

## **DRAFT APPROACH PAPER FOR DEVELOPING THE CRITERIA FOR MODIFICATION IN ENTITLEMENT**

### **1.0. Preface**

- 1.1. Before discussing the approach to preparation of a Criteria for modification in Entitlement under Section 11 (h) of the MWRRA Act, 2005, it would be necessary to examine the scope and ambit of the new Section 31 A in the MWRRA (Amendment and Continuance) Act 2011 issued by the State government on 22.4.2011 to amend the MWRRA Act and its implications on the various other provisions on Entitlement in the Act. Section 31 A reads as under

***“31 A. Notwithstanding anything contained in this Act or in any other law for the time being in force, the term ‘Entitlement’ shall apply only to such areas where compliance of all relevant provisions including delineation under the Maharashtra Management of Irrigation Systems by Farmers Act, 2005 is made.”***

- 1.2. From a reading of the above section, it prima-facie appears that the term ‘Entitlement’ means only irrigation Entitlements delivered to WUAs in delineated command areas of projects and where other provisions of the Farmer’s Act have become applicable viz. identification of Priority I & II works for rehabilitation, their rehabilitation within the stipulated time periods and signing of agreements between WRD and WUA. Consequently, it follows that non-irrigation agreements between WRD and Water User Entities (WUE) for supply of water to water utilities/industries within sectoral allocation are not the Entitlements referred to in the amended section 31 A. In other words the term “Entitlement” referred to section 31 A are purely those entitlements which are issued to WUAs in delineated areas. An examination of other provisions in the MWRRA Act relating to Entitlements supports this conclusion for the following reasons
- (i) By definition [Section 2 (i)], Entitlement means any authorization by River Basin Agency to use the water for the purposes of the Act.
  - (ii) Section 2 (zc) defines a Water User Entity to include WUAs, utilities, industrial users which are authorised to receive and utilize an Entitlement.
  - (iii) Under modified Section 11 (a), the Authority has to determine the Criteria for distribution of Entitlements by the RBAs within each

category of use. Category of use is further defined in Section 2 (f) to mean use of water for different purposes such as domestic, agricultural, industrial, commercial, environmental etc.

- 1.3. From the foregoing, it is clear that Section 31 A relates only to Irrigation Entitlements in the delineated areas as the term ‘areas’ in this section cannot mean anything other than command areas of WUAs to which water deliveries are made, which is not the case for non-irrigation users. Thus deliveries for irrigation become legal Entitlements only when the provisions in the Farmer’s Act have been applied to the command areas. The term ‘Entitlement’ mentioned in section 11 (h) is a broader term and applies therefore to all categories of users and the various provisions in the Act relating to Entitlement, including especially section 11 (h) (ii), are not diluted or neutralized by Section 31 A.

## **2.0. Modification in Entitlement**

- 2.1. Section 11 (h) in the MWRRA Act under Powers, Duties, Functions of the Authority reads as under

***“11 (h) - to lay down the criteria for modification in Entitlement for the diversion, storage and use of the surface and sub surface waters of the State. These criteria shall among others include the following***

- (i) Aggregate Bulk Water Entitlements will be considered as Bulk Water Entitlements under the provisions of this Act except that they shall not be a usufructuary right and will only be adjusted by the Authority if there is a compensating change, under the provisions of this Act, to any component Bulk Water Entitlement that comprise part of the Aggregate Bulk Water Entitlement;***
- (ii) in the event that any Water User Entity wishes to use its category priority to mandate a change in the use or volume of any Entitlement, that entity shall demonstrate in a public hearing before the Authority, that it has exhausted all attempts to conserve, increase efficiency and manage its demand of water within its Entitlement and has exhausted all opportunities to increase its Entitlement through a transfer within the voluntary, market based economy. If, after such a public hearing, the Authority deems such a mandated transfer, on either an annual or permanent basis, to be legal and necessary in the interest of the people of the State, the Authority***

***shall then determine a fair and just compensation as determined by the market value of the water resource, to be paid to the Entitlement holder by the entity exercising the mandated user category preference. “***

- 2.2. As 11 (h) (i) is clarificatory in nature, we can examine the operational part of this Section which is 11 (h) (ii). It can be concluded that
- (i) it is applicable to all Water User Entities in a project desiring a change in Entitlement
  - (ii) the change can be in use or volume of the Entitlement (e.g. a Municipal Corporation can seek a increase in its Entitlement on the grounds that the industrial use component of its Entitlement has increased).
  - (iii) the reasons for seeking change can be linked by the Entity to the allocation priority in the State Water Policy (e.g. an industrial user can ask for increase in Entitlement to meet increased production capacity stating that he had got a lower Entitlement as his preference category is after domestic; a domestic category can similarly seek higher entitlement on the grounds that it has the highest category priority and an irrigation entitlement holder can seek a change on the ground that his priority is third but he has been given negligible water despite having a priority albeit third)
  - (iv) before seeking a change in Entitlement, the Entity must have exhausted other efforts to meet the increase like trading or recycling and reuse
  - (v) a public hearing has to be arranged by the Authority where (iv) above has to be demonstrated
  - (vi) the change in Entitlement has to be annual or permanent and not seasonal
  - (vii) the section applies only to surface water as sub surface water Entitlement are not issued by RBAs, whose use is governed by the Easement Act, 1882
  - (viii) the section applies only to existing Entitlement holders in a project. Thus the demand of a new claimant for allocation of Entitlement in a project which already stands fully allocated cannot be entertained under this section
  - (ix) the term “in the interest of the people of the State” used in the Section means allocation priorities indicated in the State Water Policy for various categories of use. It cannot be taken literally

because modification in Entitlement in a project cannot affect the people of the State at large.

- (x) The Authority has two tasks viz. to determine first that the demand is legal, necessary and in the public interest and second to decide the amount of compensation payable to the Entity whose Entitlement is getting reduced.

### **3.0. Application to Irrigation**

3.1. The use of the term 'Water User Entity' in the section does not preclude WUAs from seeking a change in Entitlement. However, the following has to be kept in view

- a) irrigation requirements are seasonal whereas under Section 11 (h) only annual or permanent change in Entitlement can be made
- b) irrigation deliveries become Entitlements in the legal sense only after the MMISF Act is applied to project areas. Thus Section 11 (h) will become applicable to irrigation only when this has been done
- c) under Section 11 (i), changes in irrigation requirements on a seasonal basis can be met by trading among WUAs of their quotas. Separate Criteria have to be prepared by the Authority for this provision
- d) WUAs must first adopt drip or sprinkler or any other water savings practice to save water to meet their additional requirement, before they can invoke Section 11 (h)
- e) since by definition Applicable Entitlement for irrigation as per the MMISF Act has to result in every ha of CCA in the command getting the same Entitlement, it will be difficult for WUAs to put forth convincing reasons for increase in their Entitlement

3.2. Keeping the above in view, it is proposed to confine at this stage application of Section 11 (h) to non irrigation users only and develop the Criteria accordingly. They can be amplified later to cover irrigation based on the experience gained from trading among WUAs and the limitations of that facility. Hence the term WUE in this paper refers only to non-irrigation user entities.

### **4.0. Modalities Proposed**

4.1. Once the above basic contours of this Section are accepted, the actual modalities can now be discussed. From operational considerations and keeping in view the volume of the Entitlement, it may be prudent and practical to apply this Section only to major and medium projects and not to minor projects. In minor projects, the main non-irrigation WUE is

normally the Gram Panchayat (GP). During periods of drought, there are GRs on reservation in storage for drinking water curtailing irrigation. Also water saved in storage due to under drawal by irrigation Entitlement holders is usually made available to GPs for domestic water supply.

- 4.2. The applicant WUE will have to, in his request, include the following
- (i) category of his Entitlement (domestic or industry)
  - (ii) if industry, type of industry, annual production details
  - (iii) if domestic, per capita norms and total required including commercial uses
  - (iv) sanctioned water use Entitlement, season wise
  - (v) actual drawal of Entitlement, season wise, year wise for the years since agreement with project authorities.
  - (vi) tariff levied and paid

His application will also contain

- (i) reasons for seeking additionality in Entitlement
  - (ii) whether this requirement is on permanent basis or annual for limited number of years
  - (iii) efforts made to meet this by recycling, improvement in efficiency in the industry / water utility or by other efforts
  - (iv) prescribed water use norms of Industries Dept. or any other authorised department / institution for the product and actual production norms
  - (v) the WUE or category of user from whom the entitlement holders desires the additionality with justification.
  - (vi) willingness to pay the appropriate compensation
- 4.3. Once a request is received in the Authority, routed through the RBA, from a WUE of a particular project, the Authority will first collect all relevant information from the RBA on
- (i) design parameters of the project
  - (ii) the list of non-irrigation WUE & irrigation WUAs
  - (iii) the Sanctioned Water Use Entitlement for a design year
  - (iv) the Applicable Water Entitlement based on actual storage of 15<sup>th</sup> Oct. for last few years
  - (v) the actual drawals by the WUEs & WUAs of their Entitlement in various years

(vi) the tariff levied and realized from the WUEs & WUAs, year wise since enforcement of Entitlement.

4.4. The Authority will circulate the request to all other WUEs of the project through the RBA and invite objections within a prescribed time limit. Since irrigation Entitlements are not proposed to be changed in this modification exercise, objection of WUAs will not be invited but they will be invited to attend the public hearing.

4.5. The Authority will thereafter fix a date for public hearing at a location within the project or nearest to it, as per administrative convenience and inform all WUEs. Authorised representatives of the WUEs will only be invited to attend. Individual members (farmers) will be represented only by the concerned WUA through its elected Chairman and Secretary or other office bearers.

4.6. Based on the objections received and views expressed in the public hearing, the Authority will decide

- (i) whether a second public hearing is required
- (ii) whether the request for additionality in Entitlement from the WUE is justified or not or only a part is justified.
- (iii) the WUE from whom this additionality is to be met with reasons for this decision
- (iv) the compensation payable by the beneficiaries WUE to the donor WUE
- (v) issuance of order and date from which effective

4.7. Based on the orders of the Authority, RBA will readjust the Entitlements of the concerned WUEs.

## **5.0. Compensation**

5.1. If a WUE has voluntarily reduced its Entitlement due to cut in production/ reduction in demand, tariff will be charged to the WUE for the reduced Entitlement and the quantity that has become available due to this reduction will be used to meet the requirement of WUE seeking modification in Entitlement.

5.2. Where the Authority, after a public hearing, mandates a transfer in Entitlement from one WUE to another, the fair and just compensation to be paid will be determined on a case by case basis keeping the market value of water and other factors in view.