

**Approach Paper to  
Model Bill for State Water Regulatory System Act  
Sub Group on Model Bill for State Water Regulatory Authority Act (Water Governance Group)  
November 2011**

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**1. Introduction to the Approach Paper**

In June 2011, the Sub Group on Model Bill for State Water Regulatory Authority Act commenced its working under the auspices of the Planning Commission's Working Group on Water Governance. The Sub Group subsequently prepared a draft of the Model Bill for State Water Regulatory System Act (hereafter referred to as the Model WRS Bill or the Model Bill).

The need for a document accompanying the draft of the Model WRS Bill was discussed in detail in the Consultation (Sept 2, 2011) and the Steering Committee (Water Resources and Sanitation) Meeting (Oct 20, 2011) held at the Planning Commission.

Based on the requirements emerging from the discussions, this Approach Paper lays out the main elements of the structure and functioning of the Bill as well as its key features. It also discusses, the rationale behind various components of the Bill, and contains a brief introduction to the pre-legislative processes that needs to be followed prior to enactment of the Bill.

**Box 1: Overview of the Main Contents of this Approach Paper**

1. What (the bill creates or provides for)?
  - Contents of the Bill
2. Why (the bill provides for certain elements and features)?
  - Rationales and Explanations Underlying Various Elements and Features of the Bill
3. Brief Introduction to 'How (to operationalize the bill)'?
  - Processes and Procedures for Operationalizing the Bill by the State Government

For the ease of comprehension, the discussion on 'What' and 'Why' of the Bill has been presented in an integrated manner. In other words, the contents of the Bill and the rationale for the content have been included in the same section of the Approach Paper.

**1.1. Process followed by the Sub Group**

The Sub Group on Model Bill for State Water Regulatory Authority Act consisted of independent researchers, academics, representatives from the government, as well as civil society organizations, each having a long standing experience in working in the water sector. Thanks to the wide and vast experience brought on board by the members of the Sub Group, a range of critiques and concerns related to the existing water regulatory mechanisms were raised. The Sub Group started its functioning by articulating and collating these concerns and critiques. The imperatives or requirements from the design of the water regulatory mechanism evolved subsequently to requirement of design of a Water Regulatory System (WRS) based on these concerns and critiques. At this stage, an outline of the preliminary detailed draft of the Model WRS Bill was prepared. Inputs from the members of the Sub Group were sought and incorporated based on this draft. Further detailing of the drafts of the Bill, along with inputs from the Sub Group members, facilitated preparation of

the draft of the Model Bill, circulated for the purpose of the Consultation held in the Planning Commission on Sept 2, 2011. Comments and suggestions from the Consultation were incorporated while preparing the legal-language draft of the Bill.

## **1.2. Logical Process and Methodology for Development of the Bill**

Three meetings of the Sub Group were held to discuss in detail the design of the Bill. Respecting the time and resource constraints, continual e-mail consultations were also resorted to, to expedite and make maximum effective the process of drafting of the Model Bill.

The process of deliberation within the Sub Group started with the discussion on 'Concerns and Critiques' related to the conventional design of IRAs in general, and Water Regulatory Authorities in specific. A set of detailed 'Design Imperatives' emerged from the discussion related to these concerns and critiques. These design imperatives were then categorized as substantive, procedural, and institutional design imperatives. The substantive design imperatives yielded the objectives of regulation sought to be achieved (together forming the responses to 'why' and 'what' of water regulation system), while the procedural and institutional design imperatives formed the basis for the design of 'how' and 'who' aspects respectively of the system for water regulation.

The substantive design imperatives were further classified into different 'Areas of Regulation' in the Model Bill, i.e., those areas of water sector that require regulatory intervention. Second, the procedural design imperatives translated into procedural components of the Bill that specify the processes and procedures for preparation of policy instruments and making decisions based on those. Finally, the institutional design imperatives gave rise to the institutional structure and the concept of institutional transition envisaged in the Bill.

## **2. Chapter-wise Overview of the Bill**

After the preliminary chapters of the Bill including the enforcement of the Act and the definitions of the terms, the Bill lays out the Principles and Guidelines which provide the overarching framework for the interpretation of the Bill.

The Core Regulatory Functions that the WRS is mandated to carry out are articulated in the subsequent chapter, which essentially lays out the Areas of Regulation that the Bill covers and the sub-areas in each of the areas. This is followed by the chapters that establish and mandate the agencies such as the State Water Resources Regulatory and Development Council (in short, SC) and the State Independent Water Expert Authority (SIWEA), elaborating their respective structures, compositions, functions and roles in the WRS. The procedural chapters of the Bill provide for creation of the regime of the policy instruments, in the form of Rules, Regulations, Conduct of Business Regulations (i.e., CBRs or Procedural Regulations), and Criteria. Additionally, procedural provisions related to Transparency, Accountability, Participation, and Capacity Building, and establishment and operation of a State-Wide Service-related Grievance Redress System are included in the subsequent chapters of the Bill. The next chapter lays down the legal road map of the Institutional Transition. Finally, the bill presents the chapter on miscellaneous provisions, and Schedules including details of a number of aforementioned provisions.

The following table provides a quick overview of the scheme of the chapters of the Model WRS Bill.

**Table 1 Overview of the Scheme of Chapters of the Model WRS Bill**

<b>Name of the Chapter in the Bill</b>	<b>Nature of the Chapter</b>
Preliminary	Legal/ enforcing/ definitions
Principles and Guidelines	Substantive
Core Regulatory Functions and Objectives	Substantive
State Water Resources Development and Regulatory Council (SC)	Organizational
State Independent Water Expert Authority	Organizational
Rules, Regulations, and Criteria (RRC)	Procedural
Making And Promulgation of Decisions Based On RRC	Procedural
Transparency, accountability, and Participation	Procedural
State-wide Grievance Redressed System	Procedural
Institutional Transition	Organizational
Miscellaneous	Coordination with other laws, and responsibility and power of state govt.
Schedules	Details of various above contents

The following sections of the Approach Paper present an overview of the content of the Bill (What) and the rationale for the content (Why) in an integrated manner.

### **3. Institutional Structure Envisaged in the Bill**

A number of concerns and critiques related to the design of Independent Regulatory Authorities (IRAs) were discussed during the deliberations of the Sub Group. The deliberations over as well as the process of drafting the Model WRS Bill were subsequently based on the design imperatives required to address the concerns and critiques. These principles engendered the design components incorporated in the Model Bill, and formed the rationale for those design components. The following sub-sections elaborate on a few of the concerns related to the design of the IRAs.

#### **3.1. Critical powers of IRAs such as Tariff Determination**

The first set of concerns and critiques stemmed from the authority vested in the IRAs (as per the conventional model) to make critical decisions such as determination of tariff. To be more specific, these concerns are about the ‘selected’ experts—who are not elected and hence, have no political legitimacy—handling the matters (such as tariff) that have very strong social and political implications. The concern is also about the analytical and quasi-judicial—and not political—process followed by IRAs in making such decisions. The bill addresses these concerns by creating three different categories of institutions that have different types of competence and legitimacy (which flows from appropriate accountability

measures linked with appropriate constituents expecting accountability). These three types of agencies will be handling three different functions of governance. It is often argued that there should not be conflict of interests especially while, on one hand, handling the policy-making and execution functions, and, on the other hand, the function of monitoring and regulation. This arrangement also responds to this critique. Table 2 summarizes this arrangement. Further, the two agencies, the agency setting policies and the agency conducting regulation adopt different types of processes and procedures for their functioning. While the Independent Expert Authority (handling regulation) adopts analytical and quasi-judicial procedure, the agency with political mandate (handling policy-making) adopts the legislative procedures.

**Table 2 Types of Governing Agencies and their Governance Aspects**

<b>Governance Function</b>	<b>Qualities and Capacities</b>	<b>Areas of Competence</b>	<b>Areas of Legitimacy</b>	<b>Measures of Accountability</b>	<b>Constituents Expecting Accountability</b>
Type of Agency: Agencies with Political Mandate (to Make Subjective, Value-based Choices on behalf of Society)					
Policy-Making	Political Mandate	Social and Political	Social and Political	Electoral and Legislative Mechanisms	Citizens in general
Type of Agency: Agencies with Expertise and Capacities for Execution (Execution: the Construction, Operation, Maintenance of Infrastructure, and Service Provisioning)					
Execution / Implementation of Policies	Techno-economic, Financial, Legal Capabilities	Techno-economic, Financial, Legal	Techno-economic, Financial, Legal	Reporting to Government, Legislature, Independent Expert Authority	Citizens and Water Users
Type of Agency: Agencies with (Legal) Mandate for Regulation (Regulation: Monitoring and Enforcement of Compliance)					
Regulation	Expertise and Independence	Techno-economic, Financial, Legal	Techno-economic, Financial, Legal	Judicial Review, Procedural Accountability to Citizens, and Analytical Review by Peers	Citizens, Peers

### 3.2. Nature of Conventional IRAs as the only State-level Apex Authority

The second set of concerns and critiques relates to the nature of conventional IRAs as the only apex authorities at the state-level. The resultant distance and disconnection with the actual water users and ground-conditions suffered by the state agency not only creates alienation but also affect the quality, efficacy, and efficiency of its functioning.

In response to this concern, the Model WRS Bill incorporates the Principle of Subsidiarity, by laying out an optimum way of decentralizing water sector governance to the following four levels: (i) State-level, (ii) River Basin level<sup>1</sup>, (iii) Sub-Basin level, (iv) Local level. At all these four levels of governance, institutions with different structure, compositions, functions, authorities, and roles are provided for in the bill. Such decentralization is expected to

<sup>1</sup> Here, the river basin refers to the area of basin within the boundaries of the state.

eliminate the problems with the centralized institutional structure envisaged in the conventional model of IRA.

Such decentralization, as feared by many, might prove dysfunctional or sub-optimal affecting efficiency and efficacy of governance and performance of the sector, especially because of the lack of capabilities and understanding of issues at the lower level of institutional ladder. The bill brings in and implements the concept of phased institutional transition by providing step-wise, gate-protected process for gradual introduction of the decentralized institutional structure.

Another concern over the central, state-level agency is the problems that the water users would face in approaching the agency with their service-related grievances. Further, the large number of service related grievances—which are seen as of repetitive and routine nature—of large number of water users are seen as swamping down the agency with the work load. Such swamping and remoteness of the state-level agency is expected to give rise to high level of discontents among the water-users, affecting the water sector governance system. The bill responds to these concerns by creating a multi-structured state-wide Grievance Redressal System, with connection with the IEA at the state level.

### **3.3. Universal Design of the IRAs and Flexibility to the States**

The third set of critiques and concerns relates to the universal design of the IRAs, i.e., design based on the 'one shirt fits all' or 'cookie cutter' approach. Such approach is seen as highly inappropriate in view of: (a) the immense diversity of physical (topographic, geomorphic, and agro-climatic) and socio-cultural, political conditions within and across the state, (b) the diversity of policy priorities and political preferences of the governments in different states.

The Model Bill addresses these concerns by having a modular structure, from which modules based on the state-specific situation, requirements, priorities of water sector governance, and other different factors could be selected by the state government while preparing and enacting their final draft of the Bill.

Additionally, the temporal aspect of the state-specific situation for implementation of the Act, especially for gradual decentralization for governance, is incorporated in the phased approach for institutional transition that is already explained in the previous sub-section. This will enable the states to determine the optimal time and duration for transition through the three phases of institutional transition envisaged in the Bill.

### **3.4. Autonomy and Accountability of the Independent Authorities**

The core of the fourth set of concerns and critiques related to the IRAs is two-fold: (a) concern over the autonomy required by the IRA for effective and efficient operation of the independent regulatory mechanism, and (b) concern over the accountability required of such an independent regulatory mechanism in order to ensure clean governance<sup>2</sup>. The Bill addresses this set of concerns by incorporating many mechanisms for ensuring autonomy and accountability of the IRA, in addition to usual mechanisms on the laws creating IRAs. The separation of authority to make 'political' or 'normative' decisions and the authority to

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<sup>2</sup> Effective accountability is also seen as the necessary condition for ensuring acceptance, support and confidence of the stakeholders of the water sector.

make 'technical' or 'predominantly non-normative' decisions have helped bring more clarity in the task of ensuring autonomy and accountability of IRAs. For example, while the State Water Regulatory and Development Council (SC) is expected to ensure accountability in respect to the 'normative' or 'political' implications of the decisions of the IEA, for the technical content of its decisions, the IEA will be accountable to technical experts through the mechanism of regular peer reviews.

### 3.5. Accountability of the Agency Making Political Decisions

While the autonomy and accountability is one of the major concerns over the IRA, which is a product of the sectoral reform, the accountability of the political institutions is one of the major areas of concern that prompted the reform measures, especially establishment of the IRAs. Hence, this original concern cannot be overlooked while addressing the concerns over IRAs.

It certainly is accepted that the political decisions cannot be handed over to 'selected' experts' exempted from the political accountability and that the authority to make political decision should be matched only by political accountability. However, the issue of efficacy and efficiency of the mechanisms for ensuring political accountability remains valid. The concern is over the operationalization of the political accountability for which at present the major instrument is elections of the legislative bodies. The efficacy and efficiency of this episodic and broad-based mechanism for accountability has been questioned by many. The main concern in this regard is dispersal of accountability through this mechanism. This dispersal has two dimensions. First, it is temporal dispersion, which means that the accountability mechanism is available to citizens only in episodic manner, i.e., only once in five years. The second dimension is the substantive dispersal. This means that it is difficult to hold accountable for the decision and actions the state government in the water sector takes as it handles the governance of tens of departments and a multitude of sectors and issues. The Model Bill responds to the issue of dispersal of accountability and efficacy of accountability of the agency making political decisions by suggesting creation of the State Water Regulatory and Development Council, which is a body with political mandate, but which can be held directly accountable for its political decisions affecting the performance of water sector.

### 3.6. Institutional Content of the Bill

The institutional structure envisaged in the Bill is shaped by the concerns and critiques included in the previous sub-section, as well as some salient features of the process of governance. The process of governance is seen here as comprising certain core tasks of governance (CTGs). Each of these CTGs requires certain critical qualities on the part of the agency expected to carry out the CTGs. Various governing are envisaged for each of these CTGs due to their qualities in Phase 1, 2, and 3 of the institutional transition envisaged in the Bill. The following table provides in brief the concept of separation of political (normative), expert (predominantly non-normative or non-political), and executive (or implementing) functions and tasks of governance, and how this separation is reflected in the Bill.

**Table 3 Separation of Normative, Non-Normative, and Executive Tasks of Governance**

Core Task of Governance (CTG)	Qualities Required	Agencies Envisaged in the Bill
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<b>Core Task of Governance (CTG)</b>	<b>Qualities Required</b>	<b>Agencies Envisaged in the Bill</b>
Creating normative framework for decision-making by the executive agencies in the form of Law, Rules, and Regulations	<ul style="list-style-type: none"> <li>• Political Mandate (to make value/normative decisions)</li> </ul>	<ul style="list-style-type: none"> <li>• State Legislation and SC (Phase 1 and 2)</li> <li>• RBCs (Phase 2)</li> <li>• SBWCs (Phase 3)</li> </ul>
Creating non-normative framework within the normative framework	<ul style="list-style-type: none"> <li>• Expertise</li> <li>• Independence</li> </ul>	<ul style="list-style-type: none"> <li>• SIWEA (Phase 1 and 2)</li> <li>• BIWEA (Phase 2)</li> <li>• SBUBIWEA (Phase 3)</li> </ul>
Creating protocols or CBRs for processes and procedures of governance	<ul style="list-style-type: none"> <li>• Expertise</li> <li>• Independence</li> </ul>	<ul style="list-style-type: none"> <li>• SIWEA (Phase 1 and 2)</li> <li>• BIWEA (Phase 2)</li> <li>• SBUBIWEA (Phase 3)</li> </ul>
Implementation through making executive decisions and taking actions to implement those	<ul style="list-style-type: none"> <li>• Executive capabilities and mandate</li> </ul>	<ul style="list-style-type: none"> <li>• WRD/ VDC (Phase 1)</li> <li>• RBO/ RBA (Phase 2)</li> <li>• SRBA (Phase 3)</li> </ul>
Ensuring compliance of decisions and actions	<ul style="list-style-type: none"> <li>• Expertise</li> <li>• Independence</li> </ul>	<ul style="list-style-type: none"> <li>• SIWEA (Phase 1 and 2)</li> <li>• BIWEA (Phase 2)</li> <li>• SBUBIWEA (Phase 3)</li> </ul>
Conducting processes for public deliberations	<ul style="list-style-type: none"> <li>• Expertise</li> <li>• Independence</li> </ul>	<ul style="list-style-type: none"> <li>• SIWEA (Phase 1 and 2)</li> <li>• BIWEA (Phase 2)</li> <li>• SBUBIWEA (Phase 3)</li> </ul>

### **3.6.1. Institutions in the First Phase**

The Model Bill envisages the Water Resources Department (WRD) or Valley Development Corporations (VDCs- as may exist) as the implementing or executive agencies. Two other governing agencies are envisaged by the Bill, as elaborated in the following subsections.

#### **3.6.1.1. State Water Resources Regulatory and Development Council (SC)**

The SC is created despite the existence of the state legislative houses (SL), which is the agency having the highest level of political mandate in the state, as it is a body of representatives elected directly by the citizens. Thus, as compared to the SL, the SC has lesser degree of political mandate, first, as it draws from elected representatives from various bodies, and second, because of the presence of a few appointed (unelected) representatives of stakeholders. The rationale of creating the SC, with somewhat lesser degree of political mandate, is to address the problem of dispersed accountability in the case of the SL. The SL is responsible for myriad issues and decisions in numerous sectors at the same time, depriving it of the opportunity, time, and resources necessary for providing undivided and detailed attention to the water sector. This burden of simultaneous responsibility of a wide range of sectors and myriad issues also makes it difficult to hold the members of the SL responsible and accountable to particular decisions in a particular sector. This is coupled with the fact that the effective mechanism available to citizens for extracting accountability viz. elections- has very low frequency and has become blunt. As a result of this, the accountability of SL, as far as the governance of water sector is concerned, gets blunted or dispersed. This dispersed accountability is seen as the major source of problems of governance in the water sector.

Creation of the SC is therefore seen as a mid-way out from the problem of dispersed accountability by bringing in elected representatives from various elected bodies, and also providing the agency with a mandate to handle the water sector alone. This is expected to ensure proper attention being paid to the water sector, as well as focused or clear-cut accountability for governance of water sector.

#### **3.6.1.2. State Water Independent Expert Authority (SIWEA)**

First of all, SIWEA is a purely 'expert agency' with 'non-normative' functions. Second, it is different from a typical 'expert committee' in diverse ways. It is not a committee of part-time experts, but an 'authority' with full-time experts who have certain legal powers and also legal responsibility and accountability to discharge. As it is an expert agency, no 'political/ socio-demographic' regional balance is sought in its membership. However, adequate representation of all fields of expertise which are relevant for the water sector is essential. For structuring the SIWEA, this has been the prime concern apart from capacity, honesty, and integrity of its members. Effort is made to ensure accountability and independence through various ways. For example, provision of peer review of the orders of the SIWEA by peers in the same field of expertise.

Thirdly, the SIWEA, unlike a committee which has to be formed and given a mandate to, can take suo-moto actions. In this sense it is not limited to be an adjudicatory agency, but becomes an authority charged with protection and promotion of public interest, at its own volition and mandate within the framework provided by the Act.

#### **3.6.1.3. Hierarchy and Interrelationships amongst the governing agencies**

As mentioned previously, the normative (political), non-normative, and executive decisions have been separately mandated to be made by different agencies. In this sense, no strict 'hierarchical' relationship arises amongst the SIWEA, SC, and WRD (or VDC) in normal circumstances. However, the Act does provide that the SIWEA and the executive agencies operate within the normative framework provided by the Act, the Government (in the form of Rules) and the SC (in the form of Regulations).

At the same time, in extra-ordinary circumstances, determination of whether a particular decision is normative or non-normative may give rise to a 'hierarchical' requirement for seamless implementation of the Act. In such a case, the Bill also provides for policy directives by the government, which are envisaged to address such extraordinary circumstances as may arise.

#### **3.6.1.4. Other Measures for Strengthening Transparency, Accountability, Participation and Capacity Building (TAP-C)**

The other institutions provided for by the Model Bill for strengthening TAP-C are as follows:

1. Public Interest Promotion Office (PIPO),
2. State-wide Grievance Redressal System,
3. Transparency, Accountability, and Participation Ombudsman,
4. Panel of Accredited Stakeholder Representatives

The details of these measures are included in APPENDIX 2.

#### **3.6.2. Institutional Transition**

One of the major concern/ critiques of the current IRA model is that the IRAs in current form concentrate decision-making powers in the hands of one agency and that too at the state-level. Though not voiced frequently, concentration of authority in the state level political

agencies like the state legislation and the state government are also seen as a matter of concern by many.

Another concern/ critique of the current institutional structure in the water sector, is the mismatch between the administrative boundaries and ecological boundaries. The water sector agencies are traditionally organized along administrative boundaries right from the state to the local levels.

Considering both these concerns, the institutional transition in three phases is provided for in the Model Bill. The transition is in adherence to the Principle of Subsidiarity for decentralization of governance, which requires devolution of functions to the lowest possible level of governance. The qualifying condition here is the feasibility and optimality of such decentralization.

The feasibility pertains to the preparedness of institutions (especially at the lower level) and of stakeholders. So, the transition is seen as gradual and phase-wise, with efforts in each of the successive phases for developing preparedness of both institutions and stakeholders to transition to the next phase.

Constraints of optimality require that some decisions will have to be made at higher level of governance, even after condition of preparedness is achieved. Thus, though sub-basin level agencies are prepared to govern, some functions/ decisions will have to be made at the basin or even at the state level, from the point of view of optimality. In addition to this, the institutional transition attempts to align the ecological boundaries with governance boundaries.

The following table provides a brief overview of the institutional transition envisaged in the Bill.

**Table 4 Brief overview of Institutional Transition**

	Agencies with Political Mandate			Agencies with Execution Capacities			Independent & Expert Agencies		
	Ph 1	Ph 2	Ph 3	Ph 1	Ph 2	Ph 3	Ph 1	Ph 2	Ph 3
<b>State Level</b>	SC	SC	SC	WRD	WRD	WRD	SIWEA	SIWEA	SIWEA
<b>Basin Level</b>		River Basin Council (RBC)	RBC		River Basin Agency (RBA)	RBA		Basin level Independent Water Expert Authority (BIWEA)	BIWEA
<b>Sub-Basin Level</b>			Sub-basin Water Council (SBWC)			Sub-basin office of River Basin Agency (SRBA)			Sub-basin Unit of BIWEA (SBUBIWEA)
<b>Local Level</b>	Stakeholder organizations with elected representation			Water User Associations			Stakeholder participation through comments and suggestions		

## **4. Substantive Scope and Content of the Bill**

### **4.1. Areas of Regulation<sup>3</sup>**

Regulation Areas are envisaged as the handles to give effect to the substantive measures to achieve the objectives and fulfill the rationales of regulation. In other words, Regulation Areas are those Areas of the water sector that need regulatory intervention in order to achieve the objectives of Regulation. These Areas of Regulation are those areas within which the Core Regulatory Functions shall be carried out by the WRS to achieve the sectorial objectives. Core Regulatory Functions are the mandatory functions and set of objectives that the state water regulatory system would carry out and achieve.

The following is the list of Areas of Regulation included in the Model Bill. APPENDIX 1 elaborates the key sub-areas of these Areas of Regulation as well.

1. Water Access, Extraction, and Use
2. Execution of projects and programs
3. Water Service Provisioning
4. Allocation of Financial and Other Resources to Projects
5. Environmental sustainability
6. Processes and Procedures
7. Disaster management
8. Ensuring Compliance to the Provisions of this Act
9. Private Sector Participation
10. Integrated State Water Plan (ISWP)
11. Climate Change

### **4.2. IRAs, Water Markets, and Privatization**

The fifth set of concerns was related to whether establishment of any independent regulatory mechanism in the water sector would automatically mean it is the harbinger of privatization of water sector, opening the doors of the sector wide for indiscriminate entry and take-over of the sector by private sector. This required that these concerns are addressed while, at the same time, leaving open the option of legitimate and adequately regulated private sector participation open to the state governments as a political decision or priority. To achieve this, the Model WRS Bill includes private sector participation as one of the core regulatory functions of the WRS and provides a way to address the concerns over privatization. Thus, when a state government includes private sector participation as one of the sectorial objectives, the Bill mandates carrying out certain processes and procedures to ensure protection of public interest in the wake of such initiatives.

Additionally, the Bill explicitly mandates that the state government is vested with the ultimate responsibility of provision of water for life and livelihoods to all, irrespective of the means (i.e., even in case of private sector participation in water service provisioning). Further,

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<sup>3</sup> Some regulation areas (e.g., inland water ways and fishing) which could have critical importance for some states shall have to be covered additionally. This is because given the limitations of time, expertise, and other resources, the Sub Group included only these few Areas of Regulation in the Model Bill.

concern regarding water entitlements being used as tools for establishment of water markets has been addressed by inclusion of the principle that water entitlements should be introduced to ensure secured livelihoods.

### **4.3. Social and environmental objectives of the water sector**

The draft Bill also addresses concerns over neglect of overall sectorial objectives including socio-cultural and environmental sustainability of the water sector, by mandating consideration of these overall sectorial objectives in all decision-making. This has been supplemented by appropriate representation of experts in the Independent Expert Authorities, and procedural requirements for the same. Additionally, the Bill also addresses the requirement of a seamless, competent, and available pool of talent, experience, and expertise, by establishing a prospective path and vision for career in the state's water regulatory system. For example, an interested individual may start as a Grievance Redressal Officer, gather experience to become a Consultant to the Independent Expert Authority, and then become a Special Advisor to the IEA, and subsequently a member of the IEA. A number of such options are laid out implicitly in the Bill, that achieve the objective of establishing such a seamless, competent, and available pool of talent, experience, and expertise.

Further, the contents of the Bill can be considered as (a) procedural content, (b) substantive content, and (c) institutional content. The following sub-sections elaborate on each of these categories of the contents of the Model Bill.

### **4.4. Modular Structure and Flexibility**

The Bill, while laying out the Areas of Regulation, also incorporates a Modular Structure and Flexibility for the state to enact the Bill. This is possible through selection of those Areas of Regulation by the states that are in line with the state's priorities, objectives, and the status of water sector development. The module of the Bill related to Processes and Procedures would be then applicable to the selected Areas of Regulation. Such a modular approach was considered necessary and important to avoid a 'one shirt fits all' approach.

This element of modular structure and flexibility of the Bill to be adopted by the states according to their priorities and situation is dealt with in detail in the separate document on pre-legislative processes, which has been briefly overviewed in Section 3 of this Approach Paper.

## **5. Processes and Procedural aspects envisaged in the Bill**

### **5.1. Processes and Procedures**

The Model Bill lays out detailed processes to be followed for preparation of Rules, Regulations, CBRs, and Criteria. These processes are based on the principles of Transparency, Accountability, and Participation, and the Bill specifically mandates well defined functions and responsibilities to be carried out by the various agencies established by the Bill (further detailed in sub-section 5.2).

At the same time, truly meaningful, intense, and effective participation in governance requires extending the scope of participatory processes also to procedures for making critical executive decisions in the operations and maintenance of equipment and facility.

These executive decisions are made within the framework laid out by the Rules, Regulations, CBRs, and Criteria. The Procedure for Public Deliberation (PPD) and Procedure for Comprehensive Public Deliberation (PCPD) are designed as the standard procedures to be followed for ensuring participation in preparation and promulgation of the decisions made based on the policy instruments envisaged in the Act (Rules, Regulations, CBRs, and Criteria). As PCPD is more stringent compared to PPD, it is made applicable while making decisions that have direct and wide-ranging impacts on the operation of the water sector (such as tariff determination, allocation of water access entitlements), while the PPD is mandated as a standard minimum requirement for making and promulgation of all decisions.

## **5.2. Policy Instruments: Rules, Regulations, CBRs, and Criteria**

5.2.1. **Rules and Regulations:** In the Model WRS Bill, State Water Resources Regulatory and Development Council (or SC in short) has been created as an agency with political mandate and focused accountability for making value (normative) decisions. Hence, the responsibility of making most of the value decisions is vested with the SC in the form of Regulations. However, considering the ultimate responsibility of the state government regarding the water sector, the state government has been given the authority of making 'Rules' especially over administrative and financial matters. The SC is thereby provided with a handle to make normative decisions without altering the normative core given by the state government and the SL in the form of the Act.

5.2.2. **Conduct of Business Regulations (CBRs):** CBRs involve high level of technical decisions as well as processes for making decisions such as preparation of Criteria and making executive decisions based on the CBRs and Criteria. The CBRs would, hence, be prepared by SIWEA within the framework of the Act, Rules, and Regulations. The CBRs would specifically provide step-wise time-lines for making various decisions. In other words, CBRs chiefly deal with the processes of detailing criteria, norms, standards etc. that are used to give effect to the normative framing as well as the techno-economic aspects of decisions.

5.2.3. **Criteria:** Criteria would provide more specific framework for executive agencies to make decisions. They would largely contain non-normative elements. Criteria, norms, standards etc provide the framework within which the executive agencies are expected to make non-normative and executive decisions. Some of these decisions, which are critical and significant for the execution, would need prior deliberation and approval for its compliance with the Act, Rules, Regulations, CBRs, and Criteria (such as tariff, entitlements). The procedures for seeking and obtaining such approval are specified in the act as the Process of Public Deliberation (PPD) and Process of Comprehensive Public Deliberation (PCPD) as elaborated previously.

## **5.3. Interrelationships of Policy Instruments and how they are expected to function together**

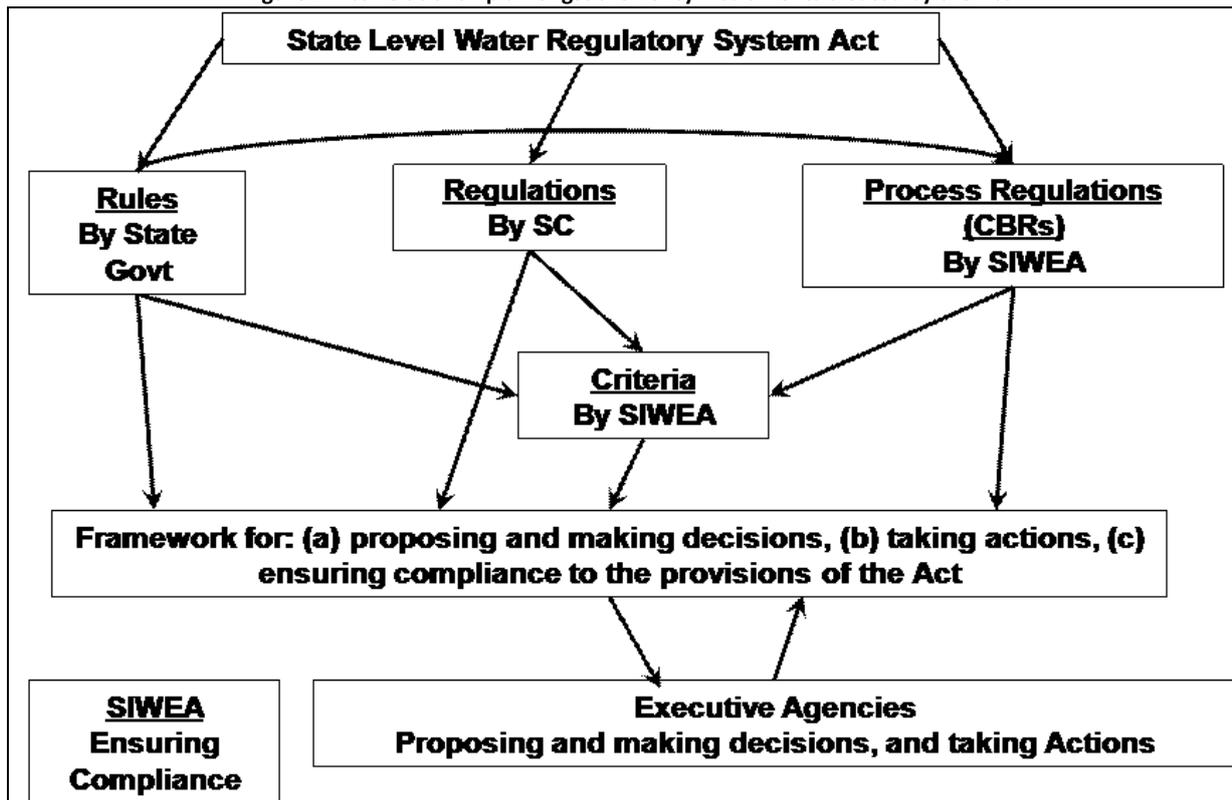
The WRS Act would lay out the overarching framework for all decision-making in the state's water sector. The Rules made by the state government would specify the administrative, financial, and/or further specific normative aspects of decision-making. Regulations, prepared through the process led by the SC would further specify the normative framework for the decisions to be made. The process regulations or the Conduct of Business Regulations, prepared by the SIWEA would specify the processes to be carried out for the decision-making. Criteria prepared by the SIWEA would embody all the normative and non-

normative aspects of the framework within which the executive and implementation decisions would need to be carried out.

The executive agencies would make decisions based on the Criteria, as well as the overarching framework provided by the Act, Rules, Regulations, and CBRs. The SIWEA would ensure compliance of the processes and procedures of decision-making and promulgation of decisions, based on the framework specified by the Act, Rules, Regulations, and CBRs.

The following figure provides a brief overview of this interrelationship amongst the policy instruments.

Figure 1 Interrelationship amongst the Policy Instruments created by the Act



### 5.3.1. The Policy Instruments and Areas of Regulation

The Rules, Regulations, CBRs, and Criteria would be prepared for all the subareas of each of the Areas of Regulation. That is, for each Area of Regulation, the Rules and Regulations would specify normative aspects for decisions within the framework provided by the Act; while the CBRs and the Criteria would respectively lay out the processes to be followed for decision-making related to that Area of Regulation, and the non-normative aspects such as the norms and standards to be used for decision-making and implementation. The concept of Areas of Regulations is elaborated in the previous sub-sections.

## 6. Pre-legislative Measures

The Model WRS Bill lays out detailed processes and procedures to ensure transparency, accountability, public participation, and autonomy of the SIWEA (TAPA) in the functioning of the Water Regulatory System. However, steps are also required before enactment of the bill at the pre-legislative stage to ensure all these elements (i.e., TAPA) during preparation of the final draft of the Bill and enactment of the Bill. Adherence to such principles will lead to a

proper and detailed process of conducting meaningful consultation and debate with all stakeholders and citizens in general. It has been experienced that, in absence of such a process, the laws not only lose wider credibility and ownership, but breed unnecessary suspicion about the intentions of the governments, leading to resistance and conflicts. More important is the alienation and the resultant disinterest even among those who do not resist, which makes efficient and effective implementation of the law impossible. In the current state of affairs the governments do not have cushion to afford such limitations on the functioning of the proposed law.

While a separate and detailed document on pre-legislative processes for preparation and enactment of the Bill would be prepared subsequently, this section provides a brief introduction to this pre-legislative process with respect to the Model WRS Bill.

### 6.1. Pre-Legislative Process: Main Stages of Pre-Legislation Process

The following are the main stages of the pre-legislative process. They are divided in two main phases: (a) Preparation of the Draft for the Public Consultation, (b) Conducting Public Consultations on the Draft. These phases are further divided in steps as shown in the table.

**Table 5 Pre-legislative phases and steps**

<b>Phase</b>	<b>Steps within Phase</b>
1. Preparation of the Draft of the Bill for Public Consultation <sup>1</sup>	a) Internal Process within the state government for Deciding the substantive scope of the Bill <sup>2</sup>
	b) Preparation of the First Draft
	c) Internal Consultation on the Draft
	d) Limited External Consultation on the Draft
	e) Finalization of the Draft for the Public Consultation
2. Public Consultation on the Draft of the Bill	a) Publication of the Draft of the Bill and Report on Rationales of Adaptation
	b) Dissemination of the Draft and the Report Across the State
	c) Public Consultations, Meetings, and Workshops at various locations across the state
	d) Assessment and Analysis of the Comments and Suggestions received through Public Consultations and Written Submissions
	e) Processing of the Findings and Revisions in the Draft of the Bill
	f) Publication of the Action Taken Report and Final Draft for the Legislative Consultation
	g) Legislative Process for Sanction of the Bill
	h) Promulgation of the Law

Notes:

1. *The draft of the Bill will always accompanied by the 'Report on the Rationale of Adaptation from the Model Bill'.*
2. *This involves choosing, adapting, and prioritizing the Areas of Regulation and Sub Areas and/or Objectives within each of the area.*

### 6.2. Methodology for Deciding Substantive Scope

This model bill is structured in the modular form with an adequately wide substantive scope. The entire substantive scope of the bill is structured in the form of different Areas of Regulation; and within each Area of Regulation in the form of Sub-Areas. The policy instruments—such as Rules, Regulations, and Process Regulations (or Conduct of Business Regulations), and Criteria—are to be structured along these sub-areas. Thus, the state

governments will have flexibility and option to choose from these various areas and sub-areas.

The choice is to be made based upon the physical, socio-cultural, and political conditions, as well as the problems faced by the state water sector, as per the understanding of the state government. The choice will also be based on the priorities of the state government as reflected in their planning and policies. The adapted draft of the Model Bill which will be used by the state government for public consultation will first emerge out of these choices to be made by the government.

Detailed methodology—based on the priorities, on-ground situation, and choices of the state government—to determine the substantive content and scope of the Bill shall be included in the separate document on the pre-legislative process.

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## **APPENDIX 1. Areas and Sub-Areas of Regulation**

1. Water Access, Extraction, and Use
  - a. Allotment of entitlements or other forms of allocation/ authorization/ permission for use of water
2. Execution of projects and programs
  - a. Review and assessment of project proposals, prior to their final approval by the government
  - b. Review and assessment of the processes, procedures, and outcomes of these processes and procedures, for identification and rehabilitation of the Project Affected People (PAPs).
  - c. Redress of grievances related to rehabilitation of the PAPs.
  - d. Stage-wise review and reporting of the project work in progress.
3. Water Service Provisioning
  - a. Assessment of water provisioning system with respect to the rules, regulations, and criteria
  - b. Enforcing compliance to the rules, regulations, and criteria with respect to service provisioning
  - c. Setting appropriate water tariff
4. Allocation of Financial and Other Resources to Projects
  - a. Review and appraisal of financial requirements for projects and programs.
  - b. Amendments and correction in the project plans
5. Environmental sustainability
  - a. Review and appraisal of implementation of the various environmental regulations and laws in relation to protection and conservation of water related ecosystems.
  - b. Enforcing adherence to the guidelines, principles, rules, regulations, CBRs, and criteria for ensuring environmental sustainability.
6. Processes and Procedures
  - a. Preparation and publication of compliance reports, inter alia including the orders issued for ensuring compliance, and the action taken by the corresponding agencies
7. Disaster management
  - a. Preparation and enforcement of norms and criteria for managing water-related disasters
8. Ensuring Compliance to the Provisions of this Act
9. Private Sector Participation
  - a. Assessment of technical, economic, and financial aspects of projects, programs, and schemes with full or partial private sector participation
  - b. Reporting on the functioning of the projects and programs with partial or full private sector participation.

- c. Issuing orders to corresponding agencies to enforce compliance to and to correct the aberrations with respect to the rules, regulations, and criteria prescribed for private sector participation.
- d. Random review of the contracts in the monitoring reports.
- e. Approval or disapproval of tariff and other service-related proposals prepared by the private or public utilities, based on the applicable regulations, CBRs, and criteria.
- f. To grant, revoke, modify, or make other changes to, the licenses to private sector applicants.
- g. Community-level public hearings (to facilitate and carry out a multi-stakeholder dialogue involving the public and the competent and responsible officials of the private entities)

#### 10. Integrated State Water Plan (ISWP)

- a. The norms for content and the process of preparation of the ISWP
- b. Technical validity of the data being used for preparation of the ISWP.
- c. Aspects to ensure validity and compliance of the draft plans and plan being submitted for finalization, with respect to the guidelines and principles prescribed in the Act.

#### 11. Climate Change

- a. Review and assessment of the process of and for assessment of potential and observed impacts of climate change on the water resource situation
- b. Review and assessment of the preparedness of institutions including organizations and policy instruments, and preparedness of stakeholders to face, mitigate, and prevent the impacts of climate change on water resource situation,
- c. Revision, reporting, and strengthening of institutional processes in key regulation areas to address the challenges of climate change.

**APPENDIX 2. Details of Other Measures to strengthen Transparency, Accountability, and Participation**

<b>Institution</b>	<b>Composition</b>	<b>Functions and Responsibilities</b>	<b>Jurisdiction and hierarchical relationships</b>	<b>Accountability mechanism</b>
Public Interest Promotion Office (PIPO)	Headed by a Committee of Eminent Persons (retired HC judge, retired secretary of the state govt., and renowned representative of Civil Society)	Protection and promotion of public interest by taking necessary actions and carrying out activities either suo-moto or on request of stakeholders	PIPO would be established by the SIWEA, and the Regulations and CBRs for PIPO shall govern functioning of PIPO.	The Eminent Persons shall be accountable to the stakeholders through their eminent image.
State-wide Grievance Redressal Mechanism	One or more Basin-level Grievance Redressal Officers,  One or more Sub-Basin-level Grievance Redressal Committees,  Basin-level Grievance Redressal Cells, and  One or more State Grievance Redressal Forum	Redressing service-related grievances of water users	GRS would be established within SIWEA, and CBRs for GRS would govern the functioning of GRS; while the SIWEA shall be the apex appellate authority for the GRS	Accountability mechanism applicable to SIWEA shall be applicable to the GRS as well, since GRS would be established within the SIWEA.
TAP Ombudsman	Retired High Court Judge	Hearing grievances of all stakeholders related to TAP in functioning of the WRS	The TAPO shall be appointed by the SIWEA	The TAPO shall be accountable to the stakeholders through the image of being a senior HC Judge, in addition to being governed by the same accountability mechanism as that is applicable to the SIWEA.
Panel of Accredited Stakeholder	Representatives of various stakeholder	Representation of stakeholders of the water sector	No direct hierarchical relationship except	Accountability mechanism applicable to the

<b>Institution</b>	<b>Composition</b>	<b>Functions and Responsibilities</b>	<b>Jurisdiction and hierarchical relationships</b>	<b>Accountability mechanism</b>
Representatives (ASRs)	categories (e.g., farmers, industry, urban domestic, rural domestic), and of third party public interest interveners	by being party to all proceedings and processes before SIWEA	for being appointed by the SIWEA	processes and procedures before SIWEA shall be applicable to the ASRs as they will be party to these processes and procedures