

No. 380/QĐ-TTg

Hanoi, April 10, 2008

DECISION

ON THE PILOT POLICY ON FOREST ENVIRONMENT SERVICE CHARGE PAYMENT

THE PRIME MINISTER

*Pursuant to the December 25, 2001 Law on . Organization of the Government;
Pursuant to the December 3, 2004 Law on Forest Protection and Development;
Pursuant to the Prime Ministers Decision No.18/2007/QĐ-TTg of February 5, 2007, approving the strategy on development of Vietnamese forestry till 2020;
At the proposal of the Minister of Agriculture and Rural Development.*

DECIDES:

Chapter 1

GENERAL PROVISIONS

Article 1. Purposes

To create a basis for the formulation of a legal framework on the policy on forest environment service charge payment applicable nationwide in the direction of clearly defining the interests, rights and obligations of forest environment service (below abbreviated to FES) charge payees and payers, socializing forestry, step by step creating sustainable economic foundations for forest protection and development, environmental and eco-system protection, raising the quality of service provision, particularly ensuring water sources for electricity generation, water supply and tourist business activities.

Article 2. Governing scope

1. This Decision prescribes service types; sender charge rates; FES charge management and use regimes; rights and obligations of FES charge payees and payers; responsibilities of authorities at all levels and branches for the implementation of the FES charge payment policy.
2. The duration of application of the pilot policy on FES charge payment will be two years, counting from the effective date of this Decision. The policy on FES charge payment is experimentally applied in Lam Dong, Son La, Dong Nai, Hoa Binh, Binh Thuan and Ninh Thuan provinces and Ho Chi Minh city.

Article 3. Subjects of application

1. Organizations using FES and paying FES charges defined in this Decision include:
 - a/ Dai Ninh hydro-electric power plant of the Vietnam Electricity Group, in Binh Thuan province.
 - b/ Da Nhim hydro-electric power plant of the Vietnam Electricity Group, in Ninh Thuan province.
 - c/ Hoa Binh hydro-electric power plant of the Vietnam Electricity Group, in Hoa Binh province.
 - d/ Hydro-electric power plants along Suoi Sap in Son La province.
 - e/ The Saigon Water Supply Corporation (S AWACO) of Ho Chi Minh city.
 - f/ The Dong Nai water supply construction company of Dong Nai province.
 - g/ Phu Yen and Moc Chau water supply branches of the Son La water supply company of Son La province.
 - h/ Organizations and individuals dealing in tourism and tourist products in special-use forests and protection forests within the administrative boundaries of Lam Dong and Son La provinces.
2. All forest owners in the upstream areas of Dong Nai and Da river basins within the administrative boundaries of Lam Dong and Son La provinces.
3. State bodies involved in the collection, payment, management and use of FES charges and headquartered in Lam Dong, Son La, Dong Nai, Ninh Thuan, Binh Thuan or Hoa Binh province and Ho Chi Minh City.

Article 4. Interpretation of terms

In this Decision, the terms below are construed as follows:

1. FES means the supply and sustainable use of the use values of the forest environment (water source regulation, soil protection, lakebed deposit combat, flood and flash flood prevention, landscape, bio-diversity,...).
2. Forest owners defined in this Decision include forest owners defined in the Law on Forest, Protection and Development; organizations households, individuals, village or hamlet population communities directly managing, protecting and developing forests; organizations, households, individuals, village or hamlet population communities contracted by representatives of state-run forest owners to protect forests in a stable and long-term manner.
Forest owners entitled to apply the pilot policy on FES charge payment under this Decision include:
 - a/ Protection forest management boards, special-use forest management boards.
 - b/ Economic organizations.
 - c/ Domestic households and individuals.
 - d/ Village or hamlet population communities.
3. FES charge payment constitutes an economic relation between FES users paying money to FES providers under this Decision.
4. FES charge payment levels (service charge rates) are money amounts payable by FES users to FES providers, calculated on the basis of the FES-using unit or a corresponding product unit under state regulations or the agreement between the two parties.
5. Excursion charge prescribed in this Decision means a money amount payable by a tourist to the special-use forest management boards, protection forest management boards or other forest owners.

Articles 5. FES types

Types of FES referred in this pilot policy include:

1. Service on water source regulation and supply;
2. Service on soil protection, erosion restriction, lake bed deposit combat;
3. Tourist service.

Article 6. Forms of FES charge payment

1. Direct FES charge payment means that FES users (payers) pay money directly to FES providers (payees);
2. Indirect FES charge payment means that FES users pay money to FES providers indirectly through an organization under the provisions of Clause 2. Article 10 of this Decision.

Article 7. Principles for FES charge payment

1. Direct FES charge payment is made by payees and payers under contracts of agreement on the market principles.
2. Indirect FES charge rates set by the State are publicized and adjusted when necessary.
3. Organizations and individuals using FESs shall pay FES charges to FES charge payees, which do not substitute the water resource royalty or other payable amounts prescribed by law.
4. For business organizations, money paid for the use of FESs can be accounted into production costs of FES users.

Chapter 2

DETERMINATION OF FES CHARGE RATES

Article 8. FES charge rates

1. Hydro-electric power establishments

The FES charge rate applicable to hydroelectric power establishments defined at Points a, b, c and d. Clause 1, Article 3 of this Decision in the experimental duration is VND 20/1kWh of commercial electricity.

2. Daily-life water production and supply establishments

The FES charge rate applicable to daily-life water production and supply establishments defined at Points e, f and g. Clause 1, Article 3 of this Decision in the experimental duration is VND40/cubic meter of commercial water.

3. For tourist business organizations and individuals defined at Point b, Clause 1, Article 3 of this Decision, the FES charge rates are determined as equal to 0.5-2% of tourist revenue earned in a period.

The Peoples Committees of LamDong and Son La provinces are assigned to consider and specify the percentage of tourist revenue payable by each tourist establishment.

4. Collection of protection forest or special- use forest excursion charges

a/ Protection forest management boards and special-use forest management boards (below collectively referred to as forest management boards) may collect excursion charges from tourists.

b/The Peoples Committees of LamDong and Son La provinces shall approve and adjust excursion charges at any appropriate time according to their competence.

Article 9.Determination of payable FES charge amounts

1. For cases of direct payment: The amounts payable directly to FES charge payees by FES charge payers are based on contracts or agreed upon by the two parties.

2. For cases of indirect payment:

a/ For hydro-electric power establishments:

The FES charge amount payable in a payment period (in VND) is equal to the commercial electricity output in the payment period (in kWh) multiplied by the FES charge rate per 1 kWh (VND20/kWh).

b/ For daily-life water production and supply establishments

The FES charge amount payable in a payment period (in VND) is equal to the commercial water output in the payment period (in m3) multiplied by the FES charge rate per m3 of commercial water (VND 40/m3).

c/ For tourist business organizations and individuals

The payable service charge amount is determined in percentage (%) of tourist revenue (inclusive of value-added tax) earned in a period by the tourist establishments under Clause 3,Article 8 of this Decision.

4. The payment period for cases defined in Clauses 2 and 3 of this Article is the year or quarter.

Chapter 3

MANAGEMENT AND USE OF FES CHARGES

Article 10.Organization of FES charge payment

1. For cases of direct payment

FES charge payees shall organize by themselves the collection of FES charges from FES users through contracts or excursion charges.

2. For cases of indirect payment

a/ FES charge payers shall themselves declare and pay the payable amounts at the registered account places for transfer to the Forest Protection and Development Fund of Lam Dong or SonLa province. FES charge payers based in Lam Dong or Son La province shall declare and pay FES charges to the local Forest Protection and Development Funds for direct payment to payees.

b/ The Forest Protection and Development Funds of Lam Dong and Son La provinces shall open separate accounts for paid FES charges at the registered account places in the localities.

c/ The Forest Protection and Development Funds of Lam Dong and Son La provinces may use FES charges according to the headwater forest areas in the Dong Nai or Da river basin as prescribed by the Ministry of Agriculture and Rural Development.

d/ The Forest Protection and Development Funds of Lam Dong and Son La provinces shall pay money directly to payees as provided for in Article 13 of this Decision.

Article 11.Use of FES charges

1. For cases of direct payment:

FES charge payees are fully entitled to decide on the use of collected FES charge amounts for investment in forest protection and development and FES quality and life improvement, after fulfilling the financial obligations prescribed by law.

2. For cases of indirect payment:

The collected FES charge amounts will be used as follows:

- 10% will be spent on activities of the Forest Protection and Development Funds.
- 90% will be spent on activities of FES charge payees.

If FES charge payees are state-run organizations, 10% will be used to cover management expenses and 80% will be used as remuneration payable to households, individuals and village or hamlet population communities for contractual stable and long-term forest protection.

Article 12.FES charge payees

1. Forest owners defined in Clause 2, Article 3 of this Decision.
2. Lists of specific forest owners being organizations will be considered and decided by provincial-level Peoples Committees at the proposal of district-level Peoples Committees after they are appraised by provincial-level Services of Agriculture and Rural Development.
3. Lists of forest owners being households, individuals and village or hamlet population communities will be considered and decided by district-level Peoples Committees at the proposal of district-level forestry bodies.

Article 13.Determination of levels of payment to FES charge payees

1. Grounds for determination of payment levels

a/ The total FES charge amount collected from payers defined in Article 9 of this Decision (in VND).

b/ The total area of (special-use, protection, production) forests in the basin at the time it is examined and certified by a responsible body for use as a basis for FES charge payment (in hectare).

c/ The forest area, status, origin and quality at the time they are inspected and certified by responsible body for use as a basis for FES charge payment (in hectare).

2. Determination of amounts payable to forest owners

Total amount payable to the FES charge payee in a year (in VND) = The average payment norm per hectare of forest (VND/ha) x The forest area managed or used by the FES charge payee (in ha) x Coefficient K

In which:

a/ The average payment norm per hectare of forest (VND/ha) is determined as equal to the total amount collected from FES charge payers (after subtracting reasonable management costs under Article 11 of this Decision) divided by the total forest area in the basin at the time it is inspected and certified by a responsible body for use as a basis for FES charge payment (in ha).

The People Committees of LamDong and Son La provinces shall specify the forest areas in the basins where this pilot policy is implemented.

b/ The forest area managed or used by the FES charge payee is the area allocated, leased or contracted for stable and long-term protection at the time of payment declaration.

c/ Coefficient K: Depending on the type of forest (protection forest, special-use forest, production forest); forest status (enriched forest, medium forest, impoverished forest, restored forest), forest origin (natural forest, forest plantation), it will be specifically decided by the Peoples Committee of Lam Dong or Son La province, based on the forest hand-over results certified by a responsible body.

Article 14.Tasks and powers of the Forest Protection and Development Funds of Lam Dong and Son La provinces in the payment of FES charges to forest owners

1. Tasks:

a/ On behalf of FES charge payees, to estimate and settle the FES charge payment funds and submit them to provincial-level Peoples Committees for approval after obtaining written opinions of the provincial Agriculture and Rural Development Services and Finance Services;

b/ To inspect and supervise the provision of FESs;

c/ To directly realize the payment to FES charge payees.

- If FES charge payees have contracts on long-term stable forest protection, the payment will be based on accepted contract performance results.

- If FES charge payees are contractors for long-term stable forest protection that authorize in writing forest owners (forest management boards, forest management units representing forest owners being the State), the Forest Protection and Development Funds shall make payment to forest owners for transfer to FES charge payees.

2. Powers:

To have the power to reduce or exempt the payment or refuse the payment if the contractual FES quality and quantity standards are not met. In such a contract is unavailable, regular of provincial-level Peoples Committees be complied with.

Chapter 4

RIGHTS AND OBLIGATIONS OF FES CHARGE PAYEES AND PAYERS

Article 15. Obligations and rights of FES charge payers

1. Obligations:

a/ To pay FES charges in full and on time under contracts to forest owners (for case of direct payment) or remit money to provincial-level Forest Protection and Development Funds (for case of indirect payment).

b/ To pay compensations to forest owners directly or via the Forest Protection and Development Funds for contract breaches or according to regulations of provincial-level Peoples Committees.

2. Rights:

To propose provincial-level Peoples Committees directly or via the Forest Protection and Development Funds to consider the adjustment of FES charges if the FES quality is not satisfied.

Article 16.- Obligations and rights of FES charge payees

1. Obligations:

To ensure that forests are quantitatively and qualitatively protected, to develop forests according to plan.

If facing objective factors threatening to affect the FES provision, forest owners shall notify them to the Forest Protection and Development Funds and district-level administrations for measures to actively prevent and combat them.

b/ To use the paid charge amounts under Clause 2, Article 11 of this Decision.

c/ For forest owners enjoying FES charge payment supports for their forest plantations, after the exploitation of their forest plantations, to organize by themselves the forest replanting according to law within 12 months.

d/ Not to destroy forests or illegally change the forest use purposes.

2. Rights:

To request the contractual FES users (for case of direct payment) or the provincial-level Forest Protection and Development Funds (for case of indirect payment) to pay the FES charges under this Decision.

Chapter 5

ORGANIZATION OF IMPLEMENTATION

Article 17. Responsibilities of concerned ministries and branches

1. The Ministry of Agriculture and Rural Development shall assume the prime responsibility for, and coordinate with the Ministries of Planning and Investment; Finance; Natural Resources and Environment; Industry and Trade, and concerned ministries and branches in:

a/ Organizing research into scientific grounds for, and foreign experience in, the formulation of the FES charge payment policy.

b/ Guiding localities in the formulation of plans, implementation of the pilot policy, and formulation of schemes and projects covered by the pilot policy under Clause 1, Article 18 of this Decision.

c/ After two years of experiment, counting from the effective date of this Decision, the Ministry of Agriculture and Rural Development shall assume the prime responsibility for, and coordinate with ministries, branches and localities conducting the experiment to review and perfect the FES charge payment policy, and submit it to the Prime Minister for promulgation before it is applied nationwide.

2. The Ministry of Information and Communication

To propagate and thoroughly explain the FES charge payment policy in order to raise people's awareness of the practical significance and the importance of peoples responsibility in contributing money and efforts to the protection of the living environment of communities for the implementation of this policy.

3. Responsibilities of concerned ministries and branches

According to their respective state management functions and tasks, ministries and branches shall actively coordinate with the Ministry of Agriculture and Rural Development in the implementation of the Prime Ministers decision, and, at the same time, direct units under their respective management to implement the Prime Ministers decision on the pilot policy for FES charge payment.

Article 18.Responsibilities of provincial-level Peoples Committees

1. Responsibilities of the Peoples Committees of Lam Dong and Son La provinces

a/ To propagate the pilot policy and draw up specific plans for implementation of the Prime Ministers decision on the policy for FES charge payment in the second quarter of 2008.

b/ To identify localities for implementation of the pilot policy.

c/To direct provincial Agriculture and Rural Development Services to assume the prime responsibility for, and coordinate with the Natural Resources and Environment Services and Finance Services in, formulating and submitting to provincial-level Peoples Committees standing bodies for approval the following schemes and projects:

- Land allocation, forest allocation.
- Contractual long-term and stable forest protection.
- Determination of FES values.
- Mechanism for management and use of FES charges.
- Surveys for calculation and classification of FES charge payees and payers in die experimental region.

d/ To set up provincial-level Forest Protection and Development Funds under the Governments Decree No.05/2008/ND-CP of January 14, 2008.

e/ To review the implementation of the pilot policy on FES charge payment in their localities.

2. Responsibilities of the Peoples Committees of Dong Nai, Ninh Thuan, Binh Thuan and Hoa Binh provincesand Ho Chi Minh City:

a/ To propagate and thoroughly explain the pilot policy on FES charge payment so as to raise peoples awareness in the implementation of the policy.

b/ To coordinate with relevant ministries and branches in directing and inspecting the FES charge payment by enterprises in their localities according to Article 3 of this Decision.

Article 19.Responsibilities of district- and commune-level Peoples Committees in the implementation of the pilot policy

1. To disseminate, thoroughly explain and implement the pilot policy on FES charge payment under this Decision, for stakeholders directly implementing the pilot policy.

2. To make lists of households, individuals and village or hamlet population communities being FES charge payees.

3. To participate in supervising the implementation of the pilot policy on FES charge payment in their localities under the direction and guidance of provincial-level Peoples Committees.

Article 20.Responsibilities of organizations, households, individuals, village or hamlet population communities

Organizations, households, individuals and village or hamlet population communities entitled to the application of the pilot policy on FES charge payment shall strictly observe the provisions on their respective responsibilities, obligations and rights, and bear responsibility before law for the implementation of the pilot policy on FES charge payment under this Decision.

Article 21.Reporting regime

Biannually, relevant ministries and branches and the Peoples Committees of Lam Dong and Son La provinces shall report to the Ministry of Agriculture and Rural Development on the performance of their assigned state management responsibilities for implementing the pilot policy on FES charge payment for sum-up reports to the Prime Minister.

Article 22.Funds for the implementation of the pilot policy

1. The Ministry of Planning and Investment and the Finance Ministry shall provide funding support for the formulation of the schemes and projects defined in Articles 17, 18 and 19 of this Decision.

2. The Ministry of Agriculture and Rural Development shall coordinate with relevant ministries and branches immobilizing financial and technical supports as well as experience of foreign countries, international organizations (Winrock, ARBCP, GTZ...), domestic and foreign individuals for the implementation of the pilot policy on FES charge payment, and, at the same time, estimate funds for projects and schemes of the Ministry, sum up funding estimates for experimental projects and schemes of LamDong and Son La provinces in the realization of the contents of this Decision, and submit them to the Prime Minister for approval.

3. The Peoples Committees of LamDong and Son La provinces shall formulate plans and estimate funds for the formulation of projects, schemes and other activities for the implementation of the pilot policy in their provinces, report them to the Ministry of Agriculture and Rural Development for sum up and submission to the Prime Minister for approval, after obtaining the opinions of the Ministry of Finance and the Ministry of Agriculture and Rural Development.

Pending the Prime Ministers approval of the funding sources for the experiment program, the Ministry of Agriculture and Rural Development and the Peoples Committees of Lam Dong and Son La provinces may advance funds from their budgets for the formulation of projects and schemes and the direction of the experiment, which will be refunded from the approved funds.

Chapter 6

IMPLEMENTATION PROVISIONS

Article 23. This Decision takes effect on the date of its signing.

Article 24. The Minister of Agriculture and Rural Development and concerned ministries and branches; the presidents of the Peoples Committees of Lam Dong, Son La, DongNai, Ninh Thuan, Binh Thuan and Hoa Binh provinces and Ho Chi Minh City shall implement this Decision.

**FOR THE PRIME MINISTER
DEPUTY PRIME MINISTER**

Hoang Trung Hai