, Article 4 of the RA Law “On National Water Program”, ensuring public awareness is defined as one of the objectives of the Law. Article 36 of the same Law is dedicated to public awareness and

participation, and, according to that Article, to promote the public participation in the process of adoption of decisions on water resources management and protection, authorized State bodies of water sector must ensure, by defined procedure, public notification on the activity performed in water sector and accessibility of information related to the water sector. Public should be aware of the problems in water sector and can contribute to the comprehensive water basin planning and management process through *Public Water Basin Councils*.

In Annex of the RA Law “On National Water Program”, improvement of public awareness and participation in the water sector management process, development and implementation of the strategy on public water basin councils, and technical enhancement of public water basin councils are incorporated among the needs of water resources management.

In view of the above stated text, the RA Law “On National Water Program” fails to completely meet the requirement referred to in Paragraph 1 of Article 10 of Code from the perspective of offering mechanisms to ensure public awareness.

2.2) Article 30 of Code addresses the issues of information accessibility in the process of water use permit issuance, according to which Agency shall provide adequate public notice of the pending water use permit within 30 day-period of concluding the initial assessment. The final discussion incorporates investigation of all issues related to water use permit issuance, including the comments received as a result of public notification, definition of special conditions for water use permit that are related to maintenance of water quality and quantity, and are enclosed with water use permit. According to Paragraph 2 of Article 31 of Code, comments received as a result of public notice on water use permit issuance in the decision making process represent one of the criteria applied by Agency.

As per Point 8 of Annex 3 of the Regulation on Water Use Permit Issuance referred to in the RA Government Decree No. 218-N “On approving the procedure of water use permit issuance”, dated 07.03.2003, lack of feedbacks and comments on pending water use permit in course of public notification is considered as manifestation of positive public opinion on the particular water use. As per Point 9 of the same Regulation, negative comments on pending water use permit in course of public notification justifying violation of the rights and legal interests of other persons or the RA

Water Code shall be considered by the authorized body, and, if proved, shall be considered a basis for rejection of the water use permit issuance.

According to Point 10 of Annex 3 of the Regulation on Water Use Permit Issuance referred to in the RA Government Decree No. 218-N “On approving the procedure of water use permit issuance”, dated 07.03.2003, water use permit shall be formulated by Agency within 30-day period of the public notification. It can be inferred from the above norm that public representatives may submit their comments within 30-day period of notification by Agency, as the norms fail to define another period for submitting comments. However, as stated above, according to Point 2 of Paragraph 4 of the RA Government Decree No. 217-N “On approving the procedure of public notification and publicity of documents developed by the Water Resources Management and Protection Body”, as of 07.03.2003, the 5-day period of the notice publication shall be set as the deadline for the receipt of the public opinion on the water use permit documents under consideration.

Hence, to avoid various interpretations, it is advisable that the RA Government Decree No. 218-N “On approving the procedure of water use permit issuance”, dated 07.03.2003, would clearly define reasonable deadlines for submission of public opinion, procedure (e.g. written, verbal, or in course of public consultations or electronically), ways of their consideration (e.g. public consultations or closed sessions).

2.3) Paragraph 2 of Article 108 of Code defines that the documents developed by Agency on watersheds shall be subject to public notification. This derives from interests of the transparent and participatory water resources management as provided for under Article 4 of the RA Law “On National Water Policy”. According to Subparagraph 6 of Paragraph 7 of the RA Government Decree No. 1224-N “On approving the procedure of performing hydro-geological investigations of fresh ground water in the Republic of Armenia and development of water basin management plans”, dated 01.10.2009, the process of water basin management plan development consists of compilation of water basin management plans and public consultations.

According to Paragraph 4 of Article 15 of the RA Law “On National Water Policy”, public participation in the process of compiling water basin management plans shall be ensured through:

- Organization of public hearings and consultations;

- Communicating information thereon via mass media.

According to Point 3 of Annex 2 of the Regulation on the activity of basin management organizations referred to in the RA Prime Minister's Decree No. 5-N “On approving the list of basin management organizations of the Water Resources Management Agency at the RA Ministry of Nature Protection, the Agency's Charter and the timetable for switching to water basin management”, dated 10.01.2003, citizens, unions of water use companies, representatives of non-governmental and other organizations and communities may participate in the activities of basin management organizations with a right of advisory vote.

7.2 Recommendations of the RA Legislation Reform

- The right of Non-Governmental Organizations and citizens to participate in the discussions on issues related to water resources and water systems and to provide recommendations by procedures established under the legislation should result in obligation by authorized state government bodies to discuss the comments submitted by non-governmental organizations and citizens in the conduct of activities aimed at the protection of water resources and water systems (Article 106 of Code)
 - Clearly define the ways and timing of providing information at the State Water Cadastre, define a classified approach in setting time periods for providing information.
 - Set forth the mechanisms of ensuring public awareness in the RA Law “On National Water Program”.
 - Develop and introduce public water basin councils as an institute ensuring public participation in comprehensive water basin planning and management, define the procedure of their establishment, termination and activity.
 - Clarify the deadlines for submission by public representatives of their comments on water use permit issuance, excluding setting of different deadlines in different legal acts.
 - Define the procedure of presentation of public opinions on water use permit issuance (e.g. written, verbal, if those are provided in course of public consultations, or electronically), the ways of their consideration (through public consultations or closed sessions).

8. Exercising Supervision/Control

8.1 Analysis of the Current Legal Regulation

Legislation regulating the issues of environmental sector in Armenia, particularly protection of water resources is quite voluminous. It incorporates the RA Water Code, the RA Law “On National Water Program”, the RA Law “On Nature Protection Control”, a number of the RA Government Decrees, including the RA Government Decrees No. 315-N “On defining bodies exercising state control in the area of protection of water resources and water systems, and the functions thereof”, dated 20.03.2003, No. 1149-N “On approving the Charter and structure of the State Environmental Inspectorate of the RA Ministry of Nature Protection Staff”, dated 25.07.2002, No. 649-N “On approving the Charter and the structure of the Water Resources Management Agency of the Staff of the RA Ministry of Nature Protection Staff”, dated as of 14.04.2004, the RA Prime Minister's Decree No. 5-N “On approving the list of basin management organizations of the Water Resources Management Agency at the RA Ministry of Nature Protection, the Agency's Charter and the timetable for switching to water basin management”, dated 10.01.2003, the RA Government Decree No. 23-N “On defining the requirements of use and protection of water resources by classification”, dated 14.01.2010, etc.

1) Among the priority issues on water supply and sanitation, Article 16 of the RA Law “On National Water Program” states:

- exercising monitoring of and *control* over the companies providing water supply and wastewater services.
- defining and *supervision* of the minimum technical requirements to operation;
- ensuring *supervision* over the quality and management of drinking water supply, drainage, irrigation and wastewater treatment services.

The RA Law “On the National Water Program”, as well as the other above stated legal acts define the following ways to attain the goal of environmental protection and reasonable use of natural resources, as well as compliance with the nature protection law through exercise of 1. control and 2. supervision.

The RA Law lacks any coordinated and unified approach related to entities, cases, limits and mechanisms for making use of the aforementioned ways to achieve water resources protection. For example, in accordance with Subparagraphs 5 and 19, Paragraph 1 of Article 10 of Code, Agency oversees, respectively: 1. application of water standards; 2. according to the requirements of the National Water Program, implementation the norms established in the area of water resources use and protection in respect to the compliance with the established quotas and limitations. According to Paragraph 4 of Article 66 of Code, Agency shall ensure the conformity of water qualitative criteria to the established standards through oversight conducted at least twice a year. Nevertheless, the RA Government Decree No. 649-N “On approving the Charter and the structure of the Water Resource Management Agency of the Staff of the RA Ministry of Nature Protection”, dated 14.04.2004, does not provide for such function to Agency. Moreover, according to Article 7 of the RA Law “On Nature Protection Control”, nature protection control shall be ensured by the RA Government and an authorized state government body in the nature protection sector, which, according to the RA Government Decree No. 1237-N “On establishing “Ministry of Nature Protection” State enterprise and approving the regulation and the staff chart”, dated 08.08.2002, is the RA Ministry of Nature Protection on behalf of the State Environmental Inspectorate. Such problem is available also in Article 11 of Code, according to Paragraph 2 (6) of which water basin management bodies shall establish extraction quantities and regimes upon the approval by Agency, as well as implement and control the measurement of water extraction. In this regard, there is a contradiction between Code and Regulation on basin management organizations referred to in Annex 2 of the RA Prime Minister's Decree No. 5-N “On approving the list of basin management organizations of the Water Resources Management Agency at the RA Ministry of Nature Protection, the Agency's Charter and the timetable for switching to water basin management”, dated 10.01.2003, as the latter fails to provide for the control function for the water basin management bodies.

Distinction between the concepts of nature protection control and supervision, and definitions thereof are provided for under Article 4 of the RA Law “On Nature Protection Control”.

1. nature protection control is inspection conducted by the State Environmental Inspectorate (Inspector) in compliance with the procedure defined under the RA laws, aiming at

compliance with the norms on protection of atmosphere, water, land, plant and animal life, including forests, and specially and generally protected nature areas (trees, bushes, parks and other green zones), their rehabilitation, rational (efficient) use of natural resources, impact on the environment during usage of the entrails of the earth, as well as life safety, safe use of hazardous materials and wastes, radioactive pollution, registration of the payers of nature protection and nature use fees (except for the usage of the entrails of the earth), calculation of the actual volumes considered as objects of the charge (except for the usage of the entrails of the earth), submission of administrative statistical reports and other norms defined under the RA legislation.

2. Nature protection supervision represents functions performed by state government and local self-government bodies and organizations pursuant to the procedure defined under law, and is aimed at compliance with the requirements of the environmental legislation by the structures of their subordination or those under their authority, including land areas of common use (streets, squares, parks and other areas used by the public).

In view of the aforementioned definitions, the control and supervision functions differ by 1. the entities exercising the functions; 2. the objects of protection (directions); 3. the volumes of implementation; 4. mechanisms and procedure (it would be even true to state that the nature protection supervision mechanisms are not at all stipulated under the above stated law).

2) Supervision function

Chapter 15 of Code regulates the objectives of protection and state supervision of water resources. Article 99 states that the water resources in the RA shall be subject to protection and prescribes the primary requirements towards the protection. According to Paragraph 3 of this Article, in instances of violation of the requirements set forth under Paragraph 3 of this Article, water resource use shall be restricted, suspended or prohibited by procedures set forth in the legislation.

According to Article 107 of Code, the state supervision in the area of protection of water resources shall be carried out by authorized bodies in compliance with the law. Particularly, in accordance with Order No. 876 issued by the RA Minister of Health “On approving the sanitary norms and rules No.2-III-A2-1 “On drinking water. Hygienic requirements to the quality of water from centralized water supply systems. Quality control”, dated 25.12.2002, heads of the territorial

bodies of the State Hygiene and Anti-Epidemic Inspectorate (SHA EI) at the RA Ministry of Health are obliged to define supervision over “Drinking water. The hygienic requirements to the quality of water from centralized water supply systems”. Production supervision and sanitary-epidemic control shall be exercised over the quality of drinking water. Production supervision of the drinking water quality shall be ensured by organization conducting the operation of the water supply system, and the state sanitary-epidemic control over water quality shall be implemented by SHA EI bodies by planned procedure and through sanitary-epidemic instructions.

As per the RA Government Decree No. 1182-N “On approving regulation on supervision over impacts on water resources in watersheds and wetland areas”, dated 14.08.2003, supervision of impacts on water resource in watersheds and wetland areas by the procedure and in cases provided for under law shall be exercised by the RA Ministry of Nature Protection, the RA Ministry of Health, the RA Ministry of Agriculture, the RA Ministry of Emergency Situations, territorial government and local self-government bodies within their own competences.

Agency is also categorized among the bodies having the authority to exercise state supervision in the sphere of water resources protection. Agency exercises supervision in the following directions:

- a) Activity performed by structures of its subordination;
- b) Entities under its authorities, as well as supervision over compliance with other environmental legislative requirements, including water use permit issuance.

a) *Supervision of activity performed by structures of Agency's subordination*

This function is not clearly defined under Annex 1 of the RA Government Decree No. 649-N “On approving the Charter and the structure of the Water Resources Management Agency of the Staff of the RA Ministry of Nature Protection”, dated 14.04.2004.

However, one may infer from a set of norms under the stated by-law that Agency is vested with authority to exercise supervision on the structures of its subordination.

For example, Point 10 of the Agency's Charter defines that Head of Agency shall be responsible of the quality of services provided in the sphere of water resources management and protection, as well as for their conformity with the laws and other legal acts. As the Agency's basin management organizations are its territorial units, Head of Agency must be also responsible for their

activity. Thus, it is assumed that Head of Agency shall be vested with an authority to exercise supervision over the Agency's basin management organizations.

However, Point 12 of the Agency's Charter, prescribing the authorities of Head of Agency, also lacks any supervision authority in the aforementioned direction. Once again, it could be reproduced by conducting analysis of Point 12 (e), g), j)), according to which Head of Agency shall:

- regularly submit information on the course of activity performed by Agency to the Minister or respective Deputy Minister;
- define the authorities of structural and territorial units of Agency in compliance with the Charter of Ministry and Agency;
- Listen to the reports on the activity of Agency's structural and territorial units; discuss the inspection results of their activity.

According to Point 12 (k) of Charter, Head of Agency shall exercise *control* over protection of the state ownership handed over for use by the Agency's structural and territorial units, which is not in conformity with the logic of the function performed by Agency, in view of the stated reasoning. We think that in Point 12 (k), the authority of Head of Agency to exercise control should be replaced by the authority of exercising supervision.

Paragraph 2 (e)) of Annex 2 of the RA Prime Minister's Decree No. 5-N “On approving the list of basin management organizations of the Water Resources Management Agency at the RA Ministry of Nature Protection, the Agency's Charter and the timetable for switching to water basin management”, dated 10.01.2003, envisages that basin management organizations shall submit report on the activity performed by them to Agency by defined procedure.

Hence, Agency is unequivocally vested with the authority of exercising supervision over the structures of its subordination, including basin management organizations, which should be explicitly prescribed in the Agency's Charter.

b) Supervision over entities under Agency's authorities, as well as supervision on compliance with other environmental legislative requirements, including water use permit issuance.

According to Article 107 of Code, bodies exercising supervision in the area of water resources protection shall exercise supervision over use and protection of water resources.

According to Point 8 of Agency's Charter, Agency shall exercise supervision over. 1. use, recording and regime of water resources as envisaged by extraction of water, water meter structure devices, as well as actual protection of water resources; 2. compliance with quantitative and qualitative criteria of wastewater discharged into water basins.

In case of decentralization of the water use permit issuance authority, the supervision function in the aforementioned directions and the authorities deriving thereof shall be defined also for territorial units – basin management organizations.

Some objectives provided for under Article 11 of Code shall be implemented by basin management organizations (territorial units) through exercising supervision; for example 1. ensuring protection of water resources; 2. ensuring that the level of used water flows does not exceed the limits allowed by water use permit, on which a report shall be submitted to Agency; 3. they define extraction quantities and regime upon Agency's approval.

It should be noted that the directions of exercising supervision by basin management organizations is already defined in Paragraph 2 of Annex 2 of the RA Prime Minister's Decree No. 5-N "On approving the list of basin management organizations of the Water Resources Management Agency at the RA Ministry of Nature Protection, the Agency's Charter and the timetable for switching to water basin management", dated 10.01.2003, in respect to:

- compliance with the conditions provided for under water use permit and not violating the standards;
- use, recording, regime of water resources as envisaged by extraction of water, the operation of water meter structure devices, as well as protection of water protection zones;
- quantitative and qualitative criteria of wastewater discharged into basins through specialized laboratories.

Article 32 of Code envisages that each water use permit shall incorporate control mechanisms for ensuring the water use permit conditions. For the time being, this requirement of Code is fulfilled by providing the condition for installing water meter for the purpose of recording extraction of water

in water use permit. According to Paragraph 5 of Article 34 of Code, should the terms of the water use permit be violated, prior to water use permit suspension, Agency shall determine such reasonable time as the water use permit holder makes a clear showing that future activity shall conform to permit conditions. We find it advisable that the limits of the reasonable time periods referred to in Paragraph 5 of Article 34 of Code should be more clarified, by, e.g. setting 15 working days.

Based on the aforementioned, not only water use permit shall set forth mechanisms for control, but also mechanisms for supervision, particularly supervision mechanisms to be exercised by Agency and its basin management organizations. However, neither Chapter 15 of Code, nor any other legal act prescribes mechanisms of supervision. The legislation also lacks the procedures for exercising supervision, as well as that for formulation of the supervision results, which endangers ensuring the quality of services provided in the area of water resources management and protection, as well as responsibility of Agency for their conformity with legislation.

According to Article 107 of Code, bodies exercising supervision of water resources protection shall submit annual report to the National Water Council on the process of implementation of the National Water Program.

Article 34 of the RA Law “On National Water Program” envisages that authorized state bodies responsible for the activities prescribed in Program shall, prior to March 25 of the subsequent year of each year, submit to the RA Government annual report on activities carried out each year, and when necessary, recommendations on making amendments to the National Water Program. By May 15 of the particular year, on the basis of the reports elaborated by the RA Government authorized body and the recommendations submitted by the National Water Council, it shall submit to the National Assembly annual communication on performance of the activities of the particular year, as well as the amendments recommended to be made in the National Water Program. Report submitted by bodies responsible for performing the activities includes complete information on the course of performance of activities (those completed and those that are underway), the responsible party, used financial resources, as well as the justification of activities that have not been finalized or completed.

In its turn, Point 11 of the Agency's Charter envisages that Head of Agency shall be accountable to the RA Prime Minister, the RA Minister of Nature Protection, the respective Deputy

Minister coordinating the Agency's activity, as well as the Chief of Staff of the RA Ministry of Nature Protection in cases provided for under Law.

3) Control function

Article 7 of Code sets forth a set of objectives, including:

- conservation and protection of water resources, including mitigation of pollution, maintenance and supervision of water standards and water level of the national water reserve;
- safe and smooth work of water supply and wastewater systems provision of normal conditions for their use and maintenance and supervision;
- Provision of conditions for HTSs safe and smooth use and maintenance and supervision.

The main directions of supervision ensue from this norm:

3.1) conservation and protection of water resources;

3.2) protection of water systems;

3.3) ensuring conditions for use and protection of HTSs. Thus, in the water sector in Armenia, the function of control is exercised in different directions, in fact, identifying the entities of their control.

As per the RA Government Decree No. 315-N “On defining bodies exercising state control in the area of protection of water resources and water systems, and the functions thereof”, dated 20.03.2003, state control in the sphere of water resources protection shall be exercised by the RA Ministry of Nature Protection on behalf of the State Environmental Inspectorate, and in the sphere of water systems protection – the State Committee of Water Economy adjacent to the RA Government.

3.1) The State Environmental Inspectorate exercising state control in the sphere of protection of water resources has the following functions – control over:

- implementation of the National Water Program and basin management plans on the part of water resources management;
- compliance with the requirements of the water use permits;
- recording water extraction from water resources and harmful substances discharged into water resources;

- implementation of activities focusing on protection of the national water reserve and water resources;
- purposefulness of the volumes of water extraction for water use and wastewater discharged into water resources, as well as maintenance of quantities of harmful substances contained therein;
- protection of allowed volumes of extraction of water from water resources;
- compliance with the requirements of the norms on protection and use of water resources by water users and, water ecosystems protection zones (except for the sanitary protection of systems and inalienable zones);
- organization and realization of water resources supply and demand activity;
- normative quantities of water losses in water systems.

Annex 1 of the RA Government Decree No. 1149-N “On approving the Charter and structure of the State Environmental Inspectorate of the Staff of the RA Ministry of Nature Protection” (Charter of the State Environmental Inspectorate), dated 25.07.2002, sets forth control functions reserved to the State Environmental Inspectorate and sanctions applicable in the sphere of environmental protection, reasonable usage and reproduction of natural resources.

Paragraph 1 (2) of Article 22 of the RA Law “On Nature Protection Control” and Point 8 (b) of Charter of State Environmental Inspectorate set forth the following directions for exercising control in the sphere of water resources use and protection:

- compliance with the limitations of unauthorized and non-purposeful use of water resources;
- compliance with the water use requirements requiring water use permit and free water use;
- compliance with limitations of pollution of water resource exceeding the defined quantities and water regime in watersheds;
- compliance with the rules of administering the state registration of water resources;
- compliance with the requirements of installation of waste burial sites, springs, cemeteries and other facilities that may have indirect negative impact on water resources;

- compliance with the requirements defined for performing work having impact on the condition of water resources;
 - compliance with the requirements defined for making use of water resources for recreational and sporting purposes.
- compliance with the quantities and limitations set forth in the norms for water resources protection and use, as defined under the National Water Program;
- the purposefulness of use of water extraction volumes of water resources and maintenance of the quantities of wastewater discharged into water resources, as well as harmful materials contained therein;
 - maintenance of the allowed volumes of extraction of water from water resources;
 - compliance with the requirements of the norms on protection and use of water resources by water users for protection zones of aquatic ecosystems (except for the sanitary protection of systems and inalienable zones);
 - maintenance of the normative quantities of water losses in water systems;

As an essential issue it would be appropriate to specify that control on the aforementioned directions assumes also control over the quality of the monitoring data received. Paragraph 3 of Article 21 of the RA Law “The National Water Program” envisages that the monitoring data quality control and evaluation system and elaboration of the plan of its introduction should be incorporated in the monitoring program. Besides, Annex enclosed with the excerpt from Protocol No. 19 of the RA Government Session “On approving the Concept Paper on the RA State Environmental Monitoring”, dated 18.05.2006, defines the supervision over the national system for the state environmental monitoring as a function of authorized bodies conducting management in the sphere of the State Environmental Monitoring.

According to Article 23 of the RA Law “On Nature Protection Control”, nature protection control shall be exercised through inspections and investigations. As stated in Article 26 of Law, where violation of the requirements of environmental legislation is detected, the RA Chief Environmental Inspector or, upon the latter’s assignment, Senior State Territorial Environmental Inspector shall duly warn the inspected entity on the violation of environmental legislation, stating

the measures for elimination of the consequences of violation, including the time periods for their fulfillment. Failure to eliminate the consequences of violation by inspected entity in the defined period following the warning and/or failure to properly inform about it shall be a ground for conducting new inspections. In course of conducting inspections, the aforementioned warning shall be prohibited.

Paragraph 3 of Article 26 defines an effective and useful legal norm of practical activity, according to which prevention of any violation of the environmental legislation is a procedure for doing explanatory work of providing information on environmental legislation and compliance with the requirements of normative legal acts, which shall be implemented through meetings, consultations or other means of communications in course of both investigations and conducting inspections in the entities being inspected.

However, Point 10 of Charter of the State Environmental Inspectorate provides for only one type (mechanism) of exercising control by the State Environmental Inspectorate, i.e. conducting inspections at entities pursuant to the procedure defined under the RA Law, by completely neglecting the other aforementioned mechanisms of environmental control.

In accordance with Article 27 of the RA Law “On Nature Protection Control”, in course of proceedings on cases of state environmental inspections, officials conduct investigation and make decisions. Head of the authorized body, the RA Chief State Environmental Inspector and Senior State Territorial Environmental Inspector shall be authorized to make decisions on administrative offenses, as well as other decisions (hereinafter, decisions) in accordance with orders, assignments and recommendations issued by them, and State Territorial Environmental Inspector shall have such authority in cases and by procedures defined by Head of authorized body.

According to Article 242 of the RA Code of Administrative Offenses, bodies exercising *state supervision* over compliance with environmental legislation, shall investigate cases on administrative offenses referred to in Article 49 (except for safe performance of mining work), 50-52, 54² (on the part of land protection), 54⁴, 61, 62 (on the part of protection of water resources), 63², 63⁶ (on the part of natural water bodies), 64-66, 68-79, 80-87 (on the part of violation of norms and rules defined for

protection of atmospheric air), 88-91, 92 (on the part of protection of wild animals), 93, 94, 94¹, Paragraph 1 of Article 157, Articles 169.⁴ and 169.¹⁹, 201¹, 201².

As mentioned for many times, the body exercising environmental *control* is vested with the authority to investigate the cases of administrative offenses on behalf of state inspectors. Hence, it is necessary to make an appropriate amendment to Article 242 of the RA Code of Administrative Offenses.

Cases are investigated within a five-day period not later than the tenth day of drawing up an appropriate protocol, with the exception of cases of administrative offenses, investigation of which is conducted within the time periods and by procedure defined under appropriate law. Case investigation is carried out through comparison of facts and investigation results recorded in course of investigations; in case of their inconsistency, by assignment of the aforementioned officials, inspections can be extended by the procedure referred to in the RA Law “On Organizing and Conducting Audits” (see Chapter 9).

The State Environmental Inspectorate is also authorized to conduct inspections to conform the activity of Agency, including the Agency's BMOs to the requirements of the RA laws.

3.2) In the sphere of protection of water resources, the State Committee of Water Economy adjacent to the RA Government has the following functions – control over:

- use and protection of water systems pursuant to the procedure defined under law and in compliance with the technical conditions;
- compliance with the requirements in the process of irrigation and drinking water supply and in the water use process, as defined by law and other legal acts;
- sanitary maintenance of water systems and protection of inalienable zones;
- efficient use of water systems, renovation works, as well as normative quantities of water losses in the systems.

3.3) According to Paragraph 8 (f) and g)) of Point 8 of Charter approved by the RA Government Decree No. 1400-N “On approving Charter and structure of the State Committee of Water Economy at the RA Ministry of Agriculture”, dated as of 05.09.2002, the goals of safety regulation of and control over the use of hydro technical structures (HTS), as well as control over

work organization in non-competitive water supply systems by the conditions of the water system use permit are placed before the State Committee of Water Economy.

8.2 Recommendations on the RA Legislation Reform

- With the view of securing and protection of water resources, clearly distinguish the entities exercising the functions of supervision and control, incidents, limits, directions, mechanisms, procedures and formulation of results.
- Prescribe the function of exercising by Agency supervision in the sphere of management, as well as ensuring and protection of water resources, and the directions thereof.
- Define the mechanisms for exercising, by Agency, supervision in the sphere of management, as well as ensuring and protection of water resources, the procedure, the forms and procedure of result formulation.
- Clarify the formats and timings of accountability, by Agency, of own activity.
- Develop the idea of conducting explanatory work aiming at prevention of the violation of the nature protection law, as referred to in Paragraph 3 of Article 26 of the RA Law “On Nature Protection Control”, providing, inter alia, for appropriate procedures by the Charter of the State Environmental Inspectorate.

9. Regulation of Dispute Resolution Related to Water Use Permits, Legal Consequences Resulting from Violations, Securing the Mechanisms for Holding Liable

9.1 Analysis of the Current Legal Regulation

1) Decisions made by authorized bodies in the water sector may be appealed by interested parties pursuant to the procedure defined under Code and other legal acts.

According to Article 109 of Code, disputes in water relations related to use and protection of water resources shall be resolved by the following bodies authorized by the Government to regulate water relations:

1.1) Disputes arisen in the water relations, including those related to water use permits shall be resolved by the Dispute Resolution Commission established in the composition of the National Water Council (hereinafter, Council), the activity procedure of which is defined under Article 9 and Chapter

16 of Code, and the RA Prime Minister's Decision No. 614-N "On establishing Dispute Resolution Commission, and approving the Charter and composition of the Dispute Resolution Commission", dated as of 21.10.2001.

In accordance with the main objectives placed before the Commission, the latter shall:

1. resolve the disputes arisen in water relations, except for cases, where the Republic of Armenia acts as a party;
2. suggest the parties to abstain, by mutual consent, from the dispute resolution through judicial means before Commission makes a decision on the dispute resolution.

Regulation by Commission defined under Annex 1 enclosed with the RA Prime Minister's Decision No. 614-N "On establishing Dispute Resolution Commission, and approving the Charter and composition of the Dispute Resolution Commission", dated as of 21.10.2001, fails to prescribe the form and the procedure of filing an application by persons on restoration of their violated rights. Only Point 7 of Regulation envisages that Commission shall perform its activity through sessions convened when necessary.

Points 8 and 9 of Regulation envisage that only the members in the composition of Commission shall participate the Commission's sessions. Article 9 of Code states that "The Commission may use mediation to resolve disputes, and with the consent of all parties, serve as a binding arbitrator". To carry out this mission of mediation more efficiently, it is necessary to involve the parties of the dispute and/or their representatives as participants of sessions, by defining in the legislation the procedure of summoning them, as well as participating in session and submitting evidence by dispute parties to Commission. On grounds of expediency, Commission must have an opportunity of choice of the procedure of the dispute parties participation; for example, to listen to all participants in presence of the dispute parties or to prefer listening to each party separately, thereafter coming to a common conclusion by proposing ways of dispute resolution to parties.

According to Point 5 (d)) of Regulation, Commission may request from appropriate bodies, where relevant, and receive documents and information notes necessary for the dispute resolution

Regulation defines the procedure of decision making by Commission, according to which decisions shall be made, if more than half of the members present at the session have voted for them.

As the Commissions' decisions are not legally binding, and where no agreement has been reached between parties, or the agreement has not been complied with, the issue shall be resolved through judicial means, it is more advisable to define another procedure of adoption of final act by Commission. For example, compilation, by Commission, of a document of common agreement between parties based on the comments made by dispute parties, the power of which shall be established by the signature of the Chairperson of Commission, the Commission members, and the Parties' signatures. Such approach contributes to reduction of dispute resolution cases related to water use through judicial means, as the mediation role of Commission will be directed to achieving a common denominator between the dispute parties.

1.2) Article 111 of Code provides for the procedure of resolution of disputes evolved within operation of Water User Associations and Water User Association Unions by the Council regulating Water User Associations and Water User Association Unions. The procedure of Council's activity is defined under the RA Government Decree No. 1678-N "On establishing Council regulating the activity of the RA Water User Associations and Water User Association Unions, approval of Council's Charter and the executive body", dated 17.10.2002. Where no agreement has been reached between parties within the regulating council, disputes shall be also resolved through judicial means.

1.3) According to Article 112 of Code, disputes evolved over transboundary water resources use and protection shall be resolved pursuant to the norms established by international agreements.

2) Article 67 of Code defines the requirements of compliance with water standards, in case of violation of which, the water use shall be considered illegal and liability established by legislation shall apply.

If the water use permit establishes norms that allow for deviations from water standards and may lead to cumulative impact, than these permits shall be considered as invalid according to the procedure established by the legislation.

3) According to Article 115 of Code, water resources or water systems used without authorization, shall be returned to appropriate party without any refund of costs incurred during the unauthorized use thereof.

According to Article 116 of Code, persons violating requirements of this Code shall be obliged to compensate for the losses incurred as a result of their activity in the procedure established by law. Officials in charge of causing losses to water users shall be held liable in a procedure established by the legislation.

According to Article 117 of Code, should any authorized body acting in the area of water relations according to this Code be aware of any person violating the requirements of this Code, the head of respective body shall provide given person with a violation notice. The violation notice may call for the immediate halt of specific harm causing activity pending resolution of the matter according to the procedures described in this Code by stating the penalties in case of failure to halt the actions²⁴.

Failure to follow the requirements in notice shall result in imposition of fines for each day between the date of issue of notice and compliance with the requirements stated in notice. Fine may be defined in the form of increasing fines.

Should the notified person fail to comply with the requirements stated therein, he/she shall be held liable pursuant to the procedure defined under legislation.

If a person that pollutes water resources fails to comply with the direction stated in the violation notice issued by Agency within a reasonable period of time, Agency may pursue the remedies stated in the violation notice that are necessary to mitigate the damage caused to water resources, including those to protect the volume of the national water reserve and/or water quality standards. In this case Agency shall, according to the procedures established by the legislation, file a claim to the court to reimburse costs made by it from the following persons:

- 1) person who previously was or currently is responsible for, or who directly or indirectly has contributed to the pollution;

²⁴ Article 369 of the RA Civil Code: 1. A penalty (or forfeiture or fine) is a monetary sum determined by a statute or contract that a debtor must pay to the creditor in case of nonperformance or improper performance of an obligation, in particular in case of a delay in performance. In demanding payment of a penalty, the creditor is not obligated to prove that losses were caused to it. 2. A penalty secures only a valid claim. 3. The creditor does not have the right to demand payment of a penalty if the debtor does not bear liability for the nonperformance or improper performance of the obligation.

- 2) the owner of land, at the time of use of which the pollution or the potential for pollution has occurred;
- 3) any person who has been entitled to use the land at the time when the pollution or the potential for pollution has occurred;
- 4) any person, who, as a result of own negligence, failed to prevent the pollution of water resources.

The Agency's authorities as provided for under Article 117 of Code are not available in the Agency's Regulation approved in the RA Government Decree No. 649-N "On approving the Charter and the structure of the Water Resource Management Agency of the Staff of the RA Ministry of Nature Protection", dated 14.04.2004. Neither are those provided for under Regulation approved by the RA Prime Minister's Decree No. 5-N "On approving the list of basin management organizations of the Water Resources Management Agency at the RA Ministry of Nature Protection, the Agency's Charter and the timetable for switching to water basin management", dated 10.01.2003, as the BMOs' authorities.

According to Article 27 of the RA Law "On Nature Protection Control", in view of the case investigation results, state environmental inspectors are authorized to file a claim, along with the environmental impact assessment, with inspected entity on compensation for the loss caused to the environment, or to seize the illegally acquired natural resources, contingent on the nature of violation, in cases and pursuant to procedure defined under law.

4) Violation of the requirements of water use permit issuance, water resources use and protection, as defined under law, gives rise to a set of legal consequences provided for under the RA Water Code, the RA Civil Code, the RA Code of Administrative Offenses, the RA Criminal Code.

4.1) *Revocation of water use permit*

In accordance with Article 34 of Code, water use permits that are issued by violating the requirements of this Code shall be considered null and void by procedures established under the legislation. Failure to fulfill associated duties will be considered a breach of the terms of water use permit with all remedies available under law applying.

Point 8 (l) of Annex enclosed with the RA Government Decree No. 649-N “On approving the Charter and the structure of the Water Resource Management Agency of the Staff of the RA Ministry of Nature Protection”, dated 14.04.2004, provides for the procedure of revocation of the Agency’s water use permit, where the requirements of water use permits are violated by water users.

4.2) Suspension of water use permit

Article 34 of Code defines that, where necessary to safeguard the public interest, to comply with water standards and to protect environment, a water use permit may be suspended by Agency according to procedures established by law. Unless the reason for the suspension is any emergency situation, such as drought or pollution, and other disasters, the water use permit holder may be reimbursed for the caused damages, including lost profits.

Where the terms of the water use permit are violated, prior to water use permit suspension, Agency shall determine such reasonable time as the water use permit holder makes a clear showing that future activity shall conform to permit conditions.

According to Article 27 of the RA Law “On Nature Protection Control”, given the case investigation results, state environmental inspectors may make the following decisions on 1. filing with appropriate bodies (Agency in case of suspension of water use permit) a solicitation on suspension or recognizing as invalid appropriate agreements, permits, licenses and patents of persons that have committed violation; 2. giving assignments to eliminate the detected legal violations.

In accordance with Paragraph 13 of the RA Government Decree No. 1149-N “On approving the Charter and structure of the State Environmental Inspectorate of Staff of the RA Ministry of Nature Protection Staff”, dated 25.07.2002, state environmental inspectors shall also be authorized to suspend the activities by persons having committed violation.

4.3) Termination of water use permit

Article 36 of Code prescribes cases, where water use permit shall be considered as terminated and recognized null and void:

- where water use permit holders fail to exercise their right gained by the permit for three consecutive years without any legal grounds;

- where water use permit holder is required, in cases stipulated under Code, to secure a water system use permit, whereas such person fails to get it within one-year period.

In accordance with Paragraph 13 of the RA Government Decree No. 1149-N “On approving the Charter and structure of the State Environmental Inspectorate of Staff of the RA Ministry of Nature Protection”, dated 25.07.2002, state environmental inspectors are authorized to terminate the activities of persons having committed violation.

For inexplicable reasons, Agency has not been granted authority to terminate water use permit that, we think, is a gap in the law. Representing a body that exercises supervision in the sphere of water use, Agency shall unequivocally have all the chances to identify the grounds for termination of water use permit and to make an appropriate decision.

4.4) Recognising water use permits invalid

In accordance with Article 113 of Code, transactions concluded by violating state property right, water-supply and wastewater discharge systems property, authorities of state and local self-government bodies in water relations, as well as the principles of fees in water relations established by this Code shall be invalid.

Transactions concluded in violation of the requirements of this Code and related to obtaining the right to use of water resources, water supply and wastewater discharge systems, its transfer, deliver for use or transfer in other manner, use and protection of water resources, water-supply and wastewater discharge systems, use of transboundary water resources, generating harmful impact on waters, damaging safety of HTSs, as well as other transactions concluded in violation of the requirements of this Code shall be considered invalid.

Violation of the requirements of this Code shall result in liability in a procedure established by the legislation.

In accordance with Article 15 of the RA Civil Code, an act of a state body or local self-government body not corresponding to a statute or other legal acts and violating civil law rights or other interests protected by statute of a citizen or legal person may be declared invalid by a court.

§ 2 of Chapter 18 of the RA Civil Code is dedicated to issues of invalidity of transactions. As per Article 303, a transaction is invalid by virtue of its declaration as such by a court (an avoidable

transaction) or independent of such declaration (a void transaction). A claim for the declaration of an avoidable transaction to be invalid may be brought by the persons indicated in the present Code. A claim for the application of the consequences of the invalidity of a void transaction may be brought by any interested person. The court has the right to apply such consequences on its own initiative.

4.5) *Administrative and criminal liability*

Article 114 of Code provides of a list of activities, performance of which shall results in administrative or criminal liability, including unauthorized occupancy of water systems or unauthorized or non-purposeful use of water; conducting water use without first securing a necessary water use permit and/or failure to comply with the requirements of water use permit; polluting waters above quotas established by the legislation; violation of water-protective regime within watershed, causing water pollution, erosion and other harmful phenomena; conducting unauthorized operations influencing the state of waters.

4.5.1 Chapter 7 of the RA Code of Administrative Offenses addresses administrative offenses in the sphere of natural environment.

Particularly, Violation of the water resources protection rules, unauthorized operations affecting water (Article 61); Violation of the rules for extraction of water, water supply and water use (Article 62); Damaging water systems and devices, breaking the rules of their use (Article 63); Violation of the rules of water systems sanitary protection and unalienable zones (Article 63/1); Conducting water use without water use permit or failure to comply with water use permit (Article 63/2); Using water systems without water systems use permit or use of water systems with violation of the conditions of the water systems use permit (Article 63/3).

Article 239 of the RA Code of Administrative Offenses defines that the authorized Water System Management Body shall investigate the cases of administrative offenses provided for under Article 50.¹, Article 62 (on the part of water systems), Articles 63, 63¹, 63³, 63⁴, 63⁵, Article 63⁶ (on the part of water systems), Article 145 (on the part of water systems) and Article 152 (on the part of water pump water supply and waste water systems).

In accordance with Point 12 of the RA Government Decree No. 1149-N “On approving the Charter and structure of the State Environmental Inspectorate of the RA Ministry of Nature

Protection Staff, dated 25.07.2002, proceedings on administrative offenses shall be handled by state environmental inspectors.

On behalf of the authorized water system management body, the following shall have the right to investigate cases of administrative violations and to impose administrative penalties:

- The RA chief state inspector of the RA water system use and protection: penalty imposed on citizens – in the amount of 100-fold of the defined minimum salary, and penalty imposed on officials – 150-fold of the minimum salary defined.
- Deputy state inspector of the RA water system use and protection: penalty imposed on citizens – 80-fold of the defined minimum salary, and penalty imposed on officials – 120-fold of the defined minimum salary;
- Senior state inspectors of water system use and protection: penalty imposed on citizens – 70-fold of the defined minimum salary, and penalty imposed on officials – 100-fold of the defined minimum salary.
- Inspectors of water system use and protection: penalty imposed on citizens – 50-fold of the defined minimum salary, and penalty imposed on officials – 80-fold of the defined minimum salary.

4.5.2 Chapter 27 of the RA Criminal Code defines the list of offenses against the environmental safety, including pollution of water – Article 287, pollution of atmospheric air – Article 289, breach of rules for protection of fish stock – Article 293, Ecocide - 394, breach of regime of specially protected nature zones – Article 298, etc.

In accordance with Article 27 of the RA Law “On Nature Protection Control”, inspectors exercising environmental control as per case investigation results shall be obliged to file a report with competent bodies on charging persons committed crime with criminal liability.

Notwithstanding that no legal act defines that Agency shall be obliged to file a report with competent bodies on charging persons committed crime with criminal liability, it derives from the legal logic.

9.2 Recommendations on the RA Legislation Reform

- Envisage for the Dispute Resolution Commission, founded in the composition of the National Water Council, authorities corresponding to the status of mediator aiming at dispute resolution, by defining new procedures of filing, by competent persons, applications with Commission, participating in the Commissions sessions, and decision-making by Commission.
- Agency's Direction on immediate termination of activity causing harm in case of violation of the requirements of Code by any person in the sphere of water relations – define the authorities of filing a claim with court for securing measures that are stated in Direction by Agency and for compensation for the expenses made by Agency, in case of filing notification and failure to stop illegal activity, in Agency's Regulation approved in the RA Government Decree No. 649-N “On approving the Charter and the structure of the Water Resource Management Agency of the Staff of the RA Ministry of Nature Protection”, dated 14.04.2004, and in the RA Prime Minister's Decree No. 5-N “On approving the list of basin management organizations of the Water Resources Management Agency at the RA Ministry of Nature Protection, the Agency's Charter and the timetable for switching to water basin management”, dated 10.01.2003, as the authorities of Basin Management Organizations.
- Vest Agency with an authority to terminate water use permits.