

Water Governance Benchmarking Criteria

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1. **Water Sources**
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 - 2.2 Municipal
 - 2.3 Industrial
 - 2.4 Environmental 74
 - 2.5 Hydropower
 - 2.6 Fisheries, navigation, recreation
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Decree no. 2-97-489 of 6 Chaoual 1418 (4 February 1998) regarding the delimitation of the hydrological public domain, the correction of watercourses and the extraction of materials 20

The Prime Minister,

In view of Law no. 10-95 regarding water promulgated by Dahir (Royal Decree) no. 1-95-154 of 18 Rabii I 1416 (16 August 1995), and in particular its articles 2 (paragraph g), 5 and 12 (paragraphs b1, b2 and b4); 62

After examination by the Council of Ministers meeting on 18 Ramadan 1418 (17 January 1998), 71

Decrees:

Chapter 1: Determination of watercourse banks

Article 1: The frequency of rises in water levels serving to determine the limits of watercourse banks stipulated in article 2, paragraph g of the above-cited Law no. 10-95, is established by an order of the ministry responsible for infrastructures at the initiative of the director of the hydrological basin agency concerned, after considering the opinions of the governors concerned, of the prefectorial or provincial departments of the ministry responsible for infrastructures, and the communal councils concerned. 1, 38, 55, 63

For this purpose, the hydrological basin agency director provides the minister responsible for infrastructures with a technical report regarding the water regime of the watercourse or the section of the watercourse in question, and containing the longitudinal and transverse profiles of the said watercourse or watercourse section, as well as the draft order of the minister responsible for infrastructures setting the frequency of rises in water levels. 2, 25, 31

The departments and communal councils cited in article 1 above have a time limit of thirty (30) days from the date of the referral to them to state their opinions. If they have not responded when this period has elapsed, their opinion shall be considered favorable.

Article 2: The order establishing the frequency of water level rises which is published in the Official state gazette also designates the watercourse, the watercourses section and the bank for which the frequency is set as well as the Moroccan Overall Level height constituting the bank limits. These limits are indicated on site by permanent markers. 39, 48

Article 3: In the event of a change of the watercourse bed, a new determination is effected, following the same procedure, of the bank limits for the affected section of the watercourse. 40

Chapter II: Delimitation of the hydrological public domain

Article 4: When, pursuant to article 5 of the above-cited Law 10-95, there is cause for a demarcation of the hydrological public domain, a month-long preliminary public survey prescribed by the order of the minister responsible for infrastructures is conducted in accordance with article 7 of the Dahir (Royal Decree) of 7 Chaabane 1332 (1 July 1914) regarding the public domain. This

survey is conducted by a committee composed of: 3, 49, 56, 64

- the representative of the competent local administrative authority based on the location of the area to be established, chairman;
- the representative of the prefectorial or provincial departments of the Ministry of Infrastructures, secretary;
- the representative of the chairman of the communal council concerned;
- the representative of the hydrological basin agency concerned.

The committee chairman may, after hearing the committee's opinion, invite, in an advisory capacity, any persons who may be able to help the survey committee in its investigations. 24

Article 5: The public survey stipulated in article 4 above, whose duration must not exceed thirty (30) days, is prescribed by an order of the minister responsible for infrastructures, which sets: 26

- the dates on which the survey operations are to be opened and closed;
- the list of the survey committee members;
- the place of the survey;
- the location of the watercourse or section of watercourse;
- the place where the survey dossier is deposited as well as the record whose purpose is to collect the interested parties' comments. This record remains at the public's disposal during the entire duration of the survey. 50, 57, 60

Article 6: The survey opening order mentioned above is published through the good offices of the minister responsible for infrastructures in the Official state gazette (edition devoted to legal, judiciary and administrative announcements) and / or inserted in at least two journals of legal announcements and made known to the public through the good offices of the local administrative authority by all means it considers appropriate. 51

It is also displayed in the premises of the local administrative authority and in the offices of the commune. This display is verified, at the end of the survey, by certificates placed in the survey dossier by the local administrative authority and the chairman of the communal council.

The publicity operations shall take place at least fifteen (15) days before the date on which the survey opens.

Article 7: Throughout the survey, the local administrative authority shall place at the public's disposal, in the offices of the commune or communes concerned, a record of comments, numbered and initialed through their good offices, destined to receive the remarks and possible claims of third parties. 4, 52, 58, 61

Article 8: When the public survey has been completed, the committee, meeting at the behest of its chairman, shall examine the remarks and claims added to the comment record and, if the committee deems it useful, shall proceed to the site to verify the remarks made. The committee shall then draw up a report within ten (10) days of the date of its meeting. 5, 72

The report must be signed by all the committee members and contain its reasoned opinion.

The survey dossier, accompanied by the report, is conveyed by the local administrative authority to the minister responsible for infrastructures within fifteen (15) days of the drafting of the said report.

Article 9: In accordance with the provisions of article 7 of the above-cited Royal Decree of 7

Chaabane 1332 (1 July 1914), the boundaries of the hydrological public domain shall be established by decree enacted at the initiative of the minister responsible for infrastructures and published in the Official state gazette. 6, 53, 65

Article 10: The record of the public domain stipulated in paragraph 2 of article 7 of the above-cited Royal Decree of 7 Chaabane 1332 (1 July 1914), is kept through the good offices of the minister responsible for infrastructures. 7

Chapter III: Cleaning, deepening, widening, straightening or streamflow regulation of watercourses 41

Article 11: The operations of cleaning, deepening, widening, straightening or streamflow regulation of temporary or permanent waterways are subject to authorization granted by the director of the hydrological basin agency concerned according to the terms established below. 8, 42

Article 12: The application for authorization is submitted to the director of the agency. It must include: 9, 27, 32

- 1 - the applicant's identity and, if applicable, the identity of all the other persons who are duly authorized to represent the applicant;
- 2 – the name and location of the watercourse in question;
- 3 – the length of the section of the watercourse involved;
- 4 – the nature and projected duration of the works to be executed.

The application must be accompanied by the following documents: 28, 33

- a drawing of the location of the watercourse or section of the watercourse concerned;
- a configuration of the watercourse or section of the watercourse before and after the operation envisaged;
- the longitudinal and transverse profiles of the watercourse or section of the watercourse concerned;
- a study assessing the impact of the planned operations on the hydrological public domain and the aquatic ecosystems as well as the measures need to remedy that impact. 46

Article 13: The application is the subject of a report drawn up through the good offices of the director of the hydrological basin agency after a survey on the site in the presence of the representative of the prefectorial or provincial departments of the ministry responsible for infrastructures. The terms of the application are verified and the interested party, as well as all persons whose opinions are deemed useful, are heard. 59

The agency director must convey the the approval or disapproval of the application with sixty (60) days from the date of the reception of the application and the accompanying documents specified in article 12 above. 10

Article 14: The director of the hydrological basin agency issues, if appropriate, the authorization, which must contain: 11, 34, 35

- the beneficiary's identity;
- the nature of the authorized operations;
- the term of the authorization, which may not exceed 10 years (renewable);
- the works to undertake, the execution time and the period or periods of the year during which they

should be executed;

- the characteristics of the works and structures to establish, as necessary, in the hydrological public domain;
- the measures to take to avoid any modification of the watercourse regime;
- the terms of renewal or modification.

Chapter IV: Provisions regarding excavations

Article 15: The authorization to make excavations, particularly excavations of construction materials provided for in paragraph b4 of article 12 of the above-cited Law no. 10-95, is granted by the director of the hydrological basin agency concerned.

Article 16: The application for authorization is submitted to the director of the hydrological basin agency. It must indicate:

- the applicant's identity and, if applicable, the identity of all the other persons who are duly authorized to represent the applicant;
- the place and method of excavation;
- the volume of materials to extract;
- the depth of the excavations;
- if appropriate, the lots of the hydrological public domain on which the materials extracted will be stored or the equipment deposited;
- the duration of the excavation works;
- the use envisaged of the materials extracted.

The application must be accompanied by:

- an appropriate map drawn to scale showing the excavation site;
- a technical dossier indicating, among other things:
 - * the means of extraction or execution of the excavation;
 - * the nature of the materials to extract;
 - * the extraction and storage areas;
 - * as appropriate, the power and method of use of explosives;
- a mining permit issued by the Minister of Energy and Mines, when the work to be done involves the extraction of mineral substances classified as mines by virtue of the Dahir (Royal Decree) of 9 Rejeb 1370 (16 April 1951) enacting mining regulations;
- when a quarry or open pit mine is involved, a receipt acknowledging the delivery of a declaration or a copy of the authorization to operate the said quarry or open pit mine;
- a report relative to the measures that the interested party plans to undertake to restore the site to its original state (land reclamation) when the extraction and excavation works are completed;
- a copy of the title attesting to the right to operate the property, when excavation is to be done;
- study of the repercussions of the extraction or excavation on the hydrological public domain. **37**

Article 17: The director of the hydrological basin agency issues, if appropriate, the authorization, which must contain:

- the beneficiary's identity;
- the term of validity of the authorization, which must not exceed one (1) year, and is renewable;
- the nature and volume of the materials to be extracted;
- the royalty for extracting materials, whose amount is set in accordance with the legislation and regulations in effect;
- the place of the extraction or excavation;
- the control method;
- the terms of renewal or modification;
- the measures that the beneficiary must undertake during and at the end of the extraction or excavation works to avoid any degradation of the hydrological public domain;
- the conditions of extraction or excavation and of the reclamation of the site;
- the operating and excavating conditions;
- the hours during which the extraction may be performed.

Article 18: When the extraction or the excavation operation works are completed, the beneficiary of the authorization must:

- clear the extraction area of all temporary construction works and of all unusable devices or equipment;
- treat the unloading areas, grade the dug-up surfaces and fill in the extraction or excavation areas.

Article 19: When hydrological public domain lots must be used for materials storage or placement of equipment and facilities, the beneficiary of the authorization must obtain an authorization for temporary occupation of the hydrological public domain in accordance with the legislation in effect. [12](#), [45](#), [66](#)

In no case may materials storage or the placement of equipment and facilities be authorized in the low-flow channels of watercourses.

Chapter V: Authorizations to make or remove any deposits, plantings or crops on the hydrological public domain [74](#)

Article 20: The authorization to make or remove any deposits, plantings or crops on the hydrological public domain, provided for in paragraph b1 of article 12 of the above-cited Law no. 10-95, is granted by the director of the hydrological basin agency concerned. [13](#), [21](#), [67](#)

Article 21: The application for authorization is submitted to the director of the hydrological basin agency. It must indicate: [29](#)

- the applicant's identity and, if applicable, the identity of all the other persons who are duly authorized to represent the applicant;
- the lots on the hydrological public domain on which deposits, plantings or crops are proposed;
- the duration of the deposit, plantings or crops;
- the nature of the deposit, or the variety of the planting or crop.

The application must be accompanied by:

- an appropriate map drawn to scale showing the location of the hydrological public domain concerned;
- a technical dossier indicating the positive impacts of the project on the fight against floods, the

stability of watercourse banks or the reduction of the damages caused by rises in water level or floods; 44

- a report relative to the measures that the interested party plans to undertake to restore the site to its original state (land reclamation) when the authorization expires.

Article 22: The director of the hydrological basin agency issues, if appropriate, the authorization, which must contain: 14

- the beneficiary's identity;
- the term of the authorization, which must not exceed ten (10) years, and is renewable;
- the site of the deposit, planting or crop;
- the control method;
- the renewal or modification terms;
- the measures to be undertaken by the beneficiary during the deposit, planting and cultivation works to avoid any degradation of the hydrological public domain.

Chapter VI: General provisions

Article 23: The beneficiary of the authorization is required to effect or remove all deposits, plantings, crops or excavations in such a way as to hinder the circulation or free flow of the waters.

The beneficiary or his representative on the site of the excavation, deposit, planting or cultivation, shall show the authorization whenever required by the agents of the ministry responsible for infrastructures or the basin agency that issued the authorization. 15

Article 24: The authorization may be withdrawn after not less than thirty (30) days' prior notice is given when the authorization gives rise to damages to public works, to the stability of the watercourse banks or to aquatic fauna. The withdrawal of the authorization must state the reasons. 16, 30, 43, 47

However, when the circumstances warrant it, the minister responsible for infrastructures or the basin agency director may proceed to remove all structures or works established on the hydrological public domain.

The authorization may also be withdrawn in the event of non-compliance with the clauses it contains.

The royalties or fees due remain vested in the basin agency. 23

Article 25: The authorization is non-transferrable and cannot be assigned without the previous acceptance of the hydrological basin agency. 36

Article 26: The authorization issued by virtue of this Decree does not exempt the interested party from complying with other declarations or authorizations provided for in the legislation and regulations in effect. 17, 68

Article 27: The provisions of the Order of 11 Moharrem 1344 (1 August 1925) taken for the application of the Dahir (Royal Decree) of 11 Moharrem 1344 (1 August 1925) on the water regime as regards the delimitation of the hydrological public domain, and the Order of the Director-General of Public Works of 6 December 1924 regulating the extraction of sands and gravels from watercourse beds, are hereby repealed. 22, 69, 73

However, pursuant to the provisions of article 99 of the above-cited law no. 10-95, and until each hydrological basin agency is created, the responsibilities and roles accorded by this Decree to the said agencies are exercised by the Ministry of Infrastructures. 18, 70

Article 28: The Minister of State for the Interior, and the Minister of Agriculture, Infrastructures and the Environment are responsible, each in his own domain, for the execution of this Decree, which shall be published in the Official state gazette. 19, 54

In Rabat, 6 Chaoual 1418 (4 February 1998)

Abdellatif Filali

By countersignature

The Minister of State for the Interior,

Driss Basri

The Minister of Agriculture,

Infrastructures and the Environment,

Abdelaziz Meziane Belfkih