

5.1.6 Freshwater

5.1.6.1 NWFP River Protection Ordinance 2002

EXTRAORDINARY

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GOVERNMENT GAZETTE

North-West Frontier Province

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GOVERNMENT OF THE NORTH-WEST FRONTIER PROVINCE,

LAW DEPARTMENT

NOTIFICATION

19th January, 2002

No.LEGIS:I(6)/2001/481-23.—The following Ordinance by the Governor of the North-West Frontier Province is hereby published for general information: —

THE NORTH-WEST FRONTIER PROVINCE
RIVER PROTECTION ORDINANCE, 2002.
N.-W.F.P. ORDINANCE NO.III OF 2002.

AN

ORDINANCE

to provide for the protection of the aquatic ecology, water quality, economic and environmental value of the rivers and their tributaries in the North-West Frontier Province.

WHEREAS the rivers and their tributaries in the North-West Frontier Province are a public resource used and required by its people of drinking water, irrigation, commercial and sport fishing, and recreation;

AND WHEREAS these rivers and their tributaries have a great potential for economic development of the Province through eco-tourism;

AND WHEREAS the growing human population and urbanization are putting increasing pressure on the rivers and streams;

AND WHEREAS the unplanned construction along the rivers and their tributaries, often involving encroachment of them, is in progress in different areas;

AND WHEREAS these pristine economic and environmental resources are threatened with irreparable damage to the detriment of general public which needs to be curbed;

AND WHEREAS the Governor of the North-West Frontier Province is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, as amended upto date, and the Provisional Constitution Order No. 1 of 1999, read with Article 4 of the Provisional Constitution (Amendment) Order No.9 of 1999, and in exercise of all powers enabling him in that behalf, the Governor of the North-West Frontier Province is pleased to make and promulgate the following Ordinance:

1. Short title and commencement.—

- (1) This Ordinance may be called the North-West Frontier Province Rivers Protection Ordinance, 2002.
- (2) It shall in its application, extend to such length of rivers or their tributaries, or any particular river or stream or any part of a river or its tributary, as Government may, from time to time, by notification in the Official Gazette, specify.
- (3) It shall come into force at once.

2. Definition.—

In this Ordinance, unless the context otherwise requires,—

- (a) “Authorized Officer” means Tehsil Municipal Officer or any other officer notified as such by Government for the purposes of this Ordinance; provided that different Authorized Officers may be appointed for different areas;
- (b) “commercial building” means premises, built partially or completely, housing or intended to house commercial activities, and includes, manufacturing units and processing units;
- (c) “catchment area” means land receiving and storing water from rains and other forms of precipitation, and feeding the surplus water either as surface runoff or as sub-surface discharges, into the river;
- (d) “development” means a set of activities which alters the appearance, composition of functions of the environment;
- (e) “encroachment”, for the purpose of this Ordinance, shall mean—
 - (i) construction of any structures or buildings, permanent or temporary, within the area specified in clause (a) of sub-section (1) of section 3, and includes such structures or buildings, existing in the said area, the owners whereof do not provide proper septic tanks and a soaking pit or an alternate arrangement acceptable to the Authorized Officer; or
 - (ii) construction of building, house, hotel or any other permanent structure within the area specified in sub-section of section 4 without making the arrangement referred to in clause (i) above;
- (f) “environment” means—

- (i) air, water and land;
 - (ii) all layers of the atmosphere;
 - (iii) all organic and inorganic matters and living organisms;
 - (iv) the ecosystem and ecological relationship;
 - (v) buildings, structure, roads, facilities and works;
 - (vi) all social and economic conditions affecting community life; and
 - (vii) the inter-relationships between or among any of the factor sin sub-clause (i) to (vii);
- (g) “Government” means the Government of the North-West Frontier Province;
- (h) “Government Agency” includes a department, attached department, section, commission, office or autonomous body as defined and listed in the North-West Frontier Province Government rules of Business, 1985, as amended from time to time.
- (i) “high water limit” means the upper most water level attained by rivers during their peak-flows in the usual flood season, demarcated at site and so notified;
- (j) “National Environment Quality Standards: means standard established by the federal Agency under sub-section (1) of section 6 of the Pakistan Environment Protection Act, 1977 (XXXIV of 1999), or the rules made thereunder;
- (k) “person” means any natural person or legal entity and includes an individual, firm, association, partnership, society, group, company, corporation, cooperative society, Government Agency, non-governmental organization, local government or local authority and, in the case of a vessel, the master or other person having, for the time being, the charge or control of the vessel;
- (l) “Provincial Control Area” means the area specified in sub-section (2) of section 4;
- (m) “river” means perennial water bodies draining the catchment Areas, and also includes streams and natural and man-made water reservoirs;
- (n) “section” means a section of this Ordinance;
- (o) “tributaries” means branch of rivers and streams contributing to water-flows and draining therein, as may be notified by Government for the purpose of this Ordinance; and
- (p) “Trial Court” means the court of judicial magistrate of the first class authorized to try offences under this Ordinance.

3. General prohibitions.—

- (1) No person shall—
 - (a) construct, or undertake any related physical works of any commercial building or non-commercial building, or undertake any other developmental work, within two hundred feet to be measured along the slope (lay off land) beyond high water limit on either side of the rivers or their tributaries or on a space within the limits between the banks of a river;
 - (b) place or deposit or release, directly or indirectly, any substance into the river or their tributaries, in excess of the National Environmental Quality Standards (NEQS) notified by Government from time to time;
 - (c) dispose, directly or indirectly, any solid waste or hazardous waste or other additional substances specified and notified by Government into rivers or their tributaries.
- (2) Government may increase the limits on either side of a river or its tributaries within which construction of buildings or other developments may be prohibited or regulated under this Ordinance.

4. Land and zoning plans.—

- (1) government may prepare land use and zoning plans for the catchment area or a part thereof for a specific river or for all the rivers and their tributaries to which this Ordinance apply, and may require mandatory compliance with such plans.
- (2) The area upto fifteen hundred feet starting from two hundred feet to be measured along the slope (lay off land) beyond the high water limits on either side of the rivers or their tributaries shall be known as “Provincial” control Area, wherein construction or other developmental activities shall be undertaken in accordance with the land use and zoning plans prepared under sub-section (1).

5. Building control or regulations.—

Government may make regulations, or apply any of the existing building control regulations, under any other law for the time being in force, to control construction of buildings in the catchment areas of any river or a part thereof.

6. Vicarious liability.—

- (1) Where an offence of encroachment upon a river or its tributary or indiscriminate disposal of solid waste or flow of untreated water into a river or their tributary is committed by a body corporate or a firm, then every director, manager, secretary, or officer or servant of the body corporate, or every partner, manager or official actively concerned in the conduct of business of such firm, as the case may be, shall be deemed to have committed the offence, unless he proves that the offence was committed without his knowledge or that he used all his efforts to prevent the commission of such an offence.

- (2) Any offence committed by any person under this Ordinance shall be deemed to have been committed at the instance of the owner, landlord, employer, lessor, licenser, mortgagor, manager and any other person incharge of the premises, building or land for the time being, and the burden of proving otherwise shall lie upon such person.
- (3) A tenant, lessee, licensee, mortgagee and occupant of the property shall be liable to be proceeded against for any offence committed under this Ordinance with respect to that property.

7. Proper arrangements for sanitation, etc.—

- (1) It shall be incumbent upon the owner, proprietor or manager of all existing hotel or other building, whether to be used for a public purpose or otherwise, within 200 feet of both sides of a river, to ensure construction of proper septic tanks and a soaking pit or an alternate arrangement acceptable to the Authorized Officer. Similarly the owners of all the new buildings, houses, hotels, etc, within the Provincial Control Area have to make similar arrangements.
- (2) No new building, house, structure, or hotel, used for commercial or non-commercial purposes, within the Provincial Control Area shall be made unless that arrangements as mentioned in sub-section (1) are followed, provided that this shall not apply to a kacha house built by a local inhabitant for his agriculture purposes.

8. Power of Authorized Officer to enter building, etc.—

The Authorized Officer or his representative shall have the powers to enter any existing building or structure, constructed within two hundred feet on both sides of the river or its tributaries or any new building constructed within provincial Control Area, for the purpose of inspection and to ensure whether proper sanitation arrangements have been made or not.

9. Power and functions of Authorized Officer. Authorized Officer shall competent—

- (a) to register and investigate complaints dealing with offences under this Ordinance before the competent courts,
- (b) to hold into offences under this Ordinance, and in the course of such inquiry, to receive and record evidence, and to compel the attendance of witnesses and the production of documents and material objects for the purpose;
- (c) to call for and receive police help in dealing with offences under this Ordinance, and except for valid reasons, police shall be obliged to extend due help to the Authorized Office under this Ordinance, and the authorized officers of the Environmental Protection Agency whenever such help is required.

10. Power to seal etc.—

The Authorized Officer or a person duly authorized by him shall have all the powers to seal and stop any commercial activity, business of a hotel, or

establishment with respect to which an offence appears to have been committed under this Ordinance shall have the power to requisition the police force through officer incharge of a police station within whose local jurisdiction an offence under this Ordinance appears to have been committed.

11. Punishment.—

- (1) Whoever is found guilty of an offence under the provisions of this Ordinance, shall be punished, with imprisonment which may extend to six months, or with fine which may extend to five hundred thousand rupees, or with both:

Provided that the punishment of imprisonment, in no case, shall be less than one month and the amount of fine, in no case, shall be less than ten thousand rupees.

- (2) Whoever fails to remove an encroachment within ten days of the receipt of a legal notice shall also be punished with the same punishment as mentioned in sub-section (1)
- (3) Any person who is an abetter of an offence under this Ordinance shall be punishable with the same punishment as is provided in sub-section (1).

12. Cognizance of offence.—

No court shall take cognizance of an offence under this ordinance except on a compliant in writing by the Authorized Officer or an aggrieved person.

13. Trial Courts.—

Government shall, by notification in the Official Gazette, authorize one or more Trial Courts of the judicial magistrates of the first class and specify the area of jurisdiction of each such court which shall exclusively try offences under this Ordinance.

14. Indemnity.—

No suit, prosecution or legal proceedings, whatsoever, shall lie against any public servant in respect of anything which has been done, or intended to be done in good faith, under this Ordinance. The officers or any person authorized under any provision of this Ordinance to perform a certain act in a certain manner shall be deemed to be public servants within the meaning of section 21 of the Pakistan penal Code (XLV of 1860).

15. Removal of difficulty.—

If any difficulty arises in giving effect to any of the provisions of this Ordinance, Government may, as occasion may require, by order, do anything which appears to it to be necessary for the purpose of removing such difficulty.

16. Bar of jurisdiction.—

No civil court have jurisdiction to entertain any proceedings, grant any injunction or issue any order in relation to a dispute that any property or part of it is or is not coming within purview of this Ordinance.

17. Overriding effect.—

The provision of this Ordinance shall have effect notwithstanding anything contained to the contrary in any other law for the time being in force.

18. Power to make rules.—

Government may make rules and regulations for the purpose of carrying into effect the provisions of this Ordinance.

Peshawar
dated the
15th January, 2002

Lt. Gen (Rtd) IFTKHAR HUSSAIN SHAH,
Governor of the North-West Frontier Province.

SALIM KHAN
Secretary to Government of North-West Frontier Province,
Law Department