

# *Agreement of Water User Associations Services on Agricultural Water Supply*

Umidjon Ulugov

Department of entrepreneurial law  
Russian-Tajik Slavonic University  
Dushanbe, Republic of Tajikistan  
umed@blacksmithinstitute.org

Alexey Zolotukhin

Department of entrepreneurial law  
Russian-Tajik Slavonic University  
Dushanbe, Republic of Tajikistan  
mczolotoy@rambler.ru

**Abstract**—The article reveals a new and unexplored civil law construction of a contract for the provision of agricultural water supply services, which presents the basis of the financial and economic well-being of water sector in agriculture. Possessing the elements of work, delivery and services contract, this type of contract presents a mixed type of contract. In addition, the authors consider the problem of the embodied result of the contract and the consideration of water as an independent object of civil law relations. The subject of discussion is presented by the main conditions for the implementation of such transactions, which require amendments and additions to the current civil legislation of the Republic of Tajikistan. There is an acute problem of the cost of water as a natural resource, as well as the problems of civil law regulation of water intake from nature, as well as secondary water use.

**Keywords**—water users association; water supply; services; compensated provision of services; water; work contact

## I. INTRODUCTION

The contract for the provision of services for the supply of water for agricultural needs is a form of contract that is alien to civil law in this particular form. Being similar in nature to contracts for the compensated provision of services, a work contract and a water supply contract, this type of contract presents a mixed type of a contract due to a number of fundamental features. The main feature – the subject of supply is presented by water supply services exclusively for agricultural purposes; a contract is characterized by the presence of a supplier, an intermediary, and a beneficiary, which is less studied in traditional scientific literature.

Another feature is the combination of several actions that one party (supplier) undertakes to a counterparty: this includes services for the maintenance of water bodies located in the service area of water user associations (Article No. 3 of the Law of the Republic of Tajikistan “On water user associations”), [1] the duty of their maintenance insured by associations through construction, repair or rehabilitation, as well as the supply of previously agreed volumes of water between the water user and the water users association. In our opinion, this type of contract should be recognized as a mixed type of contract, as it combines three different types of actions prescribed by civil law: the provision of services, the performance of works and the provision of water in the amounts specified by parties.

The contract for the provision of services for the supply of water for agricultural needs presents the basis of legal action. To conclude a contract for the provision of agricultural water supply services, at least two conditions are necessary:

- a) The internal will of a person making the transaction;
- b) The declaration of will, i.e. expression of the inner will.

It is assumed that in case of the absence of one of the above-mentioned elements, it is impossible to speak about the formation of a contract.

## II. RESULTS AND DISCUSSION

### A. *The system of contractual relations in the field of agricultural water supply: before and after*

The transaction for the provision of agricultural water supply services should be recognized as a bilateral contract. Due to the existence of water users associations, there are two such contracts identical in nature, but different in subject. There exist real and practical reasons for the transformation of the contracts into a single multilateral agreement. It is necessary to clarify that water user associations were created as intermediaries in an agreement between water users and state water organizations.

Back in the USSR, the irrigation network was divided into inter-farm and on-farm. If a canal of any length and any carrying capacity was supplied by one collective or state farm with water, then it was considered to be an on-farm one. Such channels were on the balance of farms, they were maintained and repaired at their own expense; the expenses were attributed to the cost of agricultural products, just as plowing, sowing, harvesting and other types of work on growing and harvesting crops. If a channel, regardless of whether it is large or small, supplied water for at least two farms, then such a channel is considered inter-farm and was maintained at the expense of the state budget [2].

Accordingly, contractual and legal relations were built on the basis between state water organizations and collective entities. Until the formation of water user associations (WUAs), the contractual relations system in the field of agricultural water supply was extremely ambiguous and legally unresolved. Contracts were signed with water users

individually, were stereotyped, most issues were resolved orally.

The legislative consolidation of WUAs as a receiver of collective farms and state farms allowed, at the contractual level, redirecting a part of the functions of state water institutions on the conclusion of the agreements on the provision of water supply services to WUA farmers. Thus, we obtain two contracts:

1) The first one is between the state water organization and the water users association; the subject matter of the agreement is the agreed amount of water up to the borders of the on-farm irrigation network;

2) The second one is between the association and members; the subject is a predetermined amount of water to the borders of the water user.

In fact, these agreements only divide the civil liability of water entities to the end user as far as the inter-farm and on-farm irrigation networks are extended. However, the main and the most significant aspect is not taken into account – the payment for services: the first contract is of financial character and is expressed in the obligation of water users to pay for water supply through the inter-farm irrigation network, and the second is formal, where there is no payment and it is necessary to fulfill the conditions of the first agreement in form of enforcement of regressive requirements.

In our opinion, the current circumstance is quite beneficial for state authorities that receive an additional supervisory and control body in the face of water users associations and collectors of fees for water supply services under the terms of the first contract. However this fact is not beneficial for water user associations, which lose not only the essence of their mission, but also their authority among water users, which ultimately can lead to the collapse of the entire system of regulation of relations in the field of agricultural water supply.

We see the solution of the problem in the indication of the price expressed in monetary terms using a hectare method (in this case, the principle of calculating water consumption depending on the type of crops grown) into the contract for the provision of services and the supply of water for agricultural needs between associations and water consumers. It can lead to the following logical consequences:

1. 1. The change of the form of a legal entity from an association to water users. Thus on the basis of civil-legal nature, consumer cooperatives will be able to engage in business and remain in the status of a non-profit organizations;
2. 2. The revision of the pricing system for water supply services at the state level with accounting for the costs of servicing both on-farm and inter-farm irrigation networks on a flexible basis taking into account changes in political, legal, and economic conditions.

### *B. Interpretation of civil relations*

Another important issue the interpretation of civil law relations in contracts for the provision of services for the

supply of water for agricultural needs related to the intake of water directly from the environment. According to the Article № 25 of the Water Code of the Republic of Tajikistan (WC of the RT) [3] a water user association that takes water directly from the environment can, in this case, become the primary water user. Following the content of the law, the provision of water bodies for separate use must be accompanied by obtaining permission from a specially authorized state body.

Undoubtedly, the associations will need to build special water supply facilities, which make them special water users. Thus, obtaining permission for primary special water use, as well as agreeing on a paid basis (Chapter № 31, article № 2 of the WC of the RT) will allow entering into one bilateral agreement with members of the association who, according to the requirements of the Article № 25 of WC of the RT become secondary water users. Accordingly, this fact changes the civil legal form of the contract. We believe that in this case the contract for the provision of services for the supply of water for agricultural needs will be similar to the contract for the provision of services.

But what if our proposals will not be taken into account by decision makers? In these cases, for example, we propose a model of a single agreement with a plurality of participants, where one party is presented by the state water institution and is defined in advance, the second party is presented by the water users association which distributes water from the beginning of the boundaries of the on-farm irrigation network to the final water user, and the third party is presented by the uncertain number of water users-members of the association receiving benefits in the form of a predetermined amount of water on a fee basis.

However, such a model can only be used nowadays due to the lack of a clear legal framework for the contractual and legal relations of water user associations. According to the use of the proposed model – of the farms of water users – the bilateral agreements should be used separately with the owner of a source, as well as end consumers.

The features of conditional transactions are typical for the contracts for the provision of water supply services for agricultural needs. D.A. Nizamov determines two main features of transactions made under the condition: uncertainty and the occurrence in the future [4]. D.I. Meyer notes that “the circumstance constituting the condition of the transaction must be the future” [5].

In the context of the contract for the provision of services for the supply of water for agricultural needs, the importance of the influence of natural and climatic conditions is noted, which may become an obstacle to the provision of services in the future, the uncertainty of volumes that the parties can provide. Taking into account the above mentioned aspects a contract may be considered as conditional.

The analysis of existing and applied contracts shows that the conditions of an indefinite force are not considered at all and, accordingly, the parties bear all the risks of poor-quality service provision, although such risks are becoming more and more relevant every year.

As N.A. Yermolova states, “in conditional transactions the risk is not so much associated with the onset of negative consequences for the participants of the transaction as it is related to the uncertainty that exists for some time whether conditional rights, duties and obligations generated by the conditional transaction are transformed into an unconditional” [6]. For example they can be presented by the dependence of farmers on weather conditions (droughts or heavy rains, for example). The Article No. 182 of the Civil Code of the Republic of Tajikistan [7] divides the transactions under the condition into two types: the first type is under the suspensive condition and the second type is under the surrogate condition.

Considering water supply services as the main object of transactions of water users associations of the Republic of Tajikistan, as well as meeting the needs of farmers (water quantity, delivery time, etc.) as the main subject of the transaction, we see the need to subordinate civil law agreements concluded by water user associations to the terms of transactions with a suspensive condition, since the occurrence of rights and obligations of the parties directly depends on weather conditions and the formation of river flows, and the uncertainty of the occurrence of these circumstances and emphasizes the relevance of our judgment.

An important addition concerns the benefits of the possibility of one or another circumstance of one of the parties. The provisions of civil law state that the unfairness of one of the parties in transactions concluded under the condition that the advance of the condition is beneficial makes the condition itself void and the contract must be declared invalid.

### *C. Important issues in WUA civil law transactions*

Another important issue of civil law transactions of water user associations is the issue of the form of transactions. The contract for the provision of services for the supply of water for agricultural needs is made in a simple written form (the Article No. 186 of the Civil Code of the Republic of Tajikistan), although practice shows the presence of oral forms of an agreement on the supply of water for agricultural needs (the Article No. 184 of the Civil Code of the Republic of Tajikistan).

Another form of transactions, notarized one (the Article № 188), can be applied if one of the parties requires its application. The written form of water user association contracts encourages the parties to formulate relations more clearly and fully.

According to K.P. Tatarikina “the regulation of a mandatory written contract may even affect the conditions of the deal: after all, when writing a written document, the parties seek to formulate their will more clearly” [8].

I.G. Cheremnykh agrees that the written transaction processing may also encourage the parties to agree on the conditions that would not be orally agreed during the conclusion of a transaction [9]. Despite the absence in the Civil Code (the Article No. 797-803) of a direct reference to the form of an agreement on paid services, we consider it important to reject oral agreements on the supply of water for

agricultural needs. The agreement should be only in written form.

S. K. Solomin and N. G. Solomina rightly point out that “in order to optimally organize their relations and provide each other with additional guarantees of fulfillment of obligations, the parties of a contract resort should give it a written form, even if the law does not prescribe compliance with it” [10].

Another important problem in contracts for the provision of water supply services for agricultural needs is the determination of the parties of a contract. The Article No. 797 of the Civil Code of the RT explains the presence of two parties in the agreement on the provision of paid services - a customer and a contractor. In this case, referring to the Article No. 799 of the Civil Code of the Republic of Tajikistan in the absence of other indications in the contract a contractor is obliged to personally provide the service (services) enshrined in the contract. In this regard we can name two uncertainties in terms of the composition of the subject: are the associations of water users the only service providers and what is the circle of the consumers of their services?

The fact that water user associations are not the only structure that can act as a party of the provision of agricultural water supply services indicates, for example, the norms of the Article No. 74 and 75 of the Water Code, which allow supplying water through the state water management organization, as well as other public organizations, in addition to the association of water users.

However, according to the Water Sector Reform Program of Tajikistan for the period of 2016–2025 [11], state water management organizations should be gradually replaced by river basin organizations (p. 2.2.1.) and their functions will be largely transformed from control and supervisory to advisory-auxiliary and associations be empowered to operate and maintain irrigation and drainage networks at the on-farm and in some cases at the inter-farm level.

This fact adds another argument in favor of our judgment, in which we propose fundamental changes to the agricultural water supply system. However, we also see the danger of attributing a special status to water user associations in water management issues for agricultural needs. These concerns are based on the criteria of competitiveness, the weakness of the market of agricultural water supply services, the risk of liquidation of associations and the fulfillment of obligations. Therefore, we consider it important not to give priority only to associations of water users, as a remedy for the solution of issues of on-farm water use, but to develop a free market for water supply services for irrigation needs, which can also include commercial organizations.

Another aspect of this issue concerns the circle of consumers of the services of water user associations. According to the Article No. 3 of the Law of the Republic of Tajikistan “On Water Users Associations”, the association is engaged in water distribution on a contractual basis between members of a water user association and those who are not members of a water user association, i.e. other residents of the WUA service area. At the same time, the service area of the

association of water users will now be determined by the hydrographic boundaries of the irrigation network or within the boundaries of sub-basins.

It turns out that water users have no other right but to enter into agreements only with the water users association in order to meet the needs for irrigation water. This provision, of course, does not correspond to the spirit of free market relations, but presents a measure of state regulation and the need to address issues of ordinary water users experiencing significant problems in the field of agricultural water use due to the collapse of the system after the collapse of the USSR.

We can agree with the decisions made at the level of the government of the country, but we suggest giving priority to the free choice of water users for making transactions with this or that organization. This will require making changes and additions to the paragraph No. 123 of the Water Sector Reform Program of Tajikistan for the period of 2016–2025 of December 30, 2015 No. 791, where the composition of the parties providing irrigation water supply services should be significantly expanded.

An important point of this study is the question of determining the type of studied contract. Modern civil law science uses the dichotomy, in other words “the division in two” [12]. This division traditionally involves real and consensual treaties that cover unilateral and multilateral civil law actions.

D.I. Meyer divides the contracts into material (embodied, real in the modern interpretation) and contracts that are concluded by simple agreement (consensual). “Material contracts are contracts that are made through the return of things from one party to another one. All of these contracts are considered as existing, as soon as one person actually transferred to another thing, the delivery of which is the subject of a contract. Consensual agreements are those that exist on the basis of a single agreement.” [13]

Modern theoretical scholars have raised the question of the possibility of choosing the form of a contract in view of the application of the principle of “freedom to enter into contracts”. The point of view of Y.A. Tarasenko indicates the possibilities of parties to choose one of the above mentioned models in their contracts, “to formulate any conditions, including unknown ones in the Civil Code of the Russian Federation, while such conditions would not contradict the basic principles and meaning of civil law” [14].

The contract for the provision of services for the supply of water for agricultural needs is distinguished by its consensual nature, where the parties arrive at the agreement in advance, and, as noted by V. Belov, such an agreement is “without reference to the commission of actions for its execution” [15].

We believe that in this case the possibility of a contract is completely excluded, since the parties initially solve complex issues of water supply in volumes and quality, schedule and planning, reflecting the will of parties. Therefore, this agreement is consensual.

### III. CONCLUSION

Thus, to conclude with, it is necessary to note that we believe that a contract for the provision of services for the supply of water for agricultural needs is a necessary tool for settling relations between actors in the field of agricultural water use.

Possessing a mixed complex of actions, the agreement adjusts to the requirements of the Law of the Republic of Tajikistan “On Water User Associations”, designed to regulate the relations between water users and move to market water relations.

The advantage of the contract is expressed in its ability to include three participants at once – the water management organization, as a service provider to the boundaries of associations, water users association – as a service provider to final water user, as well as the farmer or owner of a plot.

We also note the importance of concluding a contract, taking into account the needs of every water consumer, the needs and the capabilities of the irrigation system to pass through the specified and required volumes of water.

### Acknowledgements

The author expresses his gratitude to the Russian-Tajik (Slavonic) University for financing the research under the University Development Program for 2018.

### References

- [1] Akhbori Majlisi Oli of the Republic of Tatarstan, 2006. No. 11. - p. 474.
- [2] Report on the evaluation of the activities of Water Users Associations of the southern regions of the Kyrgyz Republic // <http://www.osce.org/ru/bishkek/76142?download=true>, 2010. - p. 11.
- [3] Akhbori Majlisi Oli of the Republic of Tajikistan, 2000. No. 11. - p. 510.
- [4] D.A. Nizamov, “On the issue of signs of a conditional transaction”, Actual problems of economics and law, No. 1, p. 209, 2011.
- [5] D.I. Meyer, “Russian civil law”, Petrograd, the printing house “Engine”, 1914, p. 138.
- [6] N.A. Ermolova, “On the issue of conditional transactions in civil law”, Theory and practice of social development, No. 3, pp. 279, 2011.
- [7] Akhbori Majlisi Oli of the Republic of Tajikistan, 1999. No. 6. - P. 153.
- [8] K.P. Tatarikina, “The form of the transaction: the objectives, the validity of the establishment and the legal value”, Tomsk State University Bulletin, No. 313, pp. 126-129, 2008.
- [9] I.G. Cheremnykh, “Theoretical foundations of an independent notary of Russia”, Moscow: Bukvoed, 2006, p. 36.
- [10] S.K. Solomin, N.G. Solomina, “Implementation of the requirements for the form of transactions in the contractual sphere”, Bulletin of Omsk University. Series “Law”, No. 2 (43), pp. 123-128, 2015.
- [11] “The Water Sector Reform Program of Tajikistan for the period 2016–2025 of December 30, 2015 No. 791”, Centralized Legal Information Bank “Adlia” of the Ministry of Justice of the Republic of Tatarstan.
- [12] V.F. Asmus, “Logics”, Moscow: Gospolitizdat, 1947, p. 65.
- [13] D.I. Meyer, “Russian civil law: in 2 hours”, Part 1. Moscow: Statute, 2003, pp. 157-158.
- [14] V.A. Belova, “Civil law: actual problems of theory and practice”, Moscow: Yurayt, 2009, pp. 423-427.
- [15] V.A. Belov, “Civil law: General part”, Moscow: JSC Center JurInforR, 2002, p. 257.