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THE SINDH IRRIGATION AND DRAINAGE AUTHORITY ORDINANCE, 1997

SINDH ORDINANCE NO.III OF 1997

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THE SINDH IRRIGATION AND DRAINAGE AUTHORITY ORDINANCE, 1997

SINDH ORDINANCE NO.III OF 1997

[6TH February, 1997]

An Ordinance to provide for the establishment of the Irrigation and Drainage Authority in the Province of Sindh.

Preamble.

WHEREAS it is expedient to provide for the establishment of the Irrigation and Drainage Authority in the Province of Sindh for equitable distribution of Irrigation water and effective drainage and flood control sustainable on long term basis through participation of beneficiaries in the operation and management of irrigation and drainage network and to provide for matters connected therewith or incidental thereto;

AND WHEREAS, the provincial Assembly is not in session and the Governor of Sindh is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 128 of the Constitution of the Islamic Republic of Pakistan, the Governor of Sindh is pleased to make and promulgate the following Ordinance: —

CHAPTER—I
PRELIMINARY

Short title and Commencement.

1. (1) This Ordinance may be called the Sindh Irrigation and Drainage Authority Ordinance, 1997.

(2) It extends to the whole of Province of Sindh.

(3) It shall come into force at once.

Definitions.

2. In this Ordinance, unless there is anything repugnant in the subject or context—

(i) "Authority" means the Sindh Irrigation and Drainage Authority established under section 3;
(ii) "AWB" means an Area Water Board established under section 23;
(iii) "Board" means the Board of Management constituted under section 7;
(iv) "canal" means a canal as defined in the Sindh Irrigation Act, 1879;
(v) "Chairman" means the Chairman of the Authority;
(vi) "drain" means a natural drain, surface

or sub-surface drainage network provided for the evacuation of the surplus subsoil and surface water from the land under the command of a canal system;

(vii) "drainage cess" means the drainage cess levied for conveyance and disposal of effluent through the drains;

(viii) "FO" means the Farmers Organization formed under section 26;

(ix) "Government" means the Government of Sindh;

(x) "Local Council" means a local council constituted under the Sindh Local Government Ordinance 1979;

(xi) "Managing Director" means the Managing Director of the Authority;

(xii) "member" means the members of the Authority;

(xiii) "prescribed" means prescribed by rules or regulations under this Ordinance;

(xiv) "regulations" means regulations made under this Ordinance;

(xv) "rules" means rules made under this Ordinance;

(xvi) "WAPDA" means the Pakistan Water and Power Development Authority;

(xvii) "water" includes any water standing or following on surface or sub-surface at any place in the Province but does act include the water in the inter-provincial reservoirs and/or rivers and canals as is allocated to any other Province;

(xviii) "water rate" means the charge levied for supply of water under the Water Apportionment Accord, 1991.

CHAPTER—II
ESTABLISHMENT OF THE AUTHORITY

3. (1) As soon as may be, after the commencement of this Ordinance, there shall be established an Authority to be known as the Sindh Irrigation and Drainage Authority.

(2) The Authority shall be a body corporate with power to acquire, hold and dispose of property, having perpetual succession and a common seal and shall by the said name, sue and be sued.

(3) The Headquarters of the Authority shall be at Hyderabad.

4. (1) The Authority shall consist of— **Constitution of the authority**

(i)	Minister for Irrigation or any other person appointed by Government.	Chairman
(ii)	Additional Chief Secretary Planning and Development Department.	Member
(iii)	Secretary Finance Department.	Member
(iv)	Secretary irrigation and Power Department.	Member
(v)	Secretary Agriculture Department.	Member
(vi)	Managing Director of the Authority.	Member
(vii)	A representative of Farmer's organization.	Member

(2) The Chairman other than the ex-officio Chairman and member other than the ex-officio members shall, unless resigned or removed earlier, hold office for four years and shall be eligible for re-appointment for one similar term.

(3) In the case of death, resignation or removal of such Chairman or a member another Chairman or as the case may be, a member may be appointed in his place for the un-expired them of such Chairman or member.

(4) the Chairman or a member may be writing under his hand resign from his office but his resignation shall not take effect until it is accepted by Government.

(5) No act or proceeding of the Authority shall be invalid by reason only of existence of a vacancy in, or the Constitution of the Authority.

5. (1) There shall be at least one meeting of the Authority each quarter of a year. **Meeting of the Authority**

(2) The meetings of the Authority shall be held at such time and at such places and in such manner as may be prescribed by regulations or, until regulations are made in this behalf, as and when convened by the Chairman.

(3) Notwithstanding the provisions of sub-section (1), the Chairman shall convene a meeting of the Authority if three or more members so request him in writing and such meeting shall be convened after giving at least seven days notice with in a period of not exceeding fifteen days of receipt of such requisition.

(4) The quorum fo0r a meeting of the Authority shall be three members.

(5) The Chairman or, in his absence, a member elected by the members present in a meeting of the Authority shall preside at such meeting of the Authority.

(6) In the event of an equality of votes, the Chairman or the member presiding a meeting shall have a casting vote.

(7) The Chairman and a member shall receive such allowance as may be prescribed by the Authority for attending a meeting of the Authority.

Removal of Chairman and Member

6. Government may be notification remove the Chairman or a member other than the ex-officio chairman and member if he—

(a) is incapable of discharging his responsibilities under this Ordinance or;

(b) has been declared insolvent; or

(c) has been declared to be disqualified for employment, or has been dismissed from the service of Government, or has been convicted for an offence involving moral turpitude; or

(d) has knowingly acquired or has continued to hold without the permission, in writing, of Government, directly or indirectly or through a partner, nay share or interest in any, contract or employment with or on behalf of the Authority or in any land or

property which, to his knowledge, is likely to benefit or has benefitted as a result of the operations of the Authority.

Provided always that no action shall be taken under this section against the Chairman or member without affording him an opportunity of being heard.

Board of Management

7. (1) Subject to the overall control and guidance of the Authority, the day to day management of the affairs of the Authority shall be carried out by a Board of Management consisting of the Managing Director and not more than four General Managers as may be appointed by the Authority with the approval of Government.

(2) The Managing Director and the General Managers shall have such qualifications, technical back ground and practical experience in the profession relevant to their job description; provided that the Managing Director and the General Managers shall respectively possess at least twenty five years and fifteen years professional standing in the field of Irrigation and Drainage.

(3) the Managing Director or a General Manager may be removed if he has incurred any of the disqualification mentioned in section 6.

(4) Subject to other provisions of this section, the Managing Director and General Managers shall be appointed on such terms and conditions as may be prescribed by rules.

(5) The Managing Director and a General Manager shall unless resigned or removed earlier hold office for four years and shall be eligible for reappointment for another similar term or for such shorter term as Government may decide.

(6) The Managing Director or any General Manager may, at any time, resign; provided that his resignation shall not take effect until accepted by Government.

CHAPTER-III
POWERS AND DUTIES OF THE AUTHORITY

8. The Authority shall have the following powers and duties:-

(a) General

(1) Subject to the provision of the Indus Water Treaty (1960) and the water Apportionment Accord (1991), to receive irrigation Water at the Barrages within the Province and/or from the inter Provincial/link canals and deliver the same in agreed quantities to the various AWBs, bodies or persons in the manner and on the terms and conditions as may be prescribed by the Authority at the relevant Canal head works and to receive drainage effluent at the designated points and convey the same to the inter provincial outfall drains.

(2) to exercise such powers of Government under the Irrigation Act, 1879 and rules as are not inconsistent with or interrogation to any- provision of this Ordinance, rules or regulations.

(3) to levy and collect Water rate and drainage cess and surcharge for late payment of such rate and cess.

(4) to prescribe and receive fees or charge for providing any service under this Ordinance.

(5) to recover any amount payable to the Authority under this Ordinance as arrears of land revenue.

(b) Policy and Regulation.

(1) to formulate and implement policy guide lines and procedures for the proper and efficient, implementation of the provisions of this Ordinance;

(2) to formulate and implement policies in the water resources sector with a view to continuously improve and achieve

effective, economical and efficient utilization, preservation and improvement of such water resources on sustainable basis;

(3) to prescribe training requirements and programs which may be necessary for the purpose of this Ordinance and to prescribe the manner and authority for conducting such training and programs;

(4) to investigate and adjudicate complaints on any disputes and/or differences under this Ordinance between the different entities established under this Ordinance and between such on titles and an individual or group of individuals;

(5) to prescribe the procedures for obtaining and filing of documentation regarding water allocation;

(6) to grant, renew or cancel the licences or leases as may be prescribed.

(c) Operations.

(1) To plan, design. Construct, operate and maintain the irrigation drainage, storage reservoirs and flood control infrastructure including hill torrent control and development work for irrigation of lands including watershed management practices in catchment areas of any river hill torrents or streams;

(2) to maintain records, registers and data banks as may be necessary for the effective performance of any or all of Us powers and duties under this Ordinance;

(3) to take all such steps as may reasonably be necessary for the removal and prevention of encroachments and un authorized construction along or on the properties of the Authority;

(4) to operate and maintain the equipment, machinery and stores of the Authority effectively, efficiently and in a business-like manner;

(5) to under take or assign any person in the prescribed manner anti-errosion operations including conservation of forests and reforestation in the catchment areas of any river, hilltorrents or streams and for the purpose clearing or breaking of land as may be necessary be restricted prohibited.

(d) Finance and Administration.

(1) To under take any works, incur expenditure, procure machinery plant and stores required by the Authority;

(2) to negotiate, execute and adopt/rectify all such contracts as may be considered necessary or expedient for the purpose of this Ordinance;

(3) to utilize the Authority Fund to meet the cost and expenses incurred on account of and in connection with the due per-formance of the various functions of the Authority under this Ordinance including the payments of salaries, gratuity, pension and other remunerations to the officers, employees and other persons engaged by the Authority;

(4) to properly manage finances, and maintain accounts and assets of the Authority.

(e) Transition.

(1) To promote formation, growth and development of AWBs/ FOs as self-supporting and financially self-sustaining entities and to ensure orderly and systematic induction thereof into the operations of the Authority;

(2) to prepare or cause to be prepared and regularly update or cause to be updated Staffing and Operational and Financial Plans which will generally deal with and reflect such matters as may be prescribed by it.

(3) to formulate policies with a view to ensure that the Authority and other entities under this Ordinance become fully operative and self supporting and financially self sustaining entities as regards Operation and Maintenance cost of Irrigation and Drainage as defined in Chapter V within a period of seven to ten years.

(f) Research and Development.

(1) To formulate, implement and regularly update policies, studies and research programmes with a view to solve/eliminate and prevent waterlogging and salinity, and to develop irrigated agriculture;

(2) To conduct studies with a view to regularly analyse and evaluate the impact of the operations and polies of the Authority on the ecology and the environment with a view to establish the various available options for the minimization of the adverse impact of such operations and polices, if any, and to adopt the optimal option (s) for further action;

(3) to coordinate regulate the measures being undertaken/required to be undertaken or recording/gauging surface waters, monitoring of groundwater table and die quality of water and the compilation of data relevant thereto and in this regard to establish and regularly maintain proper liaison with similar work being undertaking in other Provinces;

(4) to publish or cause to be published die various policies, details, data and information relevant to the affairs of die Authority on a regular basis and to ensure reasonable access of the public to the same.

Contractual Services

9. The Authority may, under a written agreement as to the terms and conditions including the extent and manner of payment for die same, undertake execution of any scheme (s) of exercise technical supervision and administrative and financial control over die execution of any scheme (s) framed or sponsored by Government or any other Agency.

Acquisition of land by the authority

10. Acquisition of any land or any interest in land for the Authority for the proposes of or for any scheme under this Ordinance shall be deemed to be an acquisition of a public purpose within the scope and meaning of the Land Acquisition Act, 1894, the provisions whereof shall have effect accordingly.

Arrangement with local bodies or other agencies

11. (1) As soon as any scheme has been completed by die Authority or at a late date, the Authority may arrange by a written agreement with a Local Council or other Agency within whose Jurisdiction any particular area covered by the scheme lies, to take over and maintain any of the works comprising such scheme in the said area.

(2) Government may direct the Authority to hand over any scheme(s) completed by it to any agency of Government or a Local Council or takeover such scheme(s) completed by any agency on such terms and conditions as may be determined by Government.

Control over provincial water resources

12. Subject to the relevant provisions in the Indus Basin Treaty (196) and the water appointment Accord (1991), the Authority shall have control over all the revers, canals, drains, stream, hill torrents, springs, reservoirs (except such reservoirs as are under the control of WAPDA) and underground water resources within the Province.

CHAPTER IV
ESTABLISHMENT

Appointment of officers,servants

13. (1) Subject to any other provisions of this Ordinance the Authority may from time to time employ such officers and servants, or appoint in accordance with regulations, as it may consider necessary for the performance of its functions; provided that the Authority may appoint experts and consultants on such terms and conditions as it may deem fit.

(2) Notwithstanding anything contained in sub-section (I) any regulation made, or orders or instructions issued by the Authority, the Authority may at any time, for reasonable cause, relieve or remove from its service any person after giving him not less than ninety days notice or pay for the period by which such notice falls short of ninety days.

Disciplinary powers

14. The Authority shall be competent to take disciplinary action against its officers and employees in accordance with the regulations.

Immunity of the authority and its employees.

15. (1) The Managing Director, members of the Board officers and employees of the Authority shall, when acting or purporting to act in pursuance of any of the provisions of this Ordinance, be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code.

(2) No suit, prosecution or other legal proceedings shall lie against the Authority, the Managing Director, members or officers and employees of the Authority in respect of anything done or intended to be done in good faith under this Ordinance.

Delegation of powers

16. The Authority may by general or special order delegate to the Managing Director, a member of the Board or officer or employees of the Authority any of its powers, under this Ordinance subject to such conditions as it may impose.

Persons serving in the Provincial Irrigation and Power Department.

17. (1) All employees of the Irrigation Wing of the Provincial Irrigation and Power Department except such employees as may be specified by Government in this behalf shr.il, subject to any other provision(s) contained herein, on the commencement of this Ordinance stand transferred to, and become the employees of the Authority.

(2) The employees under sub-section (1) shall serve the Authority on such terms and conditions and may be prescribed by rules but such terms and conditions shall not be less favourable than the terms and conditions of service admissible to them immediately before their transfer; provided that the Authority shall be competent to take disciplinary action against any employees.

(3) Government shall contribute towards the pension and gratuity admissible to and transfer the provident fund of such employees to the Authority in accordance with rules.

CHAPTER-V
FINANCE

Authority fund

18. (1) There shall be a fund to be known as the "Authority Fund" vested in the Authority.

(2) The Authority fund shall consist of—

(a) all sums received by the Authority in respect of water charges, sale proceeds, and drainage cess;

(b) grants made by Government;

(c) loans obtained from Government;

(d) grants made by local Councils as required by Government;

(e) sale proceeds of bonds or any. other debt instruments issued under the Authority of Government;

(f) loans obtained by the Authority with the sanction of Govern meat;

(g) foreign assistance and loans obtained from different foreign agencies with the sanction of, and on such terms and conditions as may be approved by Government in consultation with the Federal Government.

(h) all other sums receivable by the Authority.

Authority to be deemed to be a local authority

19. The Authority shall be deemed to be a Local Authority under the local Authorities Leans Act, 1914 for the purpose of borrowing money under the said Act, and the making and execution of any scheme under this Ordinance shall be deemed to be a work which such Authority is legally authorized to carry out.

Limited liability

20. The liability of the Government of the creditors of the Authority shall be limited to the extent of grant made by the Government and the loan raised by the Authority with the sanction of the sanction of the Government.

Procedure for fixation of rates for supply of water

21. (1) The Authority shall normally supply water to different areas on equitable and reasonably assured basis.

(2) The rates at which the Authority shall supply water shall be so fixed as to provide for meeting the operation and maintenance cost of the system within a period of seven to ten years; provided always that before proposing any enhancement in the existing rates and/or agreeing to the same, the Authority AWBs concerned shall use their best endeavours to reduce the quantum of the proposed enhancement of rates through adoption of the following measures—

(i) reducing cost;

(ii) improving assessment and collection of water rate arid drain age cess;

(iii) recovery of arrears.

(iv) recovery of cost of providing drainage flood control to non- farming beneficiaries;

(v) disinvestment of fresh water tubewells in SCARP areas.

(3) The components of O & M to be recovered from the farmers in the form of abiana shall be the full O & M cost of irrigation canals and secondary drains.

(4) The O & M cost of flood protection and public sector FWG tubewells will be excluded from abiana, a nominal proportion (say five to ten percent) of the O & M

cost of SGW tubewells and/or main drains may, however, be borne by the farmers should such a need is felt by the Authority at some later stage.

Annual Financial Statements and Audit

22. (1) The Authority shall!, not later than six months after the end of each financial year, prepare financial statements including a balance sheet as at the end of the financial year, income and expenditure account for the financial year, and a statement of changes in financial position or statement of sources and application of funds for the financial year, and cause these accounts to be audited every year by the Commercial Auditors to be appointed by the Authority.

(2) The balance sheet shall give a true and fair view of the state of affairs of the Authority as at the end of its financial year, and the income expenditure account shall give a true and fair view of the surplus of deficit of income over expenditure of the Authority for the financial year.

(3) Accounting Standards of the Pakistan Institute of Chartered Accountants shall be followed in regard to the Books of Accounts and preparation of the Financial Statements.

(4) Accounting policies shall be stated as part of the Financial Statements.

(5) The authority shall attach to its Financial Statements Statement providing information on any material changes and commitments affecting the financial position of the authority which have occurred between the end of the financial year to which the financial statements relate and the date on which the financial statements were prepared.

(6) In the month of February each year, the Authority shall submit to the Government for information projected financial statements for the next year.

(7) the Commercial Auditors shall carry out the audit in accordance with the professional standards of Auditing prescribed by the Pakistan Institute of Chartered Accountants, and shall issue a report on the audit.

(8) The Authority shall provide a copy of the Audit report of the Commercial Auditors and Financial statements together with detailed information and explanation in regard to any observation, reservation qualification or adverse remarks contained in the Auditor's Report to the Government, and shall file a copy with the Accountant General of the Province within 30 days of the receipt of the report.

(9) The Authority shall carry out all directives issued by the Government for compliance with any observation, reservation, qualification or adverse remarks in the Audit Report.

CHAPTER-IV
AREA WATER BOARD

Establishment of area of Water Board

23. (1) Government shall, within one year of the commencement of this Ordinance establish AWBs together with their respective territorial jurisdictions which will preferably be based on the canal commands; provided that such AWBs shall commence functioning on successful completion of a pilot study of a specified AWBs on a canal command.

(2) The Area Water Board shall consist of a Chairman and the following member—

(a) Two representatives of FO nominated by the Chairman and the FO concerned.

(b) A representative of the Authority.

(c) Two representative of Government one of whom shall be from the Agriculture Department not below the rank of Director.

(d) Managing Director of the AWB.

(e) Two technocrats, one each with proven backgrounds in (i) Water Resources Management (ii) Finance respectively.

(3) The members shall in the first meeting of the Board elect from amongst themselves a (Chairman of the Board).

(4) The Chairman shall preside over the meetings of the Board.

(5) Where the Chairman for any reason is unable to attend a meeting of the Board, the members present at such meeting may elect one of the present members to act as Chairman for that meeting.

(6) A member other than Ex-officio members shall, unless resigned or remained for a term of four years and shall be eligible for hold office for re-nomination for similar term.

Meetings of the Board

24. (1) The Board shall meet at least once in every quarter of a year; provided that the Chairman of the Board shall, upon receipt of a requisition signed by at least three members convene a meeting of the Board after giving seven days notice to all the members, within a period not exceeding fifteen days from the date of receipt of such requisition.

(2) The quorum for a meeting of the Board shall be five members.

Functions of area Water Board

25. The Board shall subject to control and direction of the Authority—

(1) formulate and implement policies to achieve effective, economical and efficient utilization of irrigation water at its disposal;

(2) ensure that it becomes fully operative as a self-supporting and financially self-sustaining entity within a period between seven to ten years from the date of its constitution;

(3) Plan, design, construct, operate and maintain the irrigation, drainage and flood control infrastructure located within its territorial jurisdiction;

(4) Perform any other functions assigned by the Authority.

CHAPTER VII
FARMERS ORGANISATION

Formation of Fos

26. The FOs shall be formed at the minor/distributary, level in a phased in the manner and with the functions as may be prescribed by regulations.

CHAPTER-VIII
REPORTS AND STATEMENTS

Submission of yearly reports and returns

27. (1) The FOs AWBs and the Authority shall submit to Government as soon as possible after the end of every financial year but, before the expiry of a period of seven months of such end of the financial year, a report on the conduct of their affairs for that year including audited financial statement for the year in question.

(2) Government may reasonably require the submission of the following:-

(j) any return statement, estimate, statistics or other information regarding any matter under the control of such entity; or

(ii) a report on any such matter; or

(iii) a copy of any document in the charge of such entity; and the entity concerned shall comply with every such requisition.

(3) The Authority and AWBs shall cause to be published their Annual Report submitted under sub-section (1) together with brief particulars of the projects proposed to be undertaken during the next financial year in at least one Englis/Urdu/Regional language newspaper.

CHAPTER IX
MISCELLANEOUS

Compensation for loss

28. Where the Authority suffers any loss by grant of remission of water rate of drainage cess, compensation to the extent of loss shall be paid to the Authority by Government.

Transfer of rights and liabilities

29. (1) On the commencement of this Ordinance all assets and liabilities and all rights and obligations of the Irrigation Wing of the Irrigation and Power Department shall stand transferred to the Authority, on such terms and conditions particularly as regards to use and disposal of the said assets as may be prescribed by Government.

(2) All contracts made by the Irrigation and Power Department relating to irrigation, drainage and flood Control shall be deemed to be contracts made by the Authority.

(3) All decisions and/or instruments shall be signed /authenticated for and on behalf of the Authority by the signatures of the Managing Director and/or any other employee or employees of the Authority duly authorised by the Managing Director in this behalf.

Rules

30. Government may make rules for carrying out the purposes of this Ordinance.

Regulations

31. Subject to rules, the Authority may, with the approval of Government make regulations for giving effect to the provisions of this Ordinance.

Removal of difficulties

32. If any difficulty arises in giving effect to any of the provisions of this ordinance Government may make such orders, no inconsistent with the provisions of this Ordinance as may appear to it to be necessary for the purpose of removing the difficulty.

Provisions of this ordinance to over-ride other laws

33. In case of any conflict or inconsistency between any provision (s) of this Ordinance and any other law (s), the provisions of this Ordinance, to the extent of such conflict or inconsistency, as the case may, be, shall prevail.