

Uttarakhand Ground Water (Regulation and Control of Development and Management) Act, 2016

UTTARAKHAND

India

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Act 12 of 2016

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Uttarakhand Ground Water (Regulation and Control of Development and Management) Act, 2016(Act No. 12 of 2016)An Act to regulate and control the development and management of ground water and matters connected therewith.Be it enacted by the Legislative Assembly of Uttarakhand Pradesh in the Sixty-seventh Year of the Republic of India as follows -

1. Short title, extent and commencement.

(1)This Act may be called the Uttarakhand Ground Water (Regulation and Control of Development and Management) Act, 2016.(2)It extends to the whole of the State of Uttarakhand.(3)It shall come into force on such date as the State Government may by notification, in the Official Gazette, appoint.

2. Act to have overriding effect.

- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Kumoun and Garhwal Water (Collection, Retention and Distribution) Act, 1975 and Uttarakhand Water Management and Regulatory Act, 2013 or in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

3. Definitions.

- In this Act, unless the context otherwise requires, -(a)"Act" means the Uttarakhand Pradesh Ground Water (Regulation and Control of Development and Management) Act;(b)"artificial recharge to ground water" means the process by which ground water reservoir is augmented beyond the natural condition of replenishment;(c)"Authority" means the Uttarakhand Pradesh Ground Water Authority established under Section 3 of the Act;(d)"drinking water" means water for

consumption or use by human population for drinking and for other domestic purposes, which shall include consumption or use of water for cooking, bathing, washing, cleansing and other day to day activities and shall include water meant for consumption by the livestock;(e)"Government" means the Government of Uttarakhand;(f)"ground water" means the water which exists below the ground surface in the zone of saturation and can be extracted through wells or any other means or emerges as springs and base flows in streams and rivers;(g)"Municipalities" means an institution of self Government constituted under Article 243-Q of the Constitution of India;(h)"Panchayat" means an institution of self Government constituted under Article 243-B of the Constitution of India;(i)"Prescribed" means prescribed by rules made under this Act;(j)"Rain water harvesting" means the process of collection and storage of rain water at surface or in sub surface aquifer;(k)"Royalty" means the royalty payable to the authority under Section 12 of this Act;(l)"Sink" with all its grammatical variations and cognate expression in relation to a well includes any digging, drilling or boring of new wells or deepening of the existing wells;(m)"User of ground water" means a person or an institution including a company or an industry or an establishment or a society, whether Government or not, who or which use ground water for any purpose;(n)"Structure" means any structure constructed for the search or extraction of ground water by any person, except the authorized officials of the State or Central Government for carrying out scientific investigations, exploration, development, augmentation, conservation, protection or management of ground water, this will include open well, dug well, bore well, dug-cum-bore well, tube well, filter point, collector well, infiltration gallery, recharge well, disposal well, or any of their combinations or variations or any mean by which ground water, springs or surface water is tapped except any manually operated device for extraction of ground water.

4. Establishment of a Ground Water Authority.

(1)The State Government may by notification in the Official Gazette, establish, with effect from such date as may be specified in the notification, an Authority to be known as "The Uttarakhand Ground Water Authority".(2)The Authority shall consist of the following.(a)An officer either in service or retired not below the rank of Chief Secretary or equivalent post to State Government and having minimum 3 year administrative experience in Drinking Water and Sanitation water sector, will be the Chairman of an authority. The Chairman shall be appointed for 5 years or up to the age of 65 years, whichever is earlier.(b)A representative of the Central Ground Water Board to be nominated by the Chairman, CGWB;(c)Five ex-officio members who will be representatives of the following departments which are concerned with survey, exploration, development and management of ground water to be appointed by the State Government -

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| (i) Minor Irrigation Department | An Officer, Minor Irrigation Department who havenot below the rank of Superintending Engineer. |
| (ii) State Forest Department | Principal Chief Conservator of Forest |
| (iii) Payjal Department | CGM/MD of Uttarakhand Jal Sansthan/UttarakhandPayjal Nigam-Member-Secretary |
| (iv) Science and TechnologyDepartment | Incharge, Uttarakhand Remote Sensing ApplicationCentre. |

(v) Department of Energy An Engineer not less than the rank of Superintending Engineer.
(d) Such other members not exceeding five, who in the opinion of the State Government have special knowledge or practical experience in matters relating to management of ground water resources. (3) The term of the manner of filling the vacancies and other conditions of service of the Chairman and other members shall be such as may be prescribed by State Government. (4) The members will advise the Chairman who will be the Chief Executive of the Authority.

5. Staff of the Authority.

(1) In order to enable the Authority to properly function or exercise the powers under the Act, the Government may appoint such number of technical personnel and other staff as it may consider necessary. (2) The functions and the terms and conditions of service of such employees shall be such as may be prescribed by the State Government.

6. Power to notify areas to regulate and control the development and management of ground water.

(1) The Authority shall function under the overall control and supervision of the State Government. (2) If the Authority, after consultation with various expert bodies, including Central Ground Water Authority is of the opinion that it is necessary or expedient in the public interest to control and regulate the extraction or the use or both of ground water in any form in any area, it will advise the Government to declare any such area to be notified area for the purposes of this Act will effect from such date as may be specified therein. This declaration will be notified in the Official Gazette: Provided that the date so specified in the notification shall not be earlier than three months from the date of the publication of the said notification. (3) Every such notification shall, in addition to its publication in the Official Gazette, be published in not less than one daily regional language newspaper having wide circulation in the State, and also be served in such manner as the Government may think fit and all or any of the following modes may be followed in effecting such service, namely - (a) by affixing a copy of the notification to some conspicuous part of the offices of the village Panchayats located in the said area; (b) by proclaiming by beat or drum or by means of loudspeakers the contents of the notification in the said area; (c) in such other manner as may be prescribed. (4) If in the opinion of the Authority, the availability of the ground water has improved in a notified area, it may advise the State Government to de-notify such area, and the State Government may do so according to the procedure prescribed above under Section 5(3) of the Act. (5) The Authority shall take steps to ensure that exploitation of ground water resources does not exceed the natural replenishment to the aquifers and wherever, there is mismatch, steps shall be taken to ensure augmentation of ground water resources in addition to regulatory measures. (6) The Authority shall maintain and upkeep the data base of ground water related information.

7. Grant of permit to extract and use ground water the notified area.

(1) Any user of ground water as defined under Section 3(f) desiring to construct the well in the notified area for any purpose either on payment of such fee as may be prescribed, apply to the

authority for grant of a permit, and shall not proceed with any activity connected with such construction unless a permit has been granted by the Authority: Provided that the person or persons will not have to obtain a permit if any well is proposed to be fitted with a hand operated manual pump or water is proposed to be withdrawn by manual devices. (2) Every application made under sub-section (1) shall be in such form and contain such particulars as may be prescribed by the Authority. (3) On receipt of an application under sub-section (1), if the Authority is satisfied that it shall not be against public interest to do so, it may grant subject to such conditions and restrictions as may be specified, a permit authorizing the extraction and use of ground water. The authority may impose condition of providing artificial recharge structures of appropriate size to be constructed by the applicant within a period as specified by the Authority: Provided that no person shall be refused a permit unless he has been given an opportunity of being heard. (4) The decision regarding grant or refusal of the permit shall be intimated by the Authority to the applicant within a period of 90 days from the date of decision. (5) In granting or refusing a permit under sub-section (3), the Authority shall have regard to - (a) the purpose or purposes for which water is to be used; (b) the existence of other competitive users; (c) the availability of water; (d) quantity of ground water to be drawn; (e) quantity of ground water to be drawn with reference to proposed usage; (f) Spacing of ground water structures keeping in view the purpose for which water is to be used; (g) long term ground water level behaviour; (h) its likelihood of adversely affecting water availability of any drinking water sources in its vicinity; and (i) any other factor relevant thereto.

8. Registration of existing users of ground water in the notified area.

(1) Every existing user of ground water in a notified area under Section 6(2) in the State shall, within a period of 120 days from the date of notification of areas by the Government, apply to the authority for grant of a certificate of registration recognizing its existing use in such form and in such manner as may be prescribed: Provided that the authority may entertain any such application after the expiry of the said period of 120 days, if it is satisfied that the user was prevented by sufficient cause from filing application in time. (2) The details to be furnished in an application under sub-section (1) shall include the following, namely - (i) the description of the source of ground water, such a type of well, its exact location; (ii) the device used for lifting water; (iii) the quantity of ground water withdrawal and hours of operation per day; (iv) the total period of use in each year; (v) the purpose or purposes for which ground water is being extracted. (vi) in case the requirement of ground water is for purpose of drinking water, the approximate population to be served; (vii) in case of irrigation well, the location and extent of area irrigated, and (viii) in the case of State, Municipal or Community run water supply schemes, the details of the services involved in addition to the quantities of ground water extracted, the diversion or the pumping points and their locations. (3) On receipt of an application under sub-section (1), if the authority is satisfied that it shall not be against the public interest to do so, it shall grant, subject to such conditions and restrictions as may be specified therein, a certificate of registration in such form as may be prescribed authorizing continued use of ground water: Provided that no person of ground water shall be refused a certificate of registration without being given an opportunity of being heard. (4) The decision regarding grant or refusal of the certificate of registration shall be intimated by the Authority to the applicant within a period of ninety days from the date of decision. (5) In granting or refusing a certificate of registration under sub-section (3), the Authority shall have regard to, - (a) the purpose or purposes for which water is to

be used;(b)the existence of other competitive users;(c)the availability of water;(d)quality of ground water with reference to its usage;(e)spacing of ground water extraction structures keeping in view the purpose for which water is to be used;(f)long term ground water level behaviour; and(g)any other factor relevant thereto.(6)The certificate of registration shall be in such form as may be prescribed.(7)Pending the communication by the Authority of the decision on an application under sub-section (1), every existing user of ground water in the notified area shall be entitled to the continued use of the ground water in the same manner and to the same quantity as he was entitled prior to the date of his application.(8)If a registered well becomes defunct, this fact should be immediately brought to the notice of the Authority by the user of ground water.

9. Registration of drilling agencies.

- Every (sic) owner operating in the State shall register his machinery with the Authority in such manner and on payment of such fee as may be prescribed and shall follow the instructions issued by the Authority.

10. Power to alter, amend or vary the terms of the permit/certificate of registration.

- At any time after a permit or certificate of registration, as the case may be has been granted the authority may, for technical reasons to be recorded in writing, alter, amend or vary the terms of the permit or certificate of registration, as the case may be:Provided that no change shall be made in the permit or certificate of registration, as the case may be unless the user of ground water is afforded an opportunity of being heard.

11. Cancellation of permit/certificate of registration.

- If the authority is satisfied either on a reference made to it in this behalf or otherwise that -(a)the permit or certificate of registration granted, under sub-section (3) of Section 7 of sub-section (3) of Section 8 as the case may be, is not based on facts;(b)the holder of the permit or certificate of registration has without reasonable cause failed to comply with the conditions subject to which the permit or certificate of registration has been granted or has contravened any of the provisions of this Act or the rules made thereunder.(c)a situation has arisen which warrants limiting of the use or extraction of ground water;Then without prejudice to any other penalty to which the holder of the permit or of the certificate of registration may be liable under this Act, the authority may after giving the holder of the permit or certificate of registration, an opportunity to show cause, cancel the permit, certificate of registration, as the case may be.

12. Royalty in respect of use of ground water.

(1)Every user of ground water in a notified area shall pay to the Authority a royalty for extraction of ground water at such rates and in such manner as may be prescribed by the Authority.Provided that a user of ground water who irrigates for Agriculture/Horticulture or Floriculture less than one

hectare of land, whether owned or leased or both, shall be exempted from payment of royalty under this section.(2)The Authority may, assign such proportion of the royalty, as may be prescribed for maintenance of Water Supply Schemes and development of ground water resources or any other purposes.

13. Powers of the Authority.

(1)The Authority or any person authorized by it in writing in this behalf, shall have power -(a)to enter any property (Private or Government owned) with the right to investigate and made any measurements concerning the land or the water located on the surface or the underground;(b)to inspect the well, which has been or is being sunk and the soils and other materials excavated there from;(c)to take specimens of such soils or other materials or of water extracted from such wells;(d)to order, in writing the person sinking a well to keep and preserve in the prescribed manner specimens of soil or any material excavated there from for such period not exceeding six months from the date of completion or abandonment of the work, as may be specified by the Authority and such person shall comply with such order;(e)to inspect and to take copies of the relevant record or documents and ask any question necessary for obtaining any information (including diameter or depth of the well which is being or has been sunk; the level at which the water is or was struck and subsequently restored/rested, the types of strata encountered in the sinking of the well and the quality of the ground water struck etc.) required for carrying out the purposes of this Act;(f)to direct the user of ground water to install water measuring devices on any ground water abstraction structures:Provided that where the user of ground water does not comply with the directions issued to him within a period of sixty days, the Authority itself may install such water measuring device and recover the cost from the defaulting user of ground water.(g)to seize any equipment/device utilized for illegal sinking and demolish the work executed fully or partly;(h)to direct any user of ground water who does not comply with the provisions of this Act and rules framed there under to close-down the extraction of ground water, disconnect its power supply and demolish any hydraulic work found to be illegal according to the provisions of this Act and the rules framed thereunder;(i)to enter and search with such assistance, if any, as it considers necessary, any place in which it had reason to believe that offence under this Act has been or is being committed and order, in writing, the person who has been or is committing the offence, not to extract or use the ground water for a specified period not exceeding thirty days;(j)to exercise such other powers as may be necessary for carrying out the purposes of this Act or any rules made there under.(2)The power conferred by sub-section (1) of this section includes the power to break open the door of any premises where sinking, extraction and use of ground water may be going on:Provided that the power to break open the door shall be exercised only after the owner or any other person in occupation of the premises, if he is present therein, refuses to open the door on being called to do so.(3)The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall, so far as may apply to any search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued under Section 93 of the said Code.(4)Where the Authority seizes any mechanical equipment/device under clause (g) of subsection (1) it shall, as soon as may be, report to Magistrate and take his orders as to the custody thereof.

14. Service of orders etc.

(1) Every order under clause (d) of sub-section (1) of Section 13 shall be served -(a) by giving or tendering the order of notice or by sending it by post to the user for whom it is intended, or (b) if such user cannot be found, by affixing the order of notices on some conspicuous part of his last known abode or place of business or by giving or tendering the order of notice to some adult member or servant of his family or by affixing on some conspicuous part of the land or building in which the well is being sunk. (2) Where the person on whom an order or a notice is to be served is a minor, service upon his guardian in the manner provided in sub-section (1), shall be deemed to be service upon the minor.

15. Bar to claim compensation.

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

16. Delegation of powers and duties.

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

17. Members and employees of the ground water authority to be public servants.

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

18. Protection against action taken in good faith.

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

19. Cognizance and trial of offences.

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

Chapter III

20. Rain water harvesting for ground water recharge.

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

Chapter IV

Miscellaneous

21. Power to remove difficulties.

- If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion arises, by order, do anything, which appears to it, to be necessary or expedient to remove the difficulty: Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.

22. Offences and penalties.

- If any user of ground water: (a) contravenes or fails to comply with any of the provisions of this Act or any rule made thereunder; (b) obstructs the Authority or any other person authorized by it to exercise any of the powers under this Act; He shall be punishable, (i) for the first offence with fine as prescribed by the Authority; and