

DOCUMENT OF THE INTER-AMERICAN DEVELOPMENT BANK
NOT FOR PUBLIC USE

BAHAMAS

LEGAL AND REGULATORY FRAMEWORK UPDATE (WATER SECTOR)

(BH-T1017)

PLAN OF OPERATIONS

This document was prepared by the project team consisting of: Evan Cayetano (WSA/CJA) Project Team Leader; Yvon Mellinger (INE/WSA) Alternate Team Leader; Colin Forsythe (TSP/CBA); Camille Davis-Thompson (CCB/CBA); Hyun Jung Lee (LEG/SGO) and Catalina Gallego (INE/WSA).

CONTENT

EXECUTIVE SUMMARY

I.	BACKGROUND AND JUSTIFICATION	2
A.	Main Issues to be addressed by the Program	2
B.	Link to Institutional Strategy	2
C.	IDB-Netherlands Water Partnership Program (INWAP)	3
D.	Water and Sanitation Strategic Sector Plan	3
II.	PROJECT DESCRIPTION	4
A.	Project Goal and Purpose	4
B.	Components of the Project	4
III.	COSTS AND FINANCING	5
IV.	EXECUTION OF THE PROJECT	5
V.	MONITORING AND EVALUATION	6
VI.	PROGRAM BENEFITS AND RISKS	7
VII.	ENVIRONMENTAL AND SOCIAL IMPACTS	7
VIII.	CERTIFICATION	8
IX.	APPROVAL	8

ANNEXES

ANNEX I	Detailed Program Budget
ANNEX II	Procurement/Contracting Plan

BASIC SOCIOECONOMIC DATA

For basic socioeconomic data, including public debt information, please refer to the following address:

<http://www.iadb.org/RES/index.cfm?fuseaction=externallinks.countrydata>

INFORMATION AVAILABLE IN THE FILES OF INE/WSA

[Terms of Reference](#)

[Safeguard Policy Filter Report](#)

[Safeguard Screening Form](#)

ABBREVIATIONS

CAPEX	Capital Expenditure
GOB	Government of Bahamas
GOBH	Government of Bahamas
INE/SECCI	Sustainable Energy & Climate Change Unit
INE/WSA	Water and Sanitation Division
INWAP	IDB-Netherlands Water Partnership Program
INRM	Integrated Water Resource Management
MOTE	Ministry of the Environment
OPEX	Operation & Maintenance Expenditure
PUC	Public Utilities Commission
WSC	Water and Sewerage Corporation
WSSP	Water Strategic Sector Plan

PLAN OF OPERATIONS

Legal and Regulatory Framework Update (Water Sector) BH-T1017

Beneficiary:	Commonwealth of The Bahamas; Water and Sewerage Corporation; Ministry of Environment, Public Utilities Commission and the water and sanitation sector of The Bahamas.	
Project Team:	Evan Cayetano (WSA/CJA) Team Leader; Yvon Mellinger (INE/WSA) Alternate Team Leader; Colin Forsythe (TSP/CBA); Camille Davis-Thompson (CCB/CBA); Hyun Jung Lee (LEG/SGO); Catalina Gallego (INE/WSA).	
Executing Agency:	Inter-American Development Bank, through its Water and Sanitation Division (INE/WSA)	
Sources of Financing:	IDB (INWAP):	US\$250,000
	Local Counterpart:	50,000
	Total	US\$300,000
Objectives	The objective of this Legal and Regulatory Framework Technical Cooperation (TC) is to modernize the legislative framework of the water and sanitation sector of The Bahamas and provide for the protection of groundwater resources and economic efficiency of water and sanitation utility providers. The TC will contribute to: (i) the environmental sustainability of the water resources of the Bahamas; and (ii) the economic sustainability the Water and Sewerage Corporation (WSC).	
Execution timetable:	Execution:	8 months
	Disbursement:	12 months
Special contractual conditions:	None	
Exceptions to Bank Policies and Procedures:	None	
Environmental and Social review	The TC profile was reviewed by the ESR Secretariat on March 19, 2009. Recommended actions are incorporated in this Plan of Operations.	
Coordination with other Official DFIs:	Not applicable	

I. BACKGROUND AND JUSTIFICATION

A. Main Issues to be addressed by the Technical Cooperation

- 1.1 The existing legal framework governing groundwater abstraction in The Bahamas is not sufficient to support proper groundwater regulation and management, leading to increasing stress on the country's water resources. Additionally, the current legal framework does not provide for transparent costs recovery for the operation, maintenance (OPEX) and capital expenditure (CAPEX) of the Water and Sewerage Corporation (WSC), the state-owned company and the main water and sanitation service provider in The Bahamas. These issues are causing a downward spiral in the quality and efficiency of the services provided by the WSC, which has consequently become a drain on Government financing.
- 1.2 In The Bahamas, apart from minor amount of rain water harvesting, all water supplies are drawn from groundwater, whether fresh, brackish or saline in quality. Saline and brackish groundwater is treated by reverse osmosis (RO) to provide fresh water. Eight specific threats to the groundwater resources have been identified, *i.e.*: over abstraction, physical disturbance, point-source pollution, solid waste disposal, wastewater disposal, septic tanks, abstraction wells, and diffuse pollution. In addition to these anthropogenic threats, there is naturally occurring threat to by storms and hurricanes groundwater. The practical solutions to address the negative impacts currently affecting the groundwater consist of good working practice in the construction and operation of wells, good design and good construction of underground storage and septic tanks. These, in turn, require control, enforcement of standards, and public education.
- 1.3 In March 2008, the GOB requested Bank's assistance to help address the threats to ground water resources. An initial support has been provided in the context of the Water Strategic Sector Plan (WSSP) for The Bahamas, which included a review and update of WSC Business Plan as well as a review of the existing tariff structure. These studies have been presented to GOB leading the GOB into recognizing the need for an adequate legal and regulatory framework. Consequently, in January 2009, the GOBH requested Bank's assistance through INWAP for that purpose.

B. Link to Institutional Strategy

- 1.4 The Bank's Country Strategy for The Bahamas which is currently under preparation contemplates two pillars: (i) Infrastructure for Growth and Environmental Sustainability; and (ii) Institutions for Competitiveness and Social Sustainability. Under Infrastructure for Growth and Environmental Sustainability

pillar the need for technical assistance to update the legal and regulatory framework for the water and sanitation sector is identified.

C. IDB-Netherlands Water Partnership Program (INWAP)

- 1.5 The general objective of the INWAP is to support the implementation of internationally recognized principles of integrated water resources management in Latin America and the Caribbean. This general objective is to be achieved through joint efforts to internally improve and strengthen the Bank's operational capacity in the area of integrated water resources management, and externally to improve such capacity in the Bank's borrowing member countries. The specific objective of the INWAP that applies to this operation are: (i) To increase the capacity for policy and sector work in water resources management in a borrowing member country; and (ii) To support the reform and modernization processes currently being undertaken in the Region in the water sector. INWAP is financed by the Netherlands Ministry of Foreign Affairs and implemented through a trust fund (Fund).

D. Water and Sanitation Strategic Sector Plan

- 1.6 The Bank is currently financing the preparation of a Water and Sanitation Strategic Sector Plan. This assignment includes the preparation of a ten-year Business Plan for the WSC as well a tariff request. It has been determined that the WSC Act has not been updated since 1976 and its provisions are not adequate in the current environment. The current legislations need to be revised in the light of severe environmental, health, and financial issues facing the country water and sanitation sector.
- 1.7 There is the need to ensure adequate recovery of costs for operation, maintenance and required capital expenditures to ensure that WSC complies with its mandates. A review of the financial situation of the WSC confirms that the operational costs of the WSC over the past ten years have been increasing as water production has been increasing; but the volume of water sold remained relatively constant and average price of water sold has been decreasing. A primary reason for increasing cost of water production is the increase use of reverse osmosis water, which is an expensive means of production of potable water compared to pumping freshwater; and this cost has not been tied to tariff increase – indeed, there has been no tariff increase since 1993. The data also shows increases in water losses as production volumes increase. The margin required to meet OPEX and CAPEX of the utility company has therefore been shrinking over these past years. Exacerbating the situation, the WSC Act 1976 is outdated and allocates to WSC the conflicting roles of the WSC as a utility service provider and a water regulator. At the same time, the WSC lacks financial and operational autonomy necessary for an efficient utility.

- 1.8 The request to the INWAP is to assist the GOB, WSC, and the water sector in The Bahamas as a whole in revising the current legislation in light of severe environmental, health, and financial issues facing the country in the area of water and sanitation. This proposed technical cooperation will make recommendations for the required legal and regulatory changes regarding the role of WSC and MOTE for the protection of groundwater resources. It will also make recommendations regarding the transfer of responsibilities of economic regulator to the Public Utilities Commission (PUC), which is an independent regulator of utilities in The Bahamas.

II. PROJECT DESCRIPTION

A. Project Goal and Purpose

- 2.1 The objective of this Legal and Regulatory Framework Technical Cooperation is to modernize the legislative framework of the water and sanitation sector of The Bahamas and provide for the protection of groundwater resources and economic efficiency of water and sanitation utility providers. The TC will contribute to: (i) the environmental sustainability of the water resources of the Bahamas; and (ii) the economic sustainability the Water and Sewerage Corporation (WSC).
- 2.2 The expected outcome is a legislative framework document, including draft bills that would be presented to Cabinet for its approval and subsequent adoption as law.

B. Components of the Project

- 2.3 The TC has two components, which would jointly address the issues. These are: (i) Environment – Water Resources Management, and (ii) Economic Regulations.
- 2.4 ***Component 1: Environment – Water Resources Management.*** This component will address the issues of groundwater abstraction and the control of pollution. It will finance consulting services to review the existing reports on groundwater management and pollution control, plans pertaining to integrated water resources management Plan, and Water and Sanitation Strategic Sector Plan 2009. The consultants will prepare recommendations for required legal and regulatory changes including definition of the agency responsible for enforcement and the corresponding resources required, and fee structure for water resources management. A timetable for the phased implementation of the legislation including temporary measures is also to be prepared.
- 2.5 ***Component 2: Economic Regulations.*** This component will address the need for an independent economic regulator for the water and sanitation sector. It will finance the consulting services to review the WSC Corporate Business Plan,

audited financial statements, and its cost of service. The consultants will prepare recommendations for fee structure for the Public Utilities Commission (PUC) as the regulator of the water and sanitation service providers and propose a process for the PUC to regulate the water sector – pricing, and quality of the service. Recommendations for transition period for the full implementation of the tariff and fee structures and a phased implementation of the legislation including temporary measures to be adopted will also be prepared.

III. COSTS AND FINANCING

- 3.1 This TC will finance the contracting of a consulting firm with wide experience in the water sector, environmental law and legislation drafting for a total of US\$250,000 to carry out this TC. Funding will be provided on a non-reimbursable basis by the INWAP. Local counterpart of US\$50,000 will be provided by the WSC/GOB for local staff time and related expenses.

Cost Table (US\$)

Component	IDB (INWAP)	Local	Total
Component 1: Environment – Water Resources Management	\$100,000	\$25,000	\$125,000
Component 2: Economic Regulation	100,000	25,000	125,000
Contingency	50,000		50,000
TOTAL	\$250,000	\$50,000	\$300,000

IV. EXECUTION OF THE PROJECT

- 4.1 Executing Agency: This TC will be executed by the IDB (INE/WSA). This is to ensure adequate coordination as this TC will span several agencies (Ministry of Environment, PUC, Ministry of Finance, and Attorney General's Office). A consulting firm will be hired to implement the TC.
- 4.2 Executing mechanism: The TC will be executed with the support and in coordination with MOTE and WSC, as the beneficiary, under the supervision of the Water and Sanitation Division of the Infrastructure and Environment Department (INE/WSA) who will be responsible for contracting a consulting firm and monitoring the implementation of the Project. The Bank's Project team will coordinate activities among the various stakeholder agencies involved in the execution of the TC.
- 4.3 Project implementation readiness: The procurement process was initiated in February 2009 contingent upon the approval of the funds. Expressions of interests have been received and a short list of eligible consulting firms has been prepared. With the concurrence of the Beneficiary and approval of the assigned

Bank Procurement Specialist these firms will be invited to respond to the Request for Proposals, which includes the terms of reference for the assignment.

- 4.4 Execution period and disbursement schedule: This TC will be implemented within an eight (8) month period; the disbursement period will be twelve (12) months.
- 4.5 Procurement: The procurement of the consulting firm will be realized according to IDB policies defined in document GN-2350-7.
- 4.6 In the execution of the TC, the Bank's Project Team will work closely with the Executing Agency to ensure that recommendations in relation to the authority for water resources allow for some independence and potentially a higher degree of resource protection. Equally, due attention will be given to the absorptive capacity and autonomy of the authority for administering the resources. Macro issues related to development planning and priorities, sector performance requirements (pollution control and conservation) and climate change will also be considered along with their implications to legislative and institutional changes that may be required in other sectors to make the new proposed framework effective.

V. MONITORING AND EVALUATION

- 5.1 Monitoring: The work of the consulting firm and its compliance with the Terms of Reference for this project will be monitored by INE/WSA and WSC, based on the submission of intermediate and final products as required in the TOR.
- 5.2 Technical and basic responsibility: Technical and basic responsibility for the project rests with the Water and Sanitation Division of the Infrastructure and Environment Department (INE/WSA).
- 5.3 Evaluation: This project will be evaluated based on the intermediate and final products listed in the Terms of Reference. Given that the project has an execution period of 8 months, no logical framework will be developed. Nevertheless, the TOR clearly detail the contents of the various reports, and strict adherence to the requirements in the TOR will be ensured by the project team, as well as verified during the consultations with stakeholders.
- 5.4 Auditing, financial management of the resources and reporting: Standard Bank procedures will be followed with respect to auditing, financial management of the resources and reporting.

VI. PROGRAM BENEFITS AND RISKS

- 6.1 Project benefits and development impacts: The principal benefit of this TC will be the modernization of the laws governing the water sector of The Bahamas. Under

the TC legislation will be drafted for economic and environmental regulations of the water sector, which would be presented to Cabinet for its approval, and subsequent adoption as law. These will address issues pertaining to abstraction, health and safety, and pollution control. It will also address the need for an independent economic regulator of water and sanitation service providers.


- 6.2 Target beneficiaries: The beneficiaries of this TC will be the Water and Sewerage Corporation (WSC), the Ministry of Environment and the Bahamian public at large. The WSC will benefit by having an independent economic regulator that would determine a tariff consistent with the principles of cost recovery. The Ministry of Environment will benefit by having legislation that would allow it to manage the water resources and provide for pollution control.
- 6.3 Risks: The risks identified relate to; (i) the unwillingness of the authorities to allow the PUC to be responsible for setting the tariff; (ii) inability of some section of the population to afford increased water tariff; (iii) institutional constraints on the part of MOTE to take on the responsibility for water resource management and pollution control; and (iv) the possibility that the GOB may prefer in the future not to adopt a new Water and Sanitation Act. The likelihood of backtracking on the need for an independent economic regulator is low, given the large annual subsidies that the Government currently provides to the WSC. This situation, coupled with the dire need for pollution control to ensure sustainable use of groundwater resources, provide compelling reasons for the GOB to adopt a new Water and Sanitation Act. Regarding the impact on the lower income and special groups, the TC proposes that the consulting firm considers cross-subsidies and other mechanisms to ensure access to water by low income groups. Also, due consideration will be given to the social aspects of water management including consultation and participation, transparency and management of potential conflicts. With respect to institutional constraints on the part of the Ministry of Environment, care will be taken regarding how this will add to this Ministry's portfolio and to whether it will have the necessary capacity, and autonomy to administer the resource and alternative arrangement proposed.

VII. ENVIRONMENTAL AND SOCIAL IMPACTS

- 7.1 The TC Profile was reviewed by the ESR Secretariat on March 19, 2009. Recommended action is incorporated in this Plan of Operations. The present technical cooperation has positive social and environmental effects, because it promotes separation of regulatory functions from the utility provider. The operation doesn't have either negative environmental nor social aspects, because only studies related to legislative updates will be elaborated. The classification and evaluation of risk according to the criteria set out in "screening and safeguard" of ESR is C.

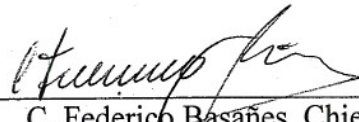
VIII. CERTIFICATION

- 8.1 I certify that this operation was approved for financing under the IDB-Netherlands Water Partnership Program (NWP) through an email dated January 30, 2009 from Wijnand Marchal, First Secretary of The Netherlands Embassy. Also, I certify that resources from the INWAP (NWP) are available for up to US\$250,000 to finance the activities described and budgeted in this document. This certification reserves resources for the referenced project for a period of six months counted from the date of signature below. Were the project not approved by the IDB within that period, the reserve of resources will be cancelled. If the project is not approved by IDB within that period, the reserve of resources will be cancelled, except if a new certification is obtained. The commitment and disbursement of these resources shall be made only by the Bank in US dollars. The same currency shall be used to stipulate the remuneration and payments to consultants, except that local consultants working in their own borrowing member country shall have their remuneration defined and paid in the currency of that country. No resources of the Fund shall be made available to cover amounts greater than the amount certified herein above for the implementation of this T/C Funds Brief. Amounts greater than the certified amount may arise from commitments on contracts denominated in a currency other than the Fund currency, resulting in currency exchange rate differences, for which the Fund is not at risk.


Peter Solhis pp
Marguerite S. Berger
Chief
Grants and Cofinancing Management
Unit, VPC/GCM

30/April/2009.
Date

IX. APPROVAL

Approved: 
C. Federico Basaños, Chief
Water and Sanitation Division
INE/WSA

04/05/09
Date

BH-T1017 Legal and Regulatory Framework Update (Water Sector)

Budget Summary: March 25, 2009

	LEVEL OF EFFORT (DAYS)					
	Environmental Lawyer/ Legal Draft person	Institutional Specialist	Water and Sanitation Specialist	Travel	Per diem	Total
Average Daily / Unit Rates	\$900	\$700	\$650	\$1,000	\$456	\$3,706
Component 1: Environment - Water Resources Management						
Review of legislation	10	5	5	4	20	\$28,870
Review of existing reports	2	7	7			\$11,250
Institutional assessment of Ministry of Environment	5	5	5			\$11,250
Assessment of macro development planning requirements for hotels and tourism industry, agriculture, etc	5	10	10			\$18,000
Preparation of recommendations for sanitation policy	4	4	10			\$12,900
Preparation of recommendations for legal and regulatory improvements and phased implementation	5	10	5			\$14,750
Conduct of stakeholder workshop and preparation of a participatory process	3	3	3			\$6,750
Preparation of draft legislation (Bills)	10	5	5			\$15,750
Technical backup	5	5	5			\$11,250
						\$0
Component 2: Economic Regulation						\$0
Review of exiting situation	10	5	5			\$15,750
Review of existing reports	2	7	7			\$11,250
Preparation of recommendations for fee structure for the PUC including recommendations for cross-subsidies or other mechanisms to ensure access to water by low income groups	5	10	5			\$14,750
Conduct of stakeholder workshop and preparation of a participatory process	3	3	3			\$6,750
Preparation of draft legal instruments for economic regulation by the PUC	10	5	5			\$15,750
Technical backup	5	5	5			\$11,250
TOTAL	84	89	85			\$206,270

Procurement Plan
Consulting Services for the Legal and Regulatory Framework Update (Water Sector)
BH-T1017

Description and type of the procurement contract	Estimated Contract Cost (US\$)	Procurement method ¹	Review (ex-ante or ex-post)	Source of financing and percentage		Pre-qualification ² (Yes/No)	Estimated dates		Status ³ (pending, in process, awarded, cancelled)	Comments
				IDB %	Other %		Publication of specific procurement notice	Completion of contract		
Consulting Firm	250,000	QCBS		100%		Yes	1 st quarter 2009	4 th quarter 2009	In process	

¹ **Consulting Firms:** QCBS: Quality- and Cost-Based Selection QBS: Quality-Based Selection FBS: Selection under a Fixed Budget; LCS: Least-Cost Selection; CQS: Selection based on the Consultants' Qualifications; SSS: Single-Source Selection. **Individual Consultants:** NICQ: National Individual Consultant selection based on Qualifications; IICC: International Individual Consultant selection based on Qualifications

² In the case of new Policies it applies only for Goods and Works. In the case Old Procurement Policies it applies for Goods, Works and Consulting Services.

³ This column "Status" should be used for retroactive procurement and for procurement plan updates.



MINISTRY OF FINANCE

P.O. BOX N-3017
NASSAU, THE BAHAMAS
FAX: (242) 327-1618/ 327-1620
TEL: (242) 327-1530

No. FIN(201.10)...
In replying please
quote this number.

14th January 2009

Mr. Oscar E. Spencer
Inter-American Development Bank (IDB)
IDB House
Bay Street
P.O. Box N-3743
Nassau, Bahamas

Dear Mr. Spencer,

Re: Inter-American Development Bank's AquaFund

Reference is made to the meeting of 23/10/08 between the IDB Country Strategy Dialogue mission, the Ministry of Finance and WSC. It was concluded that part of the Bank support for the Water and Sanitation Sector could involve accessing the AquaFund for the purpose of strengthening the legal and regulatory framework.

In this regard, please accept this as an official request by the Government of The Bahamas to access the IDB's AquaFund. Please also note that the completed Expression of Interest will follow.

Sincerely,


Ehurd Cunningham
Acting Financial Secretary

