

THE WATER BILL, 2013

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THE WATER BILL, 2013

A Bill for

AN ACT of Parliament to provide for the regulation, management and development of water resources, water and sewerage services; and for other connected purposes.

ENACTED by the Parliament of Kenya as follows-

PART I— PRELIMINARY

Short title and commencement. 1. This Act may be cited as the Water Act, 2013 and shall come into operation on such a date as the Cabinet Secretary responsible for matters relating to water may, by notice in the Gazette, appoint, and different dates may be appointed for the coming into operation of different provisions.

Interpretation. 2. (1) In this Act, unless the context otherwise requires—

“Authority” means the Water Resources Regulatory Authority” established under section 8;

"basin area" means an area designated as such under section 26;

“basin water resources board” means a water basin organization established under section 22;

"basin office" means an office of the basin water resources board established under this Act;

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to water;

“catchment area” means an area that is part of a basin designated as such under section 20;

"charges", in relation to the use of water from a water resource, includes fees, levies and premiums of any kind;

"Commission" means the Water Services Regulatory Commission established under section 66;

"county government" means a county government as provided for under Chapter 11 of the Constitution of Kenya;

"county water service provider" means a water service provider established and owned by the county government;

"easement" means the right to occupy so much of the land of another as may be necessary for or incidental to the construction or maintenance of works authorised, or the exercise of rights conferred by a permit;

"effectiveness of funds" means the allocation of funds following the principles of optimizing growth in the national interest;

"Equalization Fund" means the Equalization Fund provided for in Article 204 of the Constitution;

"Fund" means the Water Sector Trust Fund

established in section 105;

"ground water" means the water of underground streams, channels, artesian basins, reservoirs, lakes and other bodies of water in the ground, and includes water in interstices below the water table;

"inspector" means a person appointed by the Cabinet Secretary, the Authority, a basin water resources board, the Commission or county government, to exercise the powers of an inspector under this Act;

"in-stream habitat" includes the physical structure of a water resource and the associated vegetation in relation to the bed of the water course;

"Land and Environment Court" means the Land and Environment Court as established under article 162 (2) of the Constitution;

"landholder", in relation to land, means the registered owner of the land or the person in whom the land is otherwise vested by law, and includes—

- (a) any person who by any established right, custom or estate is entitled to be the holder or possessor of land;

(b) any person lawfully holding or occupying land in accordance with the provisions of any law empowering the allotment of land upon the promise of title, subject to the fulfilment by the allottee of prescribed conditions; and

(c) any person to whom a mining lease or mining location has been granted under the Mining Act;

"licence" means a licence in force under this Act;

"limits of supply", in relation to a water undertaking, means the limits within which the licensee is for the time being authorised to supply water;

Cap 306 "Management Board" means the Board of the Authority established under section 11;

"management of water resources" means the development, augmentation, conservation or protection of a water resource;

"national government" means the national government as provided for under chapter 11 of the Constitution;

“National Land Commission” means the National Land Commission established by Article 67 of the Constitution;

“national public water works” includes storage, water works bulk distribution and provision of water services, inter-basin water transfer facilities, as well as reservoirs for impounding surface run-off and for regulating stream flows to synchronize them with water demand patterns which are of strategic or national importance;

“peri-urban water services” means services provided in peri-urban areas as shall be defined by the Commission from time to time;

"permit" means a permit for the time being in force under this Act;

“person” includes a company, association or other body of persons whether incorporated or unincorporated;

"pollution", in relation to a water resource, means any direct or indirect alteration of the physical, thermal, chemical or biological properties of the water resource so as to make it—

- (a) less fit for any beneficial purpose for which it is or reasonably be

expected to be used; or

(b) harmful or potentially harmful to--

(i) the welfare, health or safety of human beings;

(ii) any aquatic or non-aquatic life or property; or

(iii) the environment;

"public consultation", in relation to any application made, or action proposed to be taken under this Act, has the meaning assigned to it in section 129;

"Regulatory Board" means the board of the Commission established under section 66;

"reserve", in relation to a water resource, means that quantity and quality of water required—

(a) to satisfy basic human needs for all people who are or may be supplied from the water resource; and

(b) to protect aquatic ecosystems in order to secure ecologically sustainable development and use of the water resource;

"resource quality", in relation to a water resource, means the quality of all the aspects of a water resource including—

- (a) the water quality stipulated for the reserve;
- (b) the quantity, pattern, timing, water level and assurance of in-stream flow;
- (c) the physical, chemical and biological characteristics of the water;
- (d) the character and condition of the in-stream and riparian habitat; and
- (e) the characteristics, condition and distribution of the aquatic biota;

"resource quality objectives", in relation to a water resource, means the level to be achieved and maintained in each aspect of resource quality for the water resource;

"riparian habitat" means the dynamic complex of plant, animal and micro-organism communities and their non-living environment adjacent to and associated with a watercourse;

"rural water services" means services provided

in rural areas as shall be defined by the Authority;

“Salaries and Remuneration Commission” means the Salaries and Remuneration Commission established under Article 230 of the Constitution;

“sanitation” means the provision of on-site sanitation services including latrines, septic tanks and conservancies including the associated exhauster services;

“sector wide approach” means coordinated development in the sector to achieve national goals, effectiveness of funds and ownership of government institutions including sector wide planning and coordination, national monitoring and information and national implementation concepts;

“sewerage services” means the development and management of infrastructure for transport, storage, treatment waste water originating from centralized and decentralized systems but shall not include household sanitation facilities;

"spring" means water emerging from beneath the surface of the ground otherwise than as a result of drilling or excavation operations;

“state organ” has the meaning assigned in Article 260 of the Constitution;

"stream" means the water contained in a watercourse, and includes a river;

"supply of water in bulk" means a supply of water to a licensee for distribution by or on behalf of the licensee taking the supply;

"swamp" means any shallow depression in which water collects either intermittently or permanently and where there is a small depth of surface water or a shallow depth of ground water and a slight range of fluctuation either in the surface level of the water or of the ground water level so as to permit the growth of aquatic vegetation;

"urban water services" means services provided in urban areas as shall be defined by the Commission from time to time;

"use of water", in relation to a water resource includes, without any limitation to -

- (a) abstraction, obstruction, impoundment or diversion of water forming part of a water resource;
- (b) the discharge of materials or substances into a water resource; or
- (c) any activity of a kind prescribed by

Regulations under this Act, in relation to a water resource;

“Water Storage Authority” means the National Water Storage Authority established in section 29;

“Water Storage Board” means the Board of the National Water Storage Authority established under section 30;

“water user” means a person using water from a water resource;

"water resource" means any lake, pond, swamp, marsh, stream, watercourse, estuary, aquifer, artesian basin or other body of flowing or standing water, whether above or below the ground, and includes trans-boundary water resources within the territorial jurisdiction of Kenya;

"water services" means any services of or incidental to the supply of water and includes the provision of sewerage services;

"water service provider" means a company, non-governmental organization or other person or body providing water services under and in accordance with a licence issued by the Regulatory Board for the service areas defined by the licence;

"water table" means—

(a) in pervious granular or detrital material, the upper surface of the body of free water which fills all openings in material that is sufficiently pervious to permit percolation; and

(b) in fractured impervious rocks and in solution openings, the surface at the contact between the water body in the openings and the overlying ground air;

"watercourse" means any natural channel or depression in which water flows regularly or intermittently, unless declared not to be a watercourse under this Act;

"water works development boards" means the agencies of the national government established under section 59; and

"works" means any structure, apparatus, contrivance, device or thing for storing, recharging, treating, carrying, conducting, providing or utilizing water or liquid waste, but does not include hand utensils or such other contrivances as may be prescribed by Regulations made under this Act.

Purpose of **3.** The purpose of this Act is to provide for the

the Act regulation, management and development of water resources, water and sewerage services in line with the Constitution.

PART II – OWNERSHIP, USE AND MANAGEMENT OF WATER RESOURCES

Ownership of water resources. 4. Every water resource is vested in and held by the national government in trust for the people of the Republic of Kenya.

Regulation of the management and use of water resources. 5. The Authority established in section 8 shall as an agent of the national government and regulate the management and use of water resources.

Rights to water resources. 6. Upon the commencement of this Act, no conveyance, lease or other instrument shall convey, assure, demise, transfer or vest in any person any property, right, interest or privilege in respect of any water resource except as may be prescribed under this Act.

National Public Water Works. 7. (1) A national public water works means a water works which has been designated by the Cabinet Secretary, by notice published in the Gazette, as a national public water works on account of its national or strategic importance, or the cross county nature of the water resource on

which it depends.

(2) National public water works include--

- (a) water storage;
- (b) water works for bulk distribution and provision of water services;
- (c) inter-basin water transfer facilities; and
- (d) reservoirs for impounding surface runoff and for regulating stream flows to synchronize them with water demand patterns which are of strategic or national importance.

(3) A national public water works shall, subject to the acquisition of a permit from a basin water resources board provided for under section 22, or from the Authority in case of inter basin water transfer, take precedence over all other water works for the use of water or the drainage of land.

(4) Land required for national public water works may be acquired in any manner provided by law for the acquisition of land for public purposes.

(5) The Cabinet Secretary may, after reasonable notice to any landholder concerned, cause to be constructed and maintained upon any land such works as the Cabinet Secretary may consider

necessary for the purposes of any national public water works.

(6) Compensation on just terms shall be payable by the Government to the owner of the land on which any such works are constructed, but in assessing the amount of compensation payable, the Cabinet Secretary shall take into consideration any benefit accruing to the land by the construction of the works and any adverse effect on the land caused by the works, as the case may be.

PART III –REGULATION OF THE MANAGEMENT AND USE OF WATER RESOURCES

Water Resources Regulatory Authority

Establishment of the Authority. 8. (1) There is established the Water Resources Regulatory Authority..

(2) (2) The Authority is a body corporate with perpetual succession and a common seal and shall in its corporate name be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;

- (c) borrowing and lending money; and
- (d) doing or performing all such other things or acts as may be necessary in furtherance of its purpose and functions.

Functions
of the
Authority

9. The functions of the Authority are to—
- (a) formulate and implement standards, procedures and Regulations for the management and use of water resources and flood mitigation;
 - (b) regulate the management and use of water resources in consultation with the National Land Commission;
 - (c) delegate regulatory functions to the basin water resource boards provided for under section 22;
 - (d) determine and set permit and water use fees for water resources;
 - (e) provide information and advice to the Cabinet Secretary for formulation of policy on national water resource management, water storage and flood control strategies;

Comment [CY1]: Function to be enriched to take care of the aspect of sustainability.
Authority to quantify available resources in order to regulate

- (f) report to the public annually on water issues and the performance of water resource institutions;
- (g) ensure access to information on water resources;
- (h) liaise with other regional, national and international bodies for the better regulation of the management and use of water resources; and
- (i) advise the Cabinet Secretary generally on the management and use of water resources.

Powers of the Authority. **10.(1)** The Authority has all powers necessary for the execution of its functions under this Act.

(2) Without prejudice to the generality of subsection (1), the Authority has the power to—

- (a) source and receive funding for the activities of the Authority;
- (b) collect, analyze and disseminate information on water resources;
- (c) monitor compliance by water users with the conditions of permits and the requirements of the Act; and

Comment [CY2]:

- (d) issue permits for inter-basin water transfer.

Management Board **11.**(1) The powers and functions of the Authority shall be exercised and performed under the direction of a Management Board, which consists of—

- (a) a chairperson, who shall be appointed by the Cabinet Secretary; and
- (b) four other members, who shall be appointed by the Cabinet Secretary;
- (c) the Managing Director; and
- (d) the Secretary.

(2) The Managing Director and the Secretary are *ex officio* board members with no voting rights.

(3) The chairperson and members of the Management Board shall hold relevant professional qualifications and experience and shall be appointed following an open and competitive recruitment process.

(4) The First Schedule has effect with respect to the membership and procedure of the Management Board

General duties and responsibilities of the Board

12.(1) The Management Board shall be responsible for overseeing the operations of the Authority with the goal of—

- (a) securing continuing improvements of performance;
- (b) protecting the long term viability of the Authority; and
- (c) ensuring fiscal discipline of the Authority.

(2) Without limiting the generality of subsection (1), the Management Board shall ensure as far as practicable that —

- (a) appropriate strategic plans consistent with government sector policy, business plans and targets are in place;
- (b) the Authority has management structures and systems for monitoring management performance against plans and targets and that corrective action is taken when necessary;
- (c) appropriate systems and practices are established for management, financial planning and control, including systems and practices for the maintenance of accurate and comprehensive records of

- all—
- (i) transactions;
 - (ii) assets and liabilities; and
 - (iii) physical and human resources of the Authority;
- (d) all such plans, targets, structures, systems and practices are regularly reviewed and revised as necessary to address changing circumstances and reflect best current commercial practices;
- (e) the Authority observes high standards of corporate and business ethics;
- (f) the government is advised, as soon as practicable, of any material development that—
- (i) adversely affects the financial or operating capacity of the Authority; or
 - (ii) gives rise to an expectation that the Authority may not be able to meet its debts as and when they fall due; and
- (g) all information furnished by the

Authority is accurate and comprehensive.

Powers of the Board **13.**(1) The Management Board shall have all powers necessary for the proper performance of the functions of the Authority under this Act.

(2) Without prejudice to the generality of the foregoing, the Management Board shall have power to—

- (a) administer the assets of the Authority in such manner as best promotes the purpose for which the Authority is established;
- (b) ensure protection, where necessary, of the assets and developments of the Authority;
- (c) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Authority;
- (d) receive any grants, gifts, donations or endowments and make legitimate disbursements there from;
- (e) invest any funds of the Authority not immediately required for its purposes;
- (f) delegate any of its powers; and

- (g) undertake any activity necessary for the fulfillment of any of the functions of the Authority.

Managing
Director

14. (1) The Cabinet Secretary shall on the recommendation of the Management Board appoint a Managing Director of the Authority on such terms and conditions as may be specified in the instrument of appointment.

(2) A person is qualified for appointment as Managing Director if that person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has at least five years experience in—
 - (i) the management of public affairs; or
 - (ii) a profession directly relevant to the functions of the Authority.
- (d) meets the requirements of leadership and integrity set out in chapter six of the Constitution.

(3) The Managing Director is the Chief Executive Officer and the accounting officer of the

Authority.

(4) The Managing Director is subject to the direction of the Management Board and is responsible to it for the—

- (a) implementation of the decisions of the Management Board;
- (b) day to day management of the affairs of the Management Board;
- (c) organization and management of the employees; and
- (d) any other function that may be assigned by the Management Board.

(5) The Managing Director shall hold office for a term of five years and is eligible for re-appointment for one further term.

Removal of the Managing Director **15.**(1) The Managing Director may be removed from office by the Cabinet Secretary on the recommendation of the Management Board, in accordance with the terms and conditions of service, for—

- (a) inability to perform the functions of the office arising out of physical or mental infirmity;

- (b) gross misconduct or misbehavior;
- (c) incompetence or neglect of duty;
- (d) a violation of the Constitution; or
- (e) any other ground that would justify removal from office under the terms and conditions of service.

(2) Before the Managing Director is removed under subsection (1), the Managing Director must be given —

- (a) sufficient notice of the allegations made against him or her; and
- (b) an opportunity to present his or her case against the allegations, either in person or by a legal representative.

Management Board Secretary **16.**(1) The Board may appoint a Secretary to the Management Board

(2) A person is qualified for appointment as Secretary to the Management Board if the person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;

- (c) has at least five years experience in any of the following fields—
 - (i) public administration;
 - (ii) business administration;
 - (iii) finance;
 - (iv) management;
 - (v) governance; or
 - (vi) law.
- (d) is a member of good standing of the Institute of Certified Public Secretaries of Kenya as provided under the Certified Public Secretaries Act.
- (e) meets the requirements of leadership and integrity set out in chapter six of the Constitution.

(3) The Secretary is subject to the direction of the Management Board and is to—

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- (a) record the minutes of the meetings of the Management Board;
- (b) advise the Management Board members on corporate governance principles and plans;

- (c) facilitate professional development programs for the Management Board;
- (d) maintain and monitor a calendar of the Authority's statutory due dates;
- (e) keep all the Authority's records in a safe place;
- (f) ensure effective information flows—
 - (i) within the Management Board;
 - (ii) from the Management Board to its committees; and
 - (iii) from the committees to the Management Board; and
 - (iv) any other function that may be assigned by the Management Board.

Employees of the Authority 17. (1) The Authority may appoint such other employees as it may consider necessary for the performance of its functions under this Act.

(2) The Management Board shall determine the terms and conditions of service of the employees on the advice of the Salaries and Remuneration Commission.

Classification of water resources and determination of quality objectives.

18.(1) The Authority shall prescribe the criteria for classifying water resources for the purpose of determining water resources quality objectives for each class of water resource.

(2) The prescribed classification criteria shall take into account—

- (a) trans-boundary considerations;
- (b) strategic functions served by the water resource;
- (c) the use or potential for use of the water resource for inter-basin transfers;
- (d) ecological functions of the water resource;
- (e) vulnerability to degradation or depletion and other factors.

(3) The Authority shall, by notice in the gazette--

- (a) classify each water resource in accordance with the prescribed classification criteria;
- (b) specify the resource quality objectives for a water resource of

the class to which it belongs; and

- (c) specify the requirements for achieving the objectives, and the dates from which the objectives will apply.

(4) All State organs shall when exercising any statutory power or performing any statutory duty, take into account and give effect to the resource quality objectives determined under this section in respect of a water resource.

National
Monitoring
and
Informatio
n System.

19.(1) The Authority shall ensure that there is in place a national monitoring and information system on water resources.

(2), The Authority may require any person, within a reasonable time or on a regular basis, to provide it with specified information, documents, samples or materials in relation to any systems established under this section.

(3) A member of the public on payment of the prescribed fee shall—

- (a) have access to any specific information contained in any national information system; and
- (b) be supplied with a copy of any document contained in the information

system which is accessible to the public.

Protection of catchment areas. **20.**(1) Where the Authority is satisfied that in order to conserve a vulnerable water resource, special measures are necessary for the protection of a catchment area or a part thereof, it may by Order published in the Gazette declare such catchment area to be a protected area.

(2) The Authority may impose such requirements, regulate or prohibit such conduct or activities, in or in relation to the protected catchment area as the Authority may consider necessary for the protection of the area and its water resources.

Conservation of groundwater. **21.**(1) Where the Authority is satisfied that, in any area, special measures for the conservation of groundwater are necessary in the public interest for—

- (a) the protection of public water or water supplies used for industry, agriculture or other private purposes;
- (b) the conservation of the water resources of the aquifer of the groundwater resources; or
- (c) ecological reasons,

it may by Order published in the Gazette, declare the area to be a ground water conservation area.

(2) The Authority may impose such requirements or prohibit such conduct or activities in relation to a ground water conservation area as it may consider necessary for the conservation of the ground water.

Basin Water Resources Board

Establishment of a basin water resource board. **22.** (1) The Cabinet Secretary shall by notice published in the Gazette establish a basin water resources board for each respective basin area provided for under section 26.

(2) The Cabinet Secretary shall assign a name to each basin water resources board established in accordance with subsection (1).

(3) A basin water resources board established under this section shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its own name and doing all things that a corporation may lawfully do.

(4) A basin water resources board shall be responsible for the management of the water resources within the respective basin area.

(5) A basin water resources board shall operate under the regulations made by the Authority.

Comment [CY3]: This ignores the County government arrangement, Need to have clarity on the reporting mechanisms. Members of the Basin should be spelt out in the Act.

Members of the basin water resources board.

23.(1) The Cabinet Secretary shall appoint the chairperson and members of a basin water resources board in accordance with the First Schedule.

Comment [CY4]: The County should forward representatives to sit in the board. The whole of 23 needs an overhaul to cover a wide array of interests in terms of representatives

(2) The persons appointed under subsection (1) must be residents of the respective basin area.

(3) The salaries, allowances and other expenses of the board referred to in subsection (1) shall be determined by the Cabinet Secretary on the advice of the Salaries and Remuneration Commission.

Functions of the basin water resources board

24.The powers and functions of the basin water resources boards are to-

- (a) protect water resources and increase water availability;
- (b) receive water permit applications for water abstraction, water use and recharge and determine, issue, vary water permits; and enforce the conditions of those permits;
- (c) enforce regulations;

- (d) report to the users of its services and the public on water issues and their performance within the basin annually;
- (e) collect water resources data, analyze and manage the information system;
- (f) review the basin area water resources management strategy;
- (g) facilitate the formation of water resource user associations provided for under section 28 and their activities;
- (h) collect water permits and water use charges;
- (i) carry out flood mitigation activities;
- (j) facilitate information sharing within the basin and the Authority; and
- (k) ensure equitable water sharing within the basin through water allocation plans.

Employees of the Basin Water Resources Boards. **25.(1)** The basin water resources boards shall appoint chief executive officers on such terms and conditions of service as the boards may determine upon the consideration of advice from the Salaries and Remuneration Commission.

(2) The Chief Executive Officer shall be the principal officer of the basin water resources boards and, subject to the directions of the board, shall be responsible for the management of the affairs of the basin water resources board.

(3) A basin water resources board may appoint such employees as may be necessary for the exercise and performance of its powers and functions, and upon such terms and conditions as it may determine upon consideration of advice from the Salaries and Remuneration Commission.

Basin Areas. **26.(1)** The Authority shall in consultation with the Cabinet Secretary by notice published in the Gazette, designate a defined area from which rain water flows into a watercourse to be a basin area for the purposes of this Act.

(2) The Authority may designate a basin area lying wholly or partly within another basin area as a sub-basin.

Basin Area Water Resources Management Strategy. **27.(1)** Upon the designation of a basin area, the Authority shall prescribe requirements and a time frame for the formulation of a basin area water resources management strategy.

(2) The basin area water resources management strategy shall be formulated by a basin water resources board in consultation with the Authority

and the county governments whose areas of jurisdiction lie within the basin area.

(3) A basin area water resources management strategy shall—

- (a) be consistent with the national water resources policy;
- (b) put in place measures to fulfil the water resource quality objectives for each class of water resource in the basin area;
- (c) describe the measures to be put in place for the sustainable management of water resources of the basin area;
- (d) contain a water allocation plan for the water resources of the basin area;
- (e) provide systems and guidelines to enable users of water resources within the basin participate in managing the water resources of the basin area; and
- (f) provide a strategy for financing the management of the water resources of the basin.

(4) The Cabinet Secretary or county government as the case may be shall gazette the strategy referred to in subsection (1).

Establishment and functions of water resource users association .

28.(1) Water resource users associations shall be established as associations of water resource users at the sub-basin level in accordance with regulations prescribed by the Authority.

(2) A water resource users association shall be a community based association for collaborative management of water resources and resolution of conflicts concerning the use of water resources.

(3) Without prejudice to the generality of section 28 (3) (e), the basin area water resources management strategy shall facilitate the establishment and operation of water resources users associations.

(4) The basin water resources boards may contract water resource users associations as agents to perform certain duties in water resource management.

National Water Storage Authority

Establishment of the National Water Storage Authority.

29.(1) There is established the National Water Storage Authority.

(2) The National Water Storage Authority established under this section is a body corporate with perpetual succession and a common seal, capable of suing and being sued in its own name and doing all things that a corporation may lawfully do.

Water Storage Board. **30.**(1) The powers and functions of the Water Storage Authority shall be exercised and performed under the direction of a Water Storage Board which shall consist of—

- (a) a chairperson, who shall be appointed by the Cabinet Secretary; and
- (b) four other members, who shall be appointed by the Cabinet Secretary;
- (c) the Managing Director; and
- (d) the Secretary.

(2) The Managing Director and the Secretary are *ex officio* members of the Water Storage Board with no voting rights.

(3) The First Schedule has effect with respect to the membership and procedure of the Water Storage Board.

Powers and functions of the Water Storage Authority. **31.**(1) The Water Storage Authority's powers and functions are to -

- (a) undertake on behalf of the national government the development of national public water works for water resources storage;

- (b) maintain and manage national public water works infrastructure for water resources storage;
- (c) collect and provide information for the formulation by the Cabinet Secretary of the national water resources storage and flood control strategies;
- (d) enforce water harvesting strategies; and
- (e) advise the Cabinet Secretary on any matter concerning national public water works for water storage; and
- (f) make Regulations to effect this section.

(2) The Water Storage Authority may appoint agents for the operation, management and maintenance of any storage infrastructure that it has developed.

(3) The Water Storage Authority shall have such other powers and functions as may be conferred or imposed on it by this or any other Act, or as may be reasonably incidental to the exercise or performance of any power or function so conferred or imposed.

Managing Director. 32.(1) The Cabinet Secretary, on the recommendation of the Water Storage Board may

Comment [CY5]: The cabinet secretary should not appoint members of the board and it is suggested that this should cut across the entire document where it appears.

Information should be open to all consumers not just for the use of the cabinet secretary.

Basic information should be easily accessed by the public without having to sell .

Comment [CY6]: This is a risk hence it is proposed that this should be done under the public procurement act

General Comment: Entire Bill not well aligned with Constitution especially in light of public participation

appoint the Managing Director of the Water Storage Authority, on such terms and conditions as may be specified in the instrument of appointment.

(2) A person is qualified for appointment as Managing Director if that person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has at least five years experience in—
 - (i) the management of public affairs; or
 - (ii) a profession directly relevant to the functions of the Water Storage Authority.
- (d) meets the requirements of leadership and integrity set out in chapter six of the Constitution.

(3) The Managing Director is the Chief Executive Officer and the accounting officer of the Water Storage Authority.

(4) The Managing Director is subject to the direction of the Water Storage Board and is responsible to it for the—

- (a) implementation of the decisions of the

Comment [CY7]: This should be captured in a general statement. Rewording needed here to accommodate a wide range of qualifications probably by use of the words atleast.

The board should determine these details. However they can be reflected in a schedule not necessarily in the main body

Water Storage Board;

- (b) day to day management of the affairs of the Water Storage Board;
- (c) organization and management of the employees; and
- (d) any other function that may be assigned by the Water Storage Board.

(5) The Managing Director shall hold office for a term of five years and is eligible for re-appointment for one further term.

Removal of the Managing Director. **33.**(1) The Managing Director may be removed from office by the Cabinet Secretary on the recommendation of the Water Storage Board, in accordance with the terms and conditions of service, for—

- (a) inability to perform the functions of the office arising out of physical or mental infirmity;
- (b) gross misconduct or misbehavior;
- (c) incompetence or neglect of duty;
- (d) a violation of the Constitution; or
- (e) any other ground that would justify removal from office under the terms

and conditions of service.

(2) Before the Managing Director is removed under subsection (1), the Managing Director must be given—

- (a) sufficient notice of the allegations made against him or her; and
- (b) an opportunity to present their case against the allegations, either in person or by a legal representative.

Comment [CY8]: The board should have powers to ask the director to step aside to allow investigations to be done

Secretary to Water Storage Board.

34.(1) The Water Storage Board shall appoint a Secretary on such terms and conditions as may be specified in the instrument of appointment.

(2) A person is qualified for appointment as Secretary to the Water Storage Board if the person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has at least five years experience in any of the following fields—
 - (i) public administration;
 - (ii) business administration;

- (iii) finance;
- (iv) management;
- (v) governance; or
- (vi) law.
- (vii) is a member of good standing of the Institute of Certified Public Secretaries of Kenya as provided under the Certified Public Secretaries Act.
- (viii) meets the requirements of leadership and integrity set out in chapter six of the Constitution.

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(3) The Secretary is subject to the direction of the Water Storage Board and is to—

- (a) record the minutes of the Water Storage Board meetings;
- (b) advise the Water Storage Board members on corporate governance principles and plans;
- (c) facilitate professional development programs for the Water Storage Board;

- permit purposes—
- (a) any use of water from a water resource, except as provided by section 37;
 - (b) the drainage of any swamp or other land;
 - (c) the discharge of a pollutant into any water resource; and
 - (d) any other purpose, to be carried out in or in relation to a water resource, which is prescribed by Regulations made under this Act to be a purpose for which a permit is required.

- Exemptions **37.(1)**A permit is not required—
- (a) for the abstraction or use of water, without the employment of works, from any water resource for domestic purposes by any person having lawful access to the water resource;
 - (b) for the abstraction of water in a spring which is situated wholly within the boundaries of the land owned by any one landholder and does not naturally discharge into a watercourse abutting on or extending beyond the boundaries of that land; or
 - (c) for the storage of water in, or the

abstraction of water from a reservoir constructed for the purpose of such storage and which does not constitute a water course for the purposes of this Act.

(2) Subsection (1) does not apply in relation to any activity mentioned in that subsection which is carried on in prescribed circumstances and the relevant law or regulation made under this Act requires a permit for the carrying on of that activity in those circumstances.

(3) Regulations made under this Act may make provisions with respect to the use of water from a water resource in any manner for which permit is not required.

(4) Without prejudice to the generality of subsection (3), such Regulations may—

- (a) prohibit any such use of water in prescribed circumstances; or
- (b) require the consent or permission of the Authority for any such water use of a prescribed kind or description.

Unauthoriz
ed
constructio
n and use
of works.

38. (1) A person who--

- (a) without a permit, constructs or employs works for a purpose for which a permit is required; or

- (b) being the holder of a permit, constructs or employs any such works in contravention of the conditions of the permit,

commits an offence.

(2) The holder of a permit authorising the construction of works who, without the permission of the basin water resources board or the Authority in the case of inter basin water transfers, takes water from any water resource--

- (a) by means of any works not authorised by the permit; or
- (b) before the whole of the works authorised by the permit have been certified, in accordance with the conditions of the permit,

commits an offence.

Easement for works. **39.**(1) The holder of a permit which authorises the construction of works that would or a portion of works which would when constructed, be situated upon lands not held by the permit holder shall acquire an easement on, over or through the land on which the works would be situated and, unless the works have previously been lawfully constructed, shall not construct or use the works

unless he or she has acquired such an easement.

(2) The provisions of the Third Schedule shall apply in respect of the acquisition of, and subsequent rights pertaining to or against, any such easement.

Procedure for obtaining a permit. **40.**(1) An application for a permit shall be made to the applicable basin water resources board or to the Authority in case of an inter-basin water transfer.

(2) An application under subsection (1) shall be made by completing and lodging the form prescribed by the Authority, together with—

(a) such information in support of the application as the Authority may require; and

(b) the prescribed fee.

(3) The application shall be determined within six months of receiving an application which meets the requirements of the Authority.

(4) An application for a permit shall be the subject of public consultation and, where applicable, of environmental impact assessment in accordance with the requirements of the Environmental Management and Co-ordination Act.

No. 8 of 1999 (5) Any person opposed to the grant of a permit may object in writing to the applicable basin water resources board or the Authority as the case maybe within a period of thirty days after publication of the notice of the application.

(6) The basin water resources board or the Authority as the case may be must within thirty days notify the applicant and any person who may have objected to the grant of the application of its decision and in the event of a rejection, the reasons for the rejection.

(7) Where an application made in accordance with this section is not determined by the basin water resources board or the Authority within six months in accordance with subsection (3), any fee paid by the applicant under subsection (2) (b) shall be refunded to the applicant.

Conditions of permits. **41.**(1) A permit shall subject to subsection (2,) be subject to—

- (a) conditions that may be prescribed by Regulations under this Act; and
- (b) such other conditions, not inconsistent with the conditions so prescribed, as the basin water resources board or the Authority in case of inter basin water

transfer may impose by endorsement on, or by an instrument in writing annexed to the permit.

(2), The provisions of the Second Schedule shall be conditions on every permit which authorises the construction of works.

(3) The Regulations under subsection 1(a) may, among other things—

- (a) require the imposition of prescribed conditions in prescribed circumstances;
- (b) require the payment by the permit holder of prescribed fees in respect of the exercise of rights under the permit; or
- (c) provide that a contravention of any specified conditions of a permit under this Act, shall constitute an offence and provide for corresponding penalties.

(4) The imposition of a penalty by a rule made in accordance with subsection 3 (c) shall not prevent any other remedy for the recovery of damages for any loss, damage or injury sustained by any person by reason of the contravention in respect of which the penalty is imposed.

Charges for water use. 42.(1) The conditions on a permit may require that on issue of the permit and at prescribed intervals thereafter, the permit holder shall pay charges to the basin water resources board or the Authority in case of inter basin water transfer permits for the use of water in accordance with the terms of the permit and the Regulations prescribed by the Authority.

(2) The charges shall be determined by reference to a schedule of charges published in the Gazette by the Authority following public consultation.

Considerations for the use of permits. 43.(1) In issuing a permit, and in fixing any conditions to be imposed on a permit, the basin water resources board or the Authority in case of inter-basin water transfers, shall take into account such factors as it considers relevant, including—

- (a) existing lawful uses of the water;
- (b) efficient and beneficial use of water in the public interest;
- (c) any basin area water resources management strategy applicable to the relevant water resource;
- (d) the likely effect of the proposed water

use on the water resource and on other water users;

- (e) the classification and the resource quality objectives of the water resource;
- (f) the investments already made and to be made by the water user in respect of the water use in question;
- (f) the strategic importance of the proposed water use;
- (g) the quality of water in the water resource which may be required for the reserve; and
- (h) the probable duration of the activity or undertaking for which a water use is to be authorised.

(2) The use of water for domestic purposes shall take precedence over the use of water for any other purpose, and the basin water resources board or the Authority may, in granting any permit, reserve such part of the quantity of water in a water resource as in its opinion is required for domestic purposes.

(3) The nature and degree of water use authorized by a permit shall be reasonable and beneficial in relation to others who use the same sources of supply or bodies of water.

(4) A permit shall, subject to this Act, remain in force for the period specified in it, and may, to the extent that the permit so provides, be renewed from time to time.

Issue of permits in exceptional cases. **44.**(1)The Cabinet Secretary shall from time to time, by notice in the Gazette, set criteria for determining exceptional circumstances to warrant a grant of a permit without resort to public consultation.

(2) The basin water resources board or Authority in case of inter-basin water transfers may, if in its opinion exceptional circumstances as provided for in subsection (1), warrant such action, grant a permit authorising with or without conditions, the use of water from a water resource and the construction of the works required without subjecting the application to public consultation.

(3) In considering whether or not to grant a permit in accordance with this section, the basin water resources board or Authority in case of inter-basin water transfers, shall have regard to the extent to which the grant shall interfere with the domestic requirements of other users.

(4) A permit granted in accordance with this section shall not in any case be in force for a period exceeding or for periods which in the aggregate

exceed, one year, or for the construction of permanent works.

Permit to be linked to land or undertaking g. **45.**(1) A permit shall specify, as far as practicable, the particular portion of any land, or the particular undertaking to which the permit is to be appurtenant, and on its grant the permit shall, subject to the provisions of this section, during the period for which it remains in force—

- (a) be appurtenant to that portion of land or that undertaking; and
- (b) pass with any demise, devise, alienation, transfer or other disposition whether by operation of law or otherwise.

(2) Where, in the opinion of a basin water resources board or Authority in the case of inter-basin water transfers –

- (a) owing to a change in circumstances not under the control of the permit holder after the grant of the permit, the water concerned cannot, in such circumstances, be reasonably beneficially used by the permit holder on the particular portion of land to which the permit is appurtenant; and

- (b) neither the public interest nor the rights of others would be adversely affected by a transfer in accordance with this subsection, a basin water resources board may, on application by the permit holder and by endorsement of the permit or other instrument in writing, transfer the permit to another portion of the land owned by the permit holder, after which, it shall become appurtenant to that portion.

(3) If any land to which a permit is appurtenant has been, or is about to be, subdivided, a basin water resources board may grant a new permit subject—

- (a) to the condition that such easements, if any, as may be required to be granted within a period of two years after subdivision of the land or within such longer period as the basin water resources board may determine; and
- (b) any other conditions, and modifications, as seem to the basin water resources board to be necessary or desirable in the circumstances.

Variation of permit. **46.(1)** Whenever it is shown to the satisfaction of a basin water resources board that, owing to natural

changes, increased demand or other cause, the use of water under a permit, or the method or point of diversion or other manner in which the water is so used causes-

- (a) inequity;
- (b) a deterioration in the quality of water;
- (c) a shortage of water for domestic purposes; or
- (d) a shortage of water for any other purpose which in the opinion of the basin water resources board or Authority in case of inter-basin water transfers, should have priority,

the water resources board may vary the permit so as to alter the discharge or quality of water or any other aspect of water use authorised by the permit, or to alter the method or point of diversion or other specifications, terms or conditions of the permit.

(2) A permit shall not be cancelled or varied under this section unless notice of the proposed cancellation or variation has been served on the permit holder and the permit holder has been

afforded a reasonable opportunity to show cause to the basin water resources board why the permit should not be cancelled or varied.

(3) Subsection (2) does not apply where the variation is expressed to be made owing to drought or owing to an emergency of a kind prescribed by Regulations made under this Act.

Power to require permit applications or re-applications. 47.(1) Where, in the opinion of a basin water resources board it is desirable that water use in respect of one or more water resources, including ground water, within a specific geographic area be rationalized or reviewed so as to—

- (a) achieve a sustainable allocation of water from a water resource which is under stress;
- (b) achieve equity in allocations;
- (c) promote beneficial use of water in the public interest;
- (d) facilitate efficient management of water resources; or
- (e) protect water resource quality,

the Authority may issue a notice in the Gazette requiring all water users, including permit holders, to apply or reapply for permits for one or more types of water use.

(2) On receipt of applications or reapplications, the basin water resources board shall prepare a proposed allocation schedule specifying how water from the water resource in question shall be allocated, taking into account the requirements of the reserve.

(3) The proposed allocation schedule shall be subjected to public consultation, after which the basin water resources board shall prepare a preliminary allocation schedule and shall, by notice published in the Gazette advertise the times and places at which a copy of the schedule may be inspected.

(4) A person dissatisfied with the preliminary allocation schedule may appeal to the Tribunal within thirty days of the publication under subsection (3).

(5) A preliminary allocation schedule shall become a final allocation schedule--

- (a) if no appeal is lodged as provided for under subsection (4);
- (b) if it has been amended after a successful appeal; or
- (c) if every appeal lodged has been dismissed.

(6) The basin water resources board shall publish a notice in the Gazette stating that the preliminary allocation schedule has become final and advertise the times and places which a copy of the schedule may be inspected.

(7) The basin water resources board shall, as soon as reasonably practicable after an allocation schedule becomes final, issue permits according to the allocations provided for in it, and cancel any inconsistent permits.

Cancellation of a permit. **48.**(1) A basin water resource board or the Authority may in case of an inter basin water transfer cancel or vary a permit if such cancellation or variation is necessary for the accommodation of additional water users of a water source.

(2) A permit shall not be cancelled or varied under this section unless notice of the proposed cancellation or variation has been served on the holder and the permit holder has been afforded reasonable opportunity to show cause to the basin water resources board or the Authority in case of inter basin water transfer why the permit should not be cancelled or varied.

(3) A permit holder whose permit is cancelled under this section shall be paid compensation of an amount agreed between the permit holder, the

additional water user or users and the respective basin water resources board or the Authority in case of inter basin water transfer, and any disputes arising from such compensation shall be determined by the Tribunal.

Cancellation or variation of a permit for failure to observe terms and conditions.

49.(1) A permit may be cancelled or varied by a basin water resources board if the permit holder—

- (a) contravenes any condition of the permit, or
- (b) fails to make beneficial use of the water or any part of the water as determined by the Authority.

(2) A permit shall not be cancelled or varied under this section unless notice of the proposed cancellation or variation has been served on the permit holder and the permit holder has been afforded a reasonable opportunity to show cause to the basin water resources board as to why the permit should not be cancelled or varied.

Variation of permit following a hydrographical survey.

50.Every permit shall be subject to subsequent variation by a basin water resources board after a hydrographical survey of the relevant body of water has been made, and after reasonable notice has been given to all parties affected.

Variation

51.(1) A permit holder may request a water

of a permit at the request of the permit holder. resources board or the Authority to vary the permit and the water resources board or the Authority may if satisfied that the variation is not contrary to the public interest or the rights of others, vary such permit—

- (a) change the point of diversion or abstraction of the water used under the permit;
- (b) change the use of water authorised by the permit; or
- (c) permit the apportionment of the water authorised by the permit to be taken or used, to be apportioned between two or more parts of the land to which the permit pertains;
- (d) permit the mixture of waters authorised to be taken or used, with those authorised to be taken or used by another permit, whether held by the same or another permit holder;
- (e) remedy any defect where the permit is incomplete or indefinite in its terms and conditions; or
- (f) vary any other term or condition of the permit.

(2) A variation relating to—

- (a) the use of water authorised by the permit; or
- (b) a term or condition of a prescribed kind,

shall not be made without public consultation.

Abandonment of permitted activities. **52.**(1) A permit holder who ceases to utilise water in accordance with the terms of the permit shall by notice to the applicable basin water resources board abandon the whole of the permit or any part capable of separation.

(2) Upon such abandonment, the applicable basin water resources Board may direct the permit holder to remove, within such time as it may specify, all or any works erected in connection with the permit.

(3) A permit holder who neglects or fails to remove the works concerned commits an offence, and the applicable basin water resources board may remove all or, any portion of the works, and may recover the cost of their removal from the permit holder as a debt in any court of competent jurisdiction.

Surrender
of permits.

53.(1) Where a permit—

- (a) is to be cancelled or varied by a basin water resources board or the Authority in case of inter basin water transfer in pursuance of this Act,
- (b) has been granted erroneously or irregularly; or
- (c) has been granted in contravention of the provisions of any Regulations made under this Act with respect to the terms and conditions of such a permit,

the basin water resources board or Authority may, by notice served on the holder of the permit, require the permit holder to surrender the permit to the basin water resources board.

(2) A permit holder who fails to comply with the notice mentioned in subsection (1) commits an offence.

Register of
permits.

54.(1) A basin water resources board shall establish and maintain a register of permits in force together with details of the permits, their terms and conditions and the results of any monitoring and enforcement action taken by the basin water resources board regarding each permit.

(2) The Authority and the Cabinet Secretary shall establish and keep a register at the national level from the information forwarded by all the basin water resources boards.

(3) The public may access the information contained in the register on payment of the fee prescribed by the Authority.

Appeals. **55.**(1) Any party aggrieved by the decision of a basin water resources board may appeal to the Authority in the prescribed manner within fourteen days from the date such decision was made.

(2) The Authority shall on appeal either vary, reverse or confirm the decision of a water basin resources board, and its decision shall be communicated to the parties concerned within fourteen days from the time the decision is made.

Ground Water

Abstraction of ground water. **56.**The Fourth Schedule has effect with respect to the abstraction of ground water and respective works.

PART IV – WATER SERVICES

General

Right to clean and safe water. **57.** Every person in Kenya has the right to clean and safe water in adequate quantities and to reasonable standards of sanitation as stipulated in Article 43 of the Constitution of Kenya.

National Water Services Strategy, Investment s and Financing Plans. **58.**(1) As soon as practicable after the commencement of this provision, the Cabinet Secretary shall, following public consultation, formulate a National Water Services Strategy.

(2) The object of the National Water Services Strategy shall be to provide the Government's plans and programs for the progressive realization of the right of every person in Kenya to water.

(3) The National Water Services Strategy shall contain, among other things, details of -

- (a) existing water services;
- (b) the number and location of persons who are not provided with a basic water supply and basic sewerage services; and
- (c) a resource mobilization strategy for the implementation of the plans.

(4) The National Water Services Strategy in force for the time being, shall be published in the Gazette.

(5) The Cabinet Secretary shall ensure that the regular up-dating of a national water sector investment and financing plan aggregated from the county government plans shall include, among others details, the time frames for the plans, and an investment programme based on the investment plans.

Water Works Development Boards

Establishment of Water Works Development Boards. **59.**(1) There is established agencies of the national government to be known as the water works development boards.

(2) The water works development boards shall be body corporates with perpetual succession and a common seal and shall have power, in their respective corporate names, to sue and to be sued and, in the exercise and performance of their powers and functions, to do and permit all such things as may lawfully be done or permitted by a body corporate in furtherance of their objects.

Boards of the Water Works Development Boards. **60.**(1) The powers and functions of the water works development boards shall be exercised and performed under the direction of boards, which shall consist of—

(a) a chairperson, who shall be appointed by the Cabinet Secretary;

(b) four other members who shall be

appointed by the Cabinet Secretary;

- (c) the Managing Director; and
- (d) the Secretary.

(2) The First Schedule has effect with respect to the membership and procedure of the boards of the water works development boards.

Criteria for Water Works Development Boards. **61.**The Cabinet Secretary shall in consultation with stakeholders develop the criteria for establishment of the water works development boards.

Powers and functions of the Boards. **62.**The powers and functions of the water works development boards shall include the--

- (a) development of national public water works for water services;
- (b) formulation of development and investment plans for rural and urban areas aggregated from the county development plans and established by the county water service providers and through the county government water services institutional structure for their designated areas;
- (c) provision of input to the national development and financing plan established by the Cabinet Secretary;

- (d) provision of technical assistance to the water services providers as county government agents for county asset development in consultation with the respective county governments;
- (e) hand over developed public assets to the licenced county water services providers, cross-county water services providers or to the county water department in accordance with Regulations made by the Cabinet Secretary;
- (f) facilitation of the establishment of cross-county water service providers; and
- (g) employment of staff to carry out its functions and activities as per any applicable law and terms determined by the Public Service Commission.

Outsourcing works. **63.**The water works development boards shall not execute works but will outsource them in line with national procurement regulations.

Funds of the water works development boards. **64.**The funds of the water works development boards shall consist of:
(a) such funds as may be vested in or accrue to the water works development boards in the performance of any function under this

Act or any other written law;

(b) moneys allocated by Parliament for the water works development boards; and

(c) any grant, credits, gifts, donation and other endowments provided to the water works development boards as the Cabinet Secretary may approve.

Handover of works **65.** Once the development of the assets are completed by the water works development boards they must be handed over to the county water services providers or cross county water services providers with all rights and obligations subject to any transition arrangements.

The Water Services Regulatory Commission

Establishment of the Commission. **66.**(1) There is established the Water Services Regulatory Commission whose principal object is to protect the interests and rights of consumers in the provision of water services.

(2) The Commission shall be a body corporate with perpetual succession and a common seal and shall have power, in its corporate name, to sue and be sued and, in the exercise and performance of its powers and functions, to do and permit all such things as may lawfully be done or permitted by a body corporate in furtherance of its objects.

Regulatory Board **67.**(1) The powers and functions of the Commission shall be exercised and performed under the direction of the Regulatory Board, which shall consist of—

- (a) a chairperson appointed by the Cabinet Secretary,
- (b) four other members also appointed by the Cabinet Secretary; and
- (c) the Director General;
- (d) the Secretary.

(2) The First Schedule shall have effect with regard to the membership and procedure of the Regulatory Board of the Commission.

Powers and functions of the Commission. **68.**(1) The powers and functions of the Commission shall be to—

- (a) determine and prescribe national standards for the provision of water services and asset development for water service providers;
- (b) validate the water and sewerage tariffs proposed by the county water service providers and approve their imposition in line with consumer protection standards;

- (c) issue licences for the provision of water services;
- (d) monitor, regulate licencees and enforce licence conditions;
- (e) develop a model Memorandum and Article of Association to be used by all water companies applying to be licenced by the Commission to operate as water service providers;
- (f) monitor compliance with standards including the design, construction, operation and maintenance of facilities for the provision of water services;
- (g) propose to the Cabinet Secretary the nature, extent and conditions of financial support to be accorded to water service providers for providing water services;
- (h) monitor progress in the implementation of the National Water Services Strategy and make appropriate recommendations;
- (i) maintain a national data base and information system on water services;

- (j) establish a mechanism for handling complaints from consumers regarding the quality or nature of water services;
- (k) develop guidelines on the establishment of consumer groups and facilitate their establishment;
- (l) carry out inspections at water service providers;
- (m) report annually to the public on issues of water supply and sewerage services and performance of relevant sector institutions;
- (n) issue Regulations on water services and asset development which shall include business, investment and financing plans; in order to ensure efficient and effective water services and progressive realization of right to water services; and
- (o) advise the Cabinet Secretary on any matter in connection with water services.

(2) The Commission may, with the consent of the Director of Public Prosecutions, undertake the prosecution of any offences arising under this Act or

in connection with the performance of its functions.

(3) The Commission shall have such powers and functions as may be conferred on it by this or any other Act, or as may be reasonably incidental to the exercise or performance of any power or function so conferred.

Employees of the Commission. **69.**(1) There shall be a Director General of the Commission who shall be appointed by the Cabinet Secretary on the recommendation of the Commission, on such terms and conditions of service as may be determined by the Commission upon the consideration of advice from the Salaries and Remuneration Commission.

(2) The Director General shall be the principal officer of the Commission and, subject to the directions of the Regulatory Board shall be responsible for management of the Commission.

(3) The Commission may appoint such officers and other employees as may be necessary for the exercise and performance of its powers and functions, upon such terms and conditions as it may determine upon consideration of advice from the Salaries and Remuneration Commission.

Special Regulatory Regime. **70.**(1) The Commission may impose a special regulatory regime on a licensee who persistently contravenes the conditions of a licence or the

requirements of this Act.

(2) The Commission may under a special regulatory regime, —

- (a) require the licensee to be under enhanced monitoring licence and reporting;
- (b) remove privileges from the licence;
- (c) impose financial penalties;
- (d) require the removal from office of the senior management of the licensee;
- (e) dissolve the board of directors of the licensee; and
- (f) appoint a special manager of the water services.

Establishment of water service providers. **71.**(1)The county governments shall establish water services providers by executing an agreement with the entities provided in subsection (3).

(2) In establishing a water services provider, a county government shall comply with the standards of commercial viability set by the Commission.

(3) A water service provider established under this section may be a company established under the Companies Act, a non-governmental

organization or other body providing water services as may be approved by the Commission.

Cap. 486 (4) A company wishing to be licenced as a water service provider shall submit its Memorandum and Articles of Associations that conform to the model developed and approved by the Commission.

Responsibilities of the water services provider. **72.** (1) A water services provider shall be responsible for-

(a) the provision of water services within the area specified in the licence; and

(b) the development of county assets for water service provision.

(2) A licensed water service provider shall have such other powers and functions as may be conferred on it by this Act or any other Act.

Board of a water services provider. **73.**(1) A water service provider shall have a board of directors and in the case of a company, the members of its board of directors shall be nominated to serve on the board in accordance with its Memorandum and Articles of Association.

(2) All members nominated to the water services provider's board of directors shall possess qualifications which meet the standards set by the

Commission.

Member of the Board not to hold public office.

74.A member of a board of directors of a water service provider shall not—

- (a) at the time of nomination for appointment to the board, be serving as an elected member of a county government;
- (b) be a full time employee of a county government;
- (c) hold office in a political party; or
- (d) be a serving member of Parliament.

Extension of services to peri-urban or rural areas.

75.On proposal by the licenced water service provider and with approval of the regulator the water service provider can extend their services to peri-urban and rural areas.

Appeals to the Commission.

76.(1) A party aggrieved by the decision of a water service provider may appeal against the decision to the Commission in the prescribed manner within fourteen days from the date the decision was made.

(2) The Commission may on appeal either vary, reverse or confirm the decision of the water service provider, and the Commission shall communicate its

decision to the parties concerned within fourteen days from the time the decision is made.

County owned water service provider to hold assets for the public.

77.A county or a cross-county owned water service provider established as a public institution and operating and providing water services shall hold the county or national public water services assets on behalf of the public.

Cabinet Secretary to make guidelines.

78.(1)The Cabinet Secretary shall develop Guidelines for handing over of public assets to the county water service providers in accordance with any law regulating the handing over and disposal of public assets.

(2) The guidelines shall include arrangements to protect public assets in case of private sector participation such as separation of operation from asset holding and development.

Provision of water services.

79.(1) A person shall not provide water services except under the authority of a licence issued by the Commission.

(2) A person who provides water services in contravention of this section commits an offence.

(3) Nothing in this section prohibits the provision of water services —

- (a) by a person to their employees;
- (b) on the premises of an institution including a hospital, factory, school, hotel, research station or other comparable institution, in cases where the source of supply of the water is lawfully under the control of the institution or where the water is supplied to it in bulk by a licensee; or
- (c) in circumstances which are prescribed by Regulations made by the Commission to be exempt from the requirement for a licence.

Procedure and requirements for obtaining a licence. **80.**(1) An application for the licence referred to in section 79(1) shall be made to the Commission.

(2) The Commission shall prescribe a form for use in making such an application, which shall include the following particulars to be furnished by the applicant—

- (a) evidence that the applicant's board of directors complies with the standards set by the Commission under section 70(2);
- (b) the technical and financial capability of the applicant to provide the services and perform the functions

- authorized by the licence;
- (c) evidence that the water services to be provided will be commercially viable;
- (d) the applicant's business plans for the provision of efficient, affordable and sustainable water services;
- (e) performance targets;
- (f) details of planned financial and infrastructural improvements;
- (g) a proposed tariff structure; and
- (h) any other information required by the Commission.

(3) The application shall be made by completing and lodging the prescribed form together with the supporting documentation and the prescribed fee.

(4) The Commission shall determine an application for a licence by granting the licence or rejecting the application.

(5) The application shall not be granted unless the Commission is satisfied that—

- (a) the applicant has the requisite technical and financial competence

- to provide the services to which the licence relates;
- (b) the applicant has demonstrated that the water services to be provided will be commercially viable;
 - (c) the applicant has presented a sound plan for the provision of an efficient, affordable and sustainable water service;
 - (d) the applicant has proposed satisfactory performance targets and planned improvements and an acceptable tariff structure;
 - (e) the applicant or any water services provider by whom the functions authorized by the licence are to be performed will provide the water services authorised by the licence on a commercial basis and in accordance with sound business principles;
 - (f) where water services authorised by the licence are to be provided by a water services provider which conducts some other business or performs other functions not authorised by the licence, the supply of those services will be undertaken,

managed and accounted for as a separate business enterprise; and

(g) the applicant has met any other requirements which the Commission may consider necessary for the efficient provision of the services to be provided under the licence.

Application **81.**(1) An application for a licence shall be the subject of public consultation.

licence

subject to (2) Any person opposed to the grant of a licence may object in writing to the Commission.

public

consultation.

n.

(3) The Commission shall notify the applicant and any objector of its decision and, in the event of the rejection of an application or objection, as the case may be, of the reasons for the decision.

(4) An applicant or objector may, if aggrieved by the decision of the Commission, within thirty days after the date of the notification, appeal to the Tribunal.

(5) The Commission shall make a determination on an application for a licence as soon as practicable after the applicant lodges the application.

(6) Where the Commission does not make a determination within six months of an applicant

lodging the application, any fee charged by the Commission under section 70 (3) shall be refunded to the applicant..

Licence not to confer any rights of proprietors hip to the licensee. **82.**(1) A licence shall only authorise a water services provider to provide the water services specified in the licence and shall not confer any rights of proprietorship and in particular, the licence shall not be capable of being sold, leased, mortgaged, transferred, attached, assigned, demised or encumbered.

(2) The Commission may require the applicant to deposit with it a guarantee or other acceptable security for the purpose of securing payment by the applicant of any expenses recoverable from the licensee, for or towards the costs incurred in discharging the functions of the licensee in cases of default.

(3) As a condition of its licence the licensee shall, within twelve months of receipt of the licence, or such longer period as the Commission may determine, formulate and present to the Commission, a development plan for extending services to un-served persons within its area, a time frame for the implementation of the plan and a resource mobilization strategy.

Licence fees. **83.**(1) A licensee shall pay to the Commission, on issue of the licence and at prescribed intervals

thereafter, such licence fees as the Commission may determine.

(2) The fee shall be determined by reference to a schedule of fees published in the Gazette from time to time by the Commission.

Conditions
of licence.

84.(1) A licence shall be subject to—

- (a) conditions prescribed by regulations made under this Act; and
- (b) such other conditions, not inconsistent with the conditions prescribed, as the Commission may impose by endorsement on, or an instrument in writing annexed to the licence;

(2) Under this Act, Regulations may—

- (a) require the imposition of prescribed conditions in prescribed circumstances;
- (b) require the licensee to maintain, in the prescribed manner, a contingency fund for the purpose of renewal, repair, enlargement or improvement of any plant, equipment, facilities or works used for the purposes of the licence or for meeting any other prescribed

contingency; or

- (c) provide that a contravention of any specified conditions prescribed under this Act as conditions of licences shall constitute an offence punishable by a penalty specified in the licence.

(3) The imposition of a penalty by a regulation made in accordance with subsection (2) (c) shall not prejudice any remedy for the recovery of damages for any loss, damage or injury sustained by any person by reason of the contravention in respect of which the penalty is imposed.

Duty to provide water services. **85.**(1) A water services provider shall, as the licensee, be responsible for the efficient and economical provision of water services so as to fulfil the rights to water and any other conditions specified in the licence.

(2) For the purpose of the provision of water services, a water services provider, may —

- (a) purchase, lease or otherwise acquire, premises, plant, equipment and facilities; and
- (b) purchase, lease or otherwise acquire land, or arrange for its compulsory acquisition in accordance with the applicable laws.

(3) As part of its duty a water services provider shall establish a mechanism for handling consumer complaints which meets the standard set by the Commission.

Public
Private
Partnership
s.

86.(1) Notwithstanding section 82 (1) a water services provider may enter into a public private partnership for the exercise and performance by another person of some or all of its functions as a licensee with respect to a part or the whole of its area of water service.

(2) The partnership shall be in writing subject to the approval of the Commission.

(3) Where the person entering into an agreement with the water services provider owns or possesses assets or infrastructure used for the provision of water services, the agreement shall set out the terms and conditions under which the assets may continue to be so used.

(4) A power or function conferred by a licence or otherwise conferred under this Act may be exercised or performed by another person acting under an agreement with the licensee and shall be deemed, when exercised or performed by that other person, to have been exercised or performed under the licence.

Special provisions with respect to unviable rural areas.

87.(1) County governments shall put in place measures for the provision of water services to rural areas which are considered by the Commission not to be commercially viable for the provision of water services.

(2) The measures taken by the county government shall include developing point sources, small scale piped systems and stand pipes which meet the standards set by the Commission and which may be managed by the community associations, non-governmental organizations or by a private person under a contract with the county government.

(3) In order to implement its obligations under this section, a county government shall formulate and submit annually to the Commission and to the Cabinet Secretary, a five year development plan incorporating an investment and financing plan for the provision of water services in the rural areas referred to in subsection (1) within its area of jurisdiction.

(4) The Cabinet Secretary shall provide technical, financial and other assistance to a county government to enable it discharge its responsibility under this section.

Variation

88.(1) The Commission may, on the application

of terms or conditions of a licensee, vary the terms and conditions of the licence.

of the licence.

(2) Except as otherwise provided by regulations made under this Act, no such variation shall be made without prior public consultation.

Areas of water service. **89.**(1) The area of a water service shall be prescribed by the licence and shall not be less than the area required for a commercially viable water service.

(2) The area so prescribed may, but need not, coincide with the boundaries of the area or areas of jurisdiction of one or more county governments.

Clustering of areas of water service provision. **90.**(1) The Commission may, on the application of the licencees concerned—

(a) permit the joint provision by two or more licencees of water services on such terms as it may approve; or

(b) permit the transfer of a water service, or part thereof, of one licensee to another licensee.

(2) Where it appears to the Commission to be necessary for the purpose of securing a commercially viable water service, it may, by notice in the Gazette, order a joint provision of water

services or a transfer of water service and vary the relevant licences accordingly.

(3) An order made under this section may make such incidental, consequential and supplementary provision as the Commission considers necessary for the purpose of carrying out the order.

(4) A licensee aggrieved by the provisions of the order may appeal to the Tribunal.

Variation of areas of service. **91.**(1) The Commission may vary the areas of water service prescribed by one or more licences-

(a) on the application of a licensee whose area of water service is to be varied and with the consent of any other licensees affected; or

(b) without the consent, or against the objections, of any such other licensee, if the Commission is satisfied that the other licensee is unable to meet the demands for water in its area of jurisdiction or is otherwise unable to provide a commercially viable service.

(2) Where it appears to the Commission that it is necessary to vary the area of water service of a

licencee, and the Commission is satisfied that such a variation cannot be otherwise secured it may, by order published in the Gazette, effect the variation accordingly.

(3) An order made under this section may make such incidental, consequential and supplementary provisions as the Commission deems necessary for the purpose of carrying out the order.

(4) A licensee aggrieved by the provisions of an order made under this section may appeal to the Tribunal.

Provision of water service outside the area of supply.

92.(1) With the consent of the Commission, and subject to any Regulations made under this Act and conditions, the Commission may impose, a licensee may provide water services outside its area of water service.

(2) Where under this section a “licensee in this section called the supplying licensee”, is providing water services to premises outside its area of supply, any other licensee within whose area those premises are situated may, in the absence of any agreement to the contrary, give not less than three months notice to the supplying licensee that the licensee is able and intends to provide water services to the premises.

(3) A notice given under subsection (2) shall not

be valid unless it relates to all the premises to which the water services are being provided by the supplying licensee in accordance with this section.

(4) If on the expiration of the notice under subsection (2), the licensee giving the notice commences to supply water to the premises covered by the notice, the supplying licensee shall, except for the purpose of recovering water rates or other charges or expenses lawfully recoverable by supplying licence, and of removing any pipes, plant or apparatus belonging to the supplying licence, cease to have any rights or duties in respect of providing water services to the premises concerned.

(5) The supplying licensee shall not remove any pipes, plant or apparatus which he or she is required by the licensee giving the notice to leave in position, and any such pipes, plant or apparatus shall vest in the licensee giving the notice.

(6) The licensee giving notice shall pay to the supplying licensee –

- (a) any expenses reasonably incurred by it for the purpose of providing water services to the premises referred to in the notice;
- (b) such sum in respect of any pipes, plant or apparatus vested in the licensee

giving the notice as may be agreed or, in default of agreement, as may be determined by the Commission .

(7) While the supplying licensee is in accordance with this section authorized to provide water services outside its area of service, any regulations relating to its water service shall have effect as if the area to which those services were provided were within those limits.

Supply of water in bulk.

93.(1) No person shall supply water in bulk to a water services provider without a licence issued by the Commission.

(2) A water services provider may enter into an agreement with any other licensee or water services provider on terms and conditions to be approved by the Commission –

- (a) for the supply of water in bulk for any period ; or
- (b) where the supply is to be given by a person which is itself a water service provider, either within or outside the area of service of that water services provider.

(3) Where it appears to the Commission that –

- (a) it is expedient that-
- (i) any licensee or water service provider should give a supply of water in bulk to another licensee or water service provider;
 - (ii) the other licensee or water service provider should take such a supply; and
- (b) giving and taking of such a supply cannot be secured by agreement,

the Commission may, by order served on the parties, require the licensees or water service providers concerned to give and take the supply of water in bulk for such a period and on such terms as it may specify.

Default by the Licensee **94.(1)** If it appears to the Commission following a complaint made to or information received by the Commission, that any licensee -

- (a) has failed to discharge any duty imposed upon the licensee by a licence or otherwise under this Act; or

(b) (b) has failed to give an adequate supply of water, either in quantity or quality to any area or any person which it is supplying; or

(c) having been notified by the Commission to take such steps as are reasonably practicable in order to remedy any such failure as is mentioned in paragraph (a) or (b), and has failed to do so,

the Commission may inquire into the matter.

(2) If, after inquiry, the Commission is satisfied that there has been failure on the part of the licensee, it may impose a special regulatory regime on the water services provider for the purpose of remedying the default.

(3) A licensee declared to be in default who is dissatisfied with an order of the Commission under this section may, within thirty days after receipt of the order, appeal to the Tribunal.

(4) A licensee declared to be in default by order under this section and who fails to comply with the order within the time specified, commits an offence.

Transfer of **95.**(1) If the Commission is satisfied that,

functions of licensee. notwithstanding the imposition of measures under a special regulatory regime, the default has not been remedied and is not likely to be remedied by the licensee, it shall, by notice in the Gazette, order the transfer of water services to another licensee.

(2) The order of transfer shall make such provisions as appear to the Commission to be desirable or necessary with respect to any property or assets being used by the defaulting licensee for the purposes of providing the water services.

Agreements as to protection of sources of water, etc

96.(1) A licensee may enter into an agreement with any person with respect to the execution and maintenance, by any party to the agreement, of such works as the licensee considers necessary or as the conditions of his or her licence may require for the purpose of protecting the catchment areas, drainage of land, carrying out soil conservation measures or the control of vegetation or more effectively collecting, conveying or preserving the purity and quantity of water which the licensee is for the time being authorised to take.

(2) An agreement under this section may be registered against any land of the person with whom it is made, and shall be binding upon and enforceable against such land or such person or successor in title.

Power of **97.(1)** A licensee who is of the opinion that there

Comment [CY9]: Payment for Ecosystem Services. WRUAs should be able to earn from the PES system.

Eg. Of WWF has done this in Naivasha, The Bill should clearly define like in the forest act.

It should have specific % of how and what should be shared between the national government and the communities

licencee to prohibit or restrict use of water. is a serious deficiency or threat of a deficiency of water available for distribution may, with the approval of the Commission, for such period as the licencee considers necessary, prohibit or restrict with respect to the whole or any part of its limits of supply, the use for any specified purpose of water supplied by the licencee.

(2) Before the prohibition or restriction in subsection (1) comes into force, notice shall be given by the licencee, in one or more newspapers of daily circulation, within the affected area or by such other means as the Commission may approve, of the proposed prohibition or restriction and of the date when it will come into force.

(3) Regulations made under this Act may provide that any person who, while such prohibition or restriction is in force, contravenes its provisions commits an offence and on conviction shall be liable to a penalty fixed by regulation.

Duty to enforce regulations on water services. **98.**(1) It shall be the duty of any licencee to monitor and enforce any regulations made under this Act, and any licencee who fails to do so may be ordered by the Regulatory Board to take such action to enforce such regulations as shall be specified in the order.

(2) Where a licencee considers that the operation of any such regulations would be

unreasonable in any particular case, the licensee may, by notice to any affected party, relax or dispense with the requirements of the regulation.

Execution of works for protection of water.

99.(1) A licensee may, on any land belonging to it, or on land over or in which it has acquired any necessary easement or right, construct and maintain drains, sewers and other works for intercepting, treating or disposing of any foul water arising or flowing upon such land or otherwise for preventing water belonging to the licensee, or which it is for the time being authorised to take, from being polluted:

(2) The licensee shall before constructing any works, if the proposed works will affect or are likely to affect any water resource, obtain the consent of the Authority and the Commission.

(3) Any licensee proposing to construct any drain, sewer or other works may, with the consent of the state organ concerned and subject to such conditions as the state organ may impose, carry the drain, sewer or other work under, across or along any road or road reserve or public place, whether within or outside the area of water service of the licensee.

(4) A consent required under subsection (2) shall not be unreasonably withheld, nor shall any unreasonable condition be attached to such

consent, and any question arising from the operation of this subsection shall be decided by consultation between the state organs concerned.

Control of trade effluent. **100.** (1) It shall be the duty of a licensee receiving trade effluent into its sewerage system to ensure that it has in place measures for the receipt and handling of the effluent without causing-

- (a) pollution of the environment;
- (b) harm to human health;
- (c) damage to the sewerage system;
or
- (d) a contravention of applicable laws or contravention of standards set by the Commission .

(2) A person shall not discharge any trade effluent from any trade premises into the sewers of a licensee without the consent of the licensee.

(3) An application for consent shall be made to the licensee and shall state—

- (a) the nature or composition of the trade effluent;
- (c) the maximum quantity of the effluent

which it is proposed to discharge on any one day;

- (d) the highest rate at which it is proposed to discharge the effluent; and
- (e) any other information required by the licensee.

(4) The licensee's consent may be given subject to conditions, including conditions requiring pre-treatment and payments to the licensee of charges for the discharge.

(5) Any person who is dissatisfied with the decision of the licensee on an application under this section may, within thirty days of the decision, appeal to the Commission.

(6) A person who contravenes the provisions of this section commits an offence.

(7) In this section, "trade effluent" means any liquid, whether with or without suspended particles, produced as a by-product in the course of any trade or industry.

Sewerage services levy.

101.(1) The Commission may impose a sewerage services levy on all water services within the area of water service of a licensee, to cover a reasonable part of the cost of disposing of the water supplied

within those limits.

(2) A portion of the levy may, with the approval of the Commission, be set aside by the licensee for use in the expansion of the sewerage system within the area of service of the licensee.

Compulsory acquisition of land.

102. (1) A licensee, or an applicant for a licence, who requires the compulsory acquisition of land for any of its purposes, may apply to the Cabinet Secretary, who, on being satisfied that such compulsory acquisition is desirable, take the steps necessary to secure the compulsory acquisition of the land in accordance with the applicable laws.

(2) It shall be a condition of the licence that the licensee or an applicant for a licence shall, for the purposes of subsection (1), include any necessary protection of a source of supply which belongs to the licensee or will belong to the licensee following the acquisition, or will be authorised to take, against pollution or other degradation, whether on the surface or underground.

(3) Any purpose for which land may be acquired under this section shall be deemed, for the purposes of the law on land acquisition, to be a public purpose.

Water Service

103.(1) The Commission shall establish a national monitoring and information system on water

Regulatory services.

Commission

n to (2) For the purposes of any systems
establish established under this section, the Commission may,
Informatio by order, require any person within a reasonable
n System. time or on a regular basis, to provide it with
information, documents, samples or materials.

(3) Regulations made under this Act may specify requirements for the keeping of records and the furnishing of information to the Commission.

Annual Report.

104. (1) Within three months after the end of each financial year, the Commission shall prepare an annual report of its work and activities.

(2) On payment of the prescribed fee, a member of the public shall-

(a) have access to information contained in any national information system; and

(b) be supplied with a copy of the Commission's annual report.

PART V – FINANCIAL PROVISIONS

Establishment of the Water

105.(1) There is established a water sector financing mechanism to be known as the Water Sector Trust Fund.

Sector

Trust Fund. (2) The Fund is a body corporate with perpetual succession and a common seal and shall have power, in its corporate name, to sue and to be sued and, in the exercise and performance of its powers and functions, to do and permit all such things as may lawfully be done or permitted by a body corporate in furtherance of its objects.

Objects of the Fund. **106.** The object of the Fund is to assist in financing the development and management of water services in marginalized areas or any area which is considered by the Board of Trustees to be underserved including-

- (a) community level initiatives for the sustainable management of water resources;
- (b) development of water services in rural areas considered not to be commercially viable for provision of water services by licencees; and
- (c) development of water services in the under-served poor urban areas.

Board of trustees of the Fund. **107.** (1) The powers and functions of the trustees of Fund shall be exercised and performed under the direction of a Board of Trustees from time to time appointed and holding office under a trust deed to

be drawn by the Cabinet Secretary.

(2)The Board of Trustees shall consist of a chairperson and six other members recruited in accordance with the First Schedule.

(3) The First Schedule shall have effect with respect to the membership and procedure of the Board of Trustees of the Fund.

Powers and functions of the Fund.

108. The powers and functions of the Fund shall be to—

- (a) manage the resources of the Fund;
- (b) mobilize additional resources for the Fund;
- (c) formulate and implement principles, regulations and procedures for financing projects, including efficiency and effectiveness of funds; implement measures to ensure the efficient and equitable sharing of the resources of the Fund giving priority to resource allocation in—
 - (i) in rural and urban areas which access to basic water services is below the national average;

- (ii) rural areas which are vulnerable to the degradation or depletion of water resources;
- (d) provide support to local communities in the identification of projects and formulation of project proposals;
- (e) provide support to local communities to build capacity in project implementation and management;
 - (ix) pay out of the Fund such grants as the trustees may authorize from time to time;
- (f) monitor the implementation of projects;
- (g) maintain and make public available information on the projects financed and project impact;
- (h) elaborate national implementation concepts which ensure efficient use of water and sustainability of developed infrastructure;

- (j) to receive grants for on-lending to water service providers, counties, and communities for the underserved areas and urban poor.

Monies of the fund. **109.** The monies of the Fund shall consist of monies —

- (a) appropriated by Parliament from the national budget for the purposes of the Fund;
- (b) provided to the Fund from the Equalization Fund;
- (c) provided to the Fund by a county government;
- (d) received by the Fund from donations, grants, and bequests from other sources; and
- (e) payable into the Fund under any Act.

Fund to create entity to manage loans. **110.** The Fund shall create a separate entity to manage loans, with its own management, accounting and supervision structure.

Staff of the Fund. **111.** (1) The Fund shall have Chief Executive Officer who shall be appointed by the Board of Trustees on such terms and conditions of service as the Board of Trustees may determine taking into account the directions of the Salaries and Remuneration Commission.

(2) The Chief Executive Officer shall be the principal officer of the Fund and, subject to the directions of the Fund, shall be responsible for the management of the affairs of the Fund.

(3) The Fund may appoint such officers and other staff as may be necessary for the exercise and performance of its powers and functions, upon such terms and conditions as it may determine.

Retention of charges and fees of Authority and Commission . **112.** The Authority, the Commission and the basin water resources boards may retain in a fund managed by the respective bodies, the revenue from permit charges, water user fees, regulatory levy, licence fees and any other authorized charges and shall use such revenue in meeting costs incurred in the performance of their functions.

Finances of sector institutions . **113.** (1) The Cabinet Secretary shall, out of monies provided by Parliament, or from any other source, provide funds to a sector institution exercising functions under this Act for the discharge of its functions on the basis of a budget agreed between the sector institutions and the Cabinet

Secretary.

(2) A sector institution exercising functions under this Act shall keep proper books of account of its income, expenditure, assets and liabilities.

(3) The accounts of a sector institution exercising functions under this Act shall be audited and reported on in accordance with the applicable laws.

Funds collected by licensed water service providers.

114. (1) All funds collected for water services by the licenced water service providers holding county or national public assets on behalf of the public through water services bills and other sources, shall be used entirely for the purpose of covering costs for the provision of water services and asset development according to regulations made by the Commission.

(2) The licenced water service providers shall not be required to pay any fees for the use of public assets for the provision of water services other than the repayments of loans acquired for the development of those assets

(3) Dividends or other payments shall not be paid to the owners of public water service providers as long as universal access and the right to water services have not been achieved in the designated service areas.

Income from water permits, abstraction and water user fees. **115.** All income through water permits, abstraction and water user fees shall be entirely used for the management of water resources.

Entry on Land

Entry by permit holder. **116.** (1) Subject to the provisions of subsection (4), a permit holder or any person proposing to apply for a permit or wishing to enter on to the land of another person, if his or her proposal is opposed by the other person, may—

(a) upon submitting in the manner prescribed—

(i) a general description of his or her proposal;

(ii) a schedule of lands which may be affected by the construction and operation or any works to be undertaken pursuant to the permit;

(iii) the names and addresses of the affected landholders; and

(b) upon payment of the prescribed fee,

obtain from the Authority permission to enter on to the land concerned and to carry out any survey or other preliminary investigation in connection with the location of any such proposed works.

(2) The Authority may prescribe a time limit within which the investigation shall be completed.

(3) The permit holder or any person authorized by the permit holder, may seek such assistance as is necessary to enter on to the respective land.

(4) A permit under this section shall not be issued until the Authority has notified each landholder concerned that an application to enter his or her land has been made under this section.

Entry by
the
Authority.

117. An inspector appointed by the Authority may, without warrant, enter onto any land and inspect any water resource located within or accessible from the land concerned, in order to take such measures as the Authority may consider necessary for the purpose of—

- (a) conserving or regulating the water resource, or preserving it from pollution or protecting the bed over which it lies;
- (b) removing any obstruction from, or

clearing and deepening, the bed; or

- (c) preventing the excessive or illegal diversion, waste or pollution of the water resource or interference with any such bed.

Entry by licencee. **118.**(1) An employee or agent of a licencee authorised by the licencee for the purpose may, without warrant, enter on to any land and inspect any source of water supply which is located within or accessible from the land concerned, in order to take such measures as the licencee may direct for the purpose of —

- (a) preserving the water from pollution or protecting the bed over which it lies or flows; or
- (b) removing any obstruction from, or for clearing and deepening, the bed; or
- (c) prevent the excessive or illegal diversion, waste or pollution of the water or interference with any such bed.

(2) An employee or agent of a licencee authorised by the licencee for the purpose may enter onto any premises in the area to which the licence is applicable, for the purpose of —

- (a) ascertaining whether there has been a

contravention of any such regulations;

- (b) in the case of any regulations in respect of tariffs and the payment of those tariffs,, exercising any right conferred on the licensee to cut off supplies for non-payment; or
- (c) in the case of any regulations made for preventing water degradation—
 - (i) ascertaining whether or not circumstances exist which would justify the licensee's imposing a requirement to execute works or take other action to prevent degradation; or
 - (ii) exercising any right conferred on the licensee to execute and maintain works or takes other action.

Entry by inspector **119.** An inspector may without warrant enter any land or premises for the purpose of ascertaining whether there is or has been any contravention of the provisions of this Act or of any rule or order made under this Act in relation to any water resource or water services.

Manner of entry. **120.** (1) In this section, "authorised person" means a person entering on to any land or premises pursuant to a right or permission conferred under

this Act.

(2) An authorised person shall not enter on any land or premises without first giving a reasonable notice in verbal or written form to the landholder or other responsible person in charge of the land or premises, and any such entry shall be at a reasonable hour.

(3) Notwithstanding the provisions of subsection (2), an inspector may enter without giving notice if—

- (a) he or she has reason to believe that a provision of this Act or of any rule or order made under this Act has been or is about to be contravened;
- (b) he or she is unable to give notice within a reasonable time having regard to all the circumstances; or
- (c) he or she has given reasonable grounds for not giving notice.

(4) If so requested by the owner or occupier of the land or premises, the authorised person shall produce evidence of his right or permission, as the case may be, to enter on to the land.

(5) It shall be the duty of any person when exercising any powers under this section to do so

with reasonable care and in such a manner as to cause as little damage as possible .

Powers of inspectors. **121.** (1) A permit holder or licensee, and an employee or agent of a permit holder or licensee shall, on demand by an inspector—

(a) afford to the inspector any information within his or her knowledge relating to any inquiry held by the inspector under this Act; and

(b) produce for inspection any licence, map plan, specification, drawing or other document or record relating to—

(i) the permit or licence;

(ii) any works constructed under the permit or licence; or

(iii) the flow of water in any such works or in any water resource affected by them.

(2) A person who contravenes this section commits an offence.

Requirement to state name and **122.** (1) A person who has committed, or has been accused of committing an offence under this Act who—

address.

- (a) refuses, on demand of an inspector, to give his or her name and place of abode and other particulars which the inspector may reasonably require; or
- (b) in purported compliance with such a demand, gives a name, place of abode or other particulars which the inspector has reason to believe to be false,

may be arrested by the inspector without warrant, and handed over to the nearest police officer.

(2) When the true identity, place of abode or other particulars of the person referred to in subsection (1) have been ascertained, the person concerned shall be released on his or her executing a bond, if so required, with or without sureties, to appear before a magistrate.

(3) If the person's true name and place of abode and other particulars are not ascertained within twenty hours from the time of the arrest, or if he or she fails to execute the bond or, if so required to furnish sufficient sureties, he or she shall be brought before a magistrate having jurisdiction in the area.

Service of notices. **123.**(1) Any notice required to be served in pursuance of this Act shall be served—

- (a) by delivering it personally to the person required to be served, or, if such person is absent or cannot be found—
 - (i) by leaving it at the person's usual or last known place of abode in Kenya;
 - (ii) by post, addressed to the person's usual or last known address in Kenya; or
- (b) in the case of a notice required to be served on a local authority, company or other corporate body, by delivering it to its principal officer or by leaving it at his or her office with a person employed there, or by registered post.

(2) If any landholder is not known and, after diligent inquiry, cannot be found, such notice may be served on him or her by leaving it, addressed to him or her, with an occupier of the land or, if there is no apparent occupier, by causing it to be put in a conspicuous position on the property in Kenya last known to have been occupied by him or her.

(3) Any notice required to be given to a landholder may be addressed to the owner of land or premises described in the address in respect of which the notice is given.

Order, etc., to be in writing. **124.** Any order, notice, consent, approval, permission, demand, objection, application, standard or other thing authorised or required by this Act to be given, made, set, determined or issued by or to the Cabinet Secretary, the Authority, Commission, a licensee or other state organ shall be in writing.

Authentication of documents . **125.** (1) Any order, notice, consent, approval, demand or other document which the Authority, the Commission, or other state organ is authorised or required by this Act to give, make or issue may be signed on its behalf —

- (a) by the Director General or Chief Executive Officer of the relevant institution; or
- (b) by any officer of the institution authorised by it in writing to sign documents of the particular kind or to sign the particular document.

(2) Any document purporting to bear the signature of any person—

- (a) expressed to hold an office by virtue of which he or she is, under this section empowered to sign a document; or
- (b) expressed to be duly authorised by the respective state organ in sub section (1) to

sign such a document or the particular document,

shall, for the purposes of this Act, be deemed, unless the contrary is proved, to be duly given, made or issued on behalf of the Authority, the Commission, or other state organ as the case may be.

Permit or licence to be evidence of power or function.

126. The production of —

- (a) a permit, or a copy of a permit, certified by the Managing Director of the Authority; or
- (b) a licence, or a copy of a licence, certified by the Director General of the Commission.

shall, without further proof be *prima facie* evidence in any proceedings of the matters and things specified therein.

Protection from liability.

127. No matter or thing done or omitted by—

- (a) the Cabinet Secretary, the Authority, the Commission, or other state organ exercising powers or functions under this Act;

- (b) any person acting at the direction of the Cabinet Secretary; or
- (c) a person acting at the direction of the Authority, the Commission, or a state organ

shall, if the matter or thing was done or omitted in good faith for the purpose of executing this Act or any rule, regulation or order made under this Act, subject the person in his or her personal capacity to any action, suit, claim or demand whatsoever.

Application of Act to trust land. **128.** Despite anything contained in this Act, any powers and functions conferred or imposed under this Act affecting land shall, in respect of Trust land, be exercised and performed subject to any written law relating to that land.

Public consultation. **129.** (1) A requirement imposed by or under this Act for a person in this section referred to as the designated person to undertake public consultation in relation to any application made, or action proposed to be taken under this Act shall be construed as a requirement to ensure that this section is complied with in relation to that application or action.

(2) The designated person shall publish a notice, in relation to the application or proposed action -

- (a) in the Gazette; and
 - (b) or in at least one national newspaper of daily circulation; or
 - (c) in at least one Kenyan radio station broadcasting in that locality;
- as the case may require.

(3) The notice shall —

- (a) set out a summary of the application or proposed action;
- (b) state the premises at which the details of the application or proposed action may be inspected;
- (c) invite written comments on or objections to the application or proposed action;
- (d) specify the person or body to which any such comments are to be submitted; and
- (e) specify a date not earlier than thirty days after publication of the notice by which any such comments are required be received.

(4) The designated person shall make

arrangements for the public to obtain copies, at reasonable cost, of documents relating to the application or proposed action which are in the possession of the designated person.

(5) The designated person shall consider —

- (a) any written comments received on or before the date specified under subsection (3) (e); and
- (b) any comments whether in writing or not received at any public meeting held in relation to the application or the proposed action at which the designated person was represented or pursuant to any other invitation to comment.

(5) The designated person shall publish in accordance with subsection (2), notice of the fact that a copy of the decision and the reasons for the decision in relation to the application or proposed action is available for public inspection at the same premises as were notified under subsection (3)(b).

(6) Regulations made under this Act may require, the designated person to hold a public meeting in relation to the application or proposed action.

Emergency powers in 130.(1) If the Authority is satisfied that, by reason of an exceptional shortage of rain or by

case of reason of accident or other unforeseen shortage of circumstances, a serious deficiency of water for essential domestic purposes exists or is threatened in any area, it may by order—

(a) declare that an emergency exists;
and

(b) direct a person who has a supply of water in excess of his or her needs for domestic purposes to supply to the area concerned, or to a specified person in the area, such quantity of water, and for such period, as the order may specify.

(2) A person directed by an order under this section who fails to comply with the provisions of the order commits an offence.

(3) An order under this section may require or authorise—

(a) the laying of pipes and the construction of works on any land;

(b) the entry on to any land by servants or agents of the Authority; and

(c) such other measures as the Authority may consider necessary for the giving and taking of any such water.

(4) If a person to whom an order under this section is directed fails to comply with the order, the Authority may direct any person to—

- (a) take possession of the water supply and operate any works of the person concerned for the drawing, diversion or use of water; and
- (b) exercise the person's rights in connection with them during the period of the order, subject to any conditions imposed by the order.

(5) It shall be the duty of any person exercising any powers under this section to do so with reasonable care and in such a manner as to cause as little damage as possible.

(6) Any payment made when undertaking the action contemplated under subsection (4), or such proportion of it as the Authority may determine, may be recovered by the person acting under the direction or of the Authority, as a debt due from a person benefiting by the supply of water under the order.

(7) A person who, without lawful authority, hinders or obstructs any person acting in pursuance of an order under this section, or interferes with any works constructed or under construction in

pursuance of such an order, commits of an offence.

No warranty implied by inspection. **131.** An inspection of any works authorized to be constructed under this Act shall not be deemed to constitute or imply any guarantee of the works constructed, or to support or justify any claim against the Authority, the Commission, the Cabinet Secretary or a licensee in connection with any such works.

Regulations . **132.(1)** The Cabinet Secretary may make Regulations, not inconsistent with this Act with respect to any matter which by this Act is required or permitted to be prescribed, or which is necessary or expedient to be prescribed for carrying out or giving effect to this Act.

(2) Without prejudice to the generality of subsection (1), such regulations may make provision with respect to—

- (a) delegation by the Authority, the Commission or a licensee of their respective powers and functions;
- (b) abstraction of ground water and works therefore, including the licensing of borehole constructors;
- (c) construction, extension or

improvement of dams and the licensing of persons carrying on business as dam constructors;

- (d) the licensing of engineers and other persons offering professional services in respect of water resources or water services;
- (e) requirements in respect to bottled or mineral waters;
- (f) national public water works;
- (g) information to be made available to the public under the Act;
- (h) requirements for the keeping of records and the furnishing of information to the Authority;
- (i) the transfer of functions, assets, liabilities and staff; or
- (j) any saving, temporary or transitional provision in consequence of the repeal of the Water Act.

(3) The Authority or the Commission may make regulations, not inconsistent with this Act, with

Cap. 372 respect to any matter which by this Act the Authority or the Commission is required, permitted or empowered to prescribe.

(4) Regulations made under this section may create offences in respect of any contravention of the Regulations and may for any such offence impose penalties not exceeding one million shillings or imprisonment not exceeding two years, or both such fine and imprisonment.

(5) Regulations made under this Act shall be published in the Gazette and shall come into effect upon publication.

Obstruction or **133.** (1) A person shall not, without authority conferred under this Act—

pollution of watercourse or water resource.

- (a) wilfully obstruct, interfere with, divert or obstruct water from any watercourse or any water resource, or negligently allow any such obstruction, interference, diversion or abstraction; or
- (b) throw or convey, or cause or permit to be thrown or conveyed, any rubbish, dirt, refuse, effluent, trade waste or other offensive or unwholesome matter or thing into or near to any water resource in such manner as to cause, or be likely to cause, pollution of the water resource.

(2) A person who contravenes this section commits an offence.

Remedy of defaults.

134.(1) Without prejudice to any other remedy or course of action, if a person contravenes any provision under this Act, then, the Authority, the Commission or the licensee concerned may, by order served on the person concerned, require that person within a reasonable time specified in the order to remedy the contravention and in particular-

- (a) to clean up any pollution or make good any other harm identified in the order which was caused to any water resource by reason of the contravention; or

(b) to remove or destroy any works, plant or machinery employed for the purposes of the contravention.

(2) Where the order in subsection (1) has not been complied with, the Authority, the Commission or the licensee may take such steps as are necessary to remedy the contravention, and the expenses incurred in doing so shall be recoverable at the instance of the Authority, the Commission or the licensee concerned through an application to the Tribunal.

(3) A person aggrieved by an order under this section may appeal to the Tribunal.

Miscellaneous offences.

- 135.** (1) A person shall not—
- (a) wilfully obstruct, molest or hinder any inspector or employee of a person authorised by the Cabinet Secretary, the Authority, the Commission, or a licensee in the exercise or performance of his or her powers and functions under this Act;
 - (b) without the written permission of the Authority and Commission knowingly or wilfully—
 - (i) deface, alter or remove; or
 - (ii) cause to be defaced, altered or

removed, any documents, survey mark, water gauge, weir or measuring device or other work, structure or approval installed with the approval of the Authority or Commission of water control or investigation;

- (c) wilfully hinder or interrupt, or cause be hindered or interrupted, any permit holder, or his employee, contractor or agent, in the lawful exercise or performance of any powers and functions under this Act;
 - (d) without lawful authority, wilfully let off or discharge water from the works any permit holder so that the permit holder loses the use of that water;
 - (e) without lawful authority, lay, erect or construct, or cause to be laid, erected or constructed, any work to connect with the works of any permit holder which is capable of drawing water from that works;
 - (f) unlawfully interfere with the works of any permit holder; or
 - (g) neglect or fail to comply with lawful order given under this Act.
- (2) A person who contravenes the provisions

of this section commits an offence.

Criminal proceedings. **136.** Without prejudice to the rights of any person to bring proceedings in respect of an offence under this Act, the Authority, the Commission, or a licensee may institute and maintain criminal proceedings in any court against any person accused of an offence under this Act or under any Regulations or regulations made under this Act.

Penalties for offences. **137.** A person who commits an offence under this Act, or under any Regulations or made under this Act, shall, if no other penalty is prescribed in respect of the offence, be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

PART VII – DISPUTE RESOLUTION

Establishment of the Water Tribunal. **138.(1)** There is established a Water Tribunal which shall be a subordinate court as provided for in article 169 (1) (d) of the Constitution of Kenya.

(2) There shall be a chairperson of the Water Tribunal appointed by the Judicial Service Commission on such term and conditions as may be determined by the Judicial Service Commission.

Staff of the Water Tribunal. **139.** The staff of the Tribunal shall be appointed, removed from office or otherwise

Tribunal. disciplined by the Judicial Service Commission in accordance with Article 172 (1) (c) of the Constitution.

Jurisdiction of the Tribunal. **140.** (1) The Tribunal shall exercise the powers and functions set out in this Act and in particular shall hear and determine appeals at the instance of any person or institution directly affected by the decision or order of the Cabinet Secretary, the Authority and Commission or of any person acting under the authority of the Cabinet Secretary, the Authority and Commission.

(2) In addition to the powers set out in subsection (1), the Tribunal shall have power to hear and determine any dispute concerning water resources or water services where there is a business contract, unless the parties have otherwise agreed to an alternative dispute resolution mechanism.

Proceedings of the Tribunal. **141.** The Tribunal shall make Regulations governing its procedures.

Determination of appeals and disputes. **142.** In determining an appeal, the Tribunal may affirm, quash or vary the decision or order.

Appeals to the Land Tribunal. **143.** A person aggrieved by a decision of the Tribunal may, within twenty-one days from the date

and of that decision, appeal to the Land and Environmental Court, established under article 162 (2) of the Constitution on an issue of law.

Decisions binding if no appeal within 30 days. **144.** A decision of a water basin organization, the Authority, the Commission or the Tribunal against which no appeal has been preferred within thirty days from the date on which the decision was made, shall be binding on all parties.

PART VIII – TRANSFER OF FUNCTIONS, ASSETS, LIABILITIES AND STAFF

Transfer of functions, assets, liability and staff from Water Resource Management Authority. **145.** (1) All property, assets, rights, liabilities, obligations, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the Water Resources Management Authority established under the Water Act, shall upon commencement of this Act, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Authority to the same extent as they were enforceable by or against the Water Resource Management Authority before the commencement of this Act.

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(2) Any legal proceedings pending in any court, the Water Appeal Board or other tribunal by or against the Water Resources Management Authority established under the Water Act, in

respect of any matter shall continue by or against the Authority.

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(3) A person who immediately before the commencement of this Act was an employee of the Water Resources Management Authority established under the Water Act shall, on the commencement of this Act, be deemed to be an employee of either the Authority or the basin water resources boards as the case may be on terms to be determined by the relevant bodies subject to the advice of the Salaries and Remuneration Commission.

Transfer of functions, assets, liability and staff from National Water Conservation and Pipeline Corporation to National Water Storage Authority.

146.(1) All property, assets, rights, liabilities, obligations, agreements and other arrangements not linked to water services provision as provided for in section 145, existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the National Water Conservation and Pipeline Corporation established by Legal Notice No. 270 of 1988 shall, upon the commencement of this Act be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Water Storage Authority to the same extent as they were enforceable by or against the National Water Conservation and Pipeline Corporation before the commencement of this Act.

(2) Any legal proceedings pending in any court,

the Water Appeal Board or other tribunal by or against the National Water Conservation and Pipeline Corporation in respect of any matter, shall continue by or against the National Water Storage Authority.

(3) A person who immediately before the commencement of this Act was an employee of the National Water Conservation and Pipeline Corporation shall, on the commencement of this Act, be deemed to be an employee of the National Water Storage Authority on terms to be determined by the Salaries and Remuneration Commission.

Transfer of functions, assets, liabilities and staff from the Water Services Regulatory Board to the Commission .

147. (1) All property, assets, rights, liabilities, obligations, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the Water Services Regulatory Board established by the Water Act shall, upon commencement of this Act, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Commission to the same extent as they were enforceable by or against the Water Services Regulatory Board before the commencement of this Act.

(2) Any legal proceedings pending in any court, the Water Appeal Board or other tribunal by or against the Water Services Regulatory Board established under the Water Act in respect of any

Cap 372 matter shall continue by or against the Commission.

(3) A person who immediately before the commencement of this Act was an employee of the Water Services Regulatory Board established under the Water Act shall, on the commencement of this Act, be deemed to be an employee of the Commission on terms to be determined by the Salaries and Remuneration Commission.

Transfer of functions, assets, liabilities and staff from the Water Services Trust Fund to the Water Sector Trust Fund.

148. (1) All property, assets, rights, liabilities, obligations, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the Water Services Trust Fund established by the Water Act shall, upon the commencement of this Act, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Water Sector Trust Fund to the same extent as they were enforceable by or against the Water Services Trust Fund before the commencement of this Act.

(2) Any legal proceedings pending in any court, the Water Appeal Board or other tribunal by or against the Water Services Trust Fund established under the Water Act in respect of any matter shall continue by or against the Water Sector Trust Fund

(3) Any person who immediately before the commencement of this Act is an employee of the

Cap. 372 Water Services Trust Fund established under the Water Act shall, on the commencement of this Act, be deemed to be an employee of the Water Sector Trust Fund on the terms to be determined by the Salaries and Remuneration Commission.

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Transfer of functions, assets, liability and staff from Water Services Boards to Water Works Development Boards.

149. (1) All property, assets, rights, liabilities, obligations, agreements and other arrangements existing concerning the operation of Water Services Boards at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the Water Services Boards established by the Water Act shall, upon commencement of this Act, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Water Works Development Boards to the same extent as they were enforceable by or against the Water Services Boards before the commencement of this Act;

(2) Any legal proceedings pending in any court, the Water Appeal Board or other tribunal by or against the Water Services Board established under the Water Act in respect of any matter shall continue by or against the Water Works Development Boards;

(3) A person who at the commencement of

Cap. 372 this Act is an employee of the Water Services Boards established under the Water Act, shall be deployed as may be determined by the Cabinet Secretary to the public sector institutions or as technical assistance to the Counties.

Cap. 372 (4) The Cabinet Secretary will publish, in consultation with the Counties and public sector institutions mentioned in subsection (3), a plan of transfer of staff, assets, liabilities and contracts.

Transfer of functions, assets, liabilities, obligations, agreements and other arrangements to County or Cross-County water service providers. **150.** (1) All property, assets, rights, liabilities, obligations, agreements and other arrangements linked to water service provision existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the Water Services Boards and the National Water Conservation and Pipeline Corporation shall, upon commencement of this Act, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf the county water service providers or cross county water service providers to the same extent as they were enforceable by or against the Water Service Boards and National Water Conservation and Pipeline Corporation before the commencement of this Act;

(2) Any other public property, liabilities and contract for water services provision shall vest in and become property, liabilities or contract of the county water service provider or county water

service providers as the case may be, established by the county government subject to such terms or provisions as may be specified in the Regulations for the exception of public property, liabilities and contracts which shall be vested in cross-county water service providers;

For these other public property, liability and contract not held by water services boards, county water service providers the counties shall make agency agreements for the use of this public property.

(3) Any legal proceedings pending in any court, the Water Appeal Board or other tribunal by or against the water services board established under the Water Act in respect of any matter and which concerns the provision of water services within the area of jurisdiction of a county government, shall continue by or against the respective water services provider or providers established by the county government.

Public water service providers to be absorbed by counties.

151. The existing public water service providers shall be absorbed by the county water service providers or cross county water service providers within the period specified in the transfer plan published by the Cabinet Secretary.

Transfer of functions, assets, liability and staff from Water Appeals Board to Water Tribunal.

152. (1) All property, assets, rights, liabilities, obligations, agreements and other arrangements existing at the commencement of this Act and vested, acquired, incurred or entered into by or on behalf of the Water Appeals Board established by the Water Act shall upon commencement of this Act be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Water Tribunal to the same extent as they were enforceable by or against the Water Appeals Board before the commencement of this Act.

(2) Any legal proceedings pending in the Water Appeals Board established under the Water Act in respect of any matter shall continue in the Water Tribunal.

(3) A person who immediately before the commencement of this Act is an employee of the Water Appeals Board established under the Water

Act shall, on the commencement of this Act be deemed to be an employee of the Water Tribunal on terms to be determined by the Salaries and Remuneration Commission.

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Repeals,
Savings
and
Transitiona
l
Provisions.

153.(1) The Water Act 2002 is repealed.
(2) Legal Notice 270 of 1988 is repealed.
(3) Notwithstanding the repeals effected by this section —

- (a) the Water Appeals Board, Water Resources Management Authority, a water services board or a water services provider and any other body established under an enactment repealed by this section shall be deemed to continue in being; and
- (b) any person or body performing any functions under the Water Act shall continue to do so, and in so doing may exercise any power vested in that person or body with respect to the performance of those functions,

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until the Cabinet Secretary, by notice in the Gazette revokes this subsection in full or in part as may be necessary.

(4) Without prejudice to subsection (3), regulations made under section 122 (2)(i) shall require that the transfer of functions, assets, liabilities and staff shall be completed within a period of three years following the commencement of the Act.

Existing
water
rights.

154. A right to the use of water in any body of water, being a right existing immediately before the commencement of this section and which was acquired—

- (a) under any provision of the Water Act repealed by this Act;
- (b) under the Water Ordinance, 1929;
- (c) by specific grant, before 1st July, 1935, by or on behalf of the Government in any title under the Government Lands Act or under the repealed Crown Lands Ordinance, 1902 or
- (d) by agreement or otherwise,

shall be deemed to be a right conferred by a permit under this Act.

SCHEDULES

FIRST SCHEDULE

(ss. 10, 26, 53, 60, 98,)

MEMBERSHIP AND PROCEDURE OF BOARDS, AND COMMITTEES

Comment [CY10]: Membership and how boards are appointed should be embedded within the main act to avoid compromise in these appointments.

Application of **1.** (1) This Schedule applies to—
this schedule.

- a. the board of the Authority;
- b. the board of the Commission ;
- c. the board of the water works development boards;
- d. the board of Water Sector Trust Fund;
- e. the board of the National Water Storage Authority ; and
- f. the board of the basin water resources boards;
- g. and a committee or tribunal established under this Act.

(2) In this Schedule, unless the context otherwise requires—

"board" means a board to which this Schedule applies;

"Chairperson" means the Chairperson of a board, Tribunal or Committee;

"member" means a member of a board, Tribunal or committee.

Qualification
of members.

2.(1) In making an appointment to a board, the Tribunal or a committee, the person making the appointment shall have regard to—

- (a) Article 10 of the Constitution of Kenya on national values and principles of governance;
- (b) Article 232 of the Constitution of Kenya on values and principles of public service;
- (c) the academic qualifications, professional experience, expertise, character and integrity of the potential candidates for appointment ;
- (d) gender, regional and ethnic diversity; and
- (e) the degree to which water users, or water users of particular kinds, are represented on the board or committee at the time the appointment is made.

(2) The Chairperson and members shall be identified for appointment through an open competitive process.

Term of office. **3.**(1) A member shall hold office for such term, not exceeding three years, as may be specified in the instrument of appointment.

(2) A member shall be eligible for re-appointment for one further term.

Acting
chairperson. **4.**(1) A member may be appointed to act in the office of Chairperson during the illness or absence of the Chairperson, and a member so appointed shall have all the powers and be able to carry out all the functions of the Chairperson.

(2) An appointment under this paragraph may be made, and at any time revoked, by the person or body who appointed or elected the Chairperson.

Terms and
conditions of
service. **5.**The terms and conditions of service of a member, including the remuneration, allowances and other expenses to which the member shall be entitled to, shall be prescribed by Regulations made under this Act.

Vacancy in
office of
member. **6.**(1) The office of a member shall become vacant if—
 (a) he or she dies, resigns or is removed from office;
 (b) he or she absents himself or herself from four consecutive meetings of the board or committee of which reasonable notice has been given to the member , unless—

- (i) the board or committee has granted the member leave to be absent from those meetings; or
- (ii) within four weeks after the last of the four meetings, the member is excused by the board or committee for having been absent from the meetings;
- (c) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (d) he or she is adjudged or declared by any competent court or tribunal to be of unsound mind; or
- (e) he or she is convicted of an offence punishable by imprisonment for twelve months or more.

(2) If the office of a member becomes vacant, the respective appointing authority shall fill the vacancies as prescribed in this Act.

Disclosure of pecuniary interest.

7.(1) A member who has a direct or indirect pecuniary interest—

- (a) in a matter which is being considered, or is about to be considered, at a meeting of a board or committee of which he or she is a member; or
- (b) in a thing being done or about to be done by the board or committee,

shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the board or committee.

(2) A disclosure to the Board or committee that the member concerned—

- (a) is a member, or is in the employment, of a specified company or any other body;
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or a specified person,

shall be deemed to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.

(3) The board or committee shall cause particulars of any disclosure made under subparagraph (1) or (2) to be recorded in a book kept for the purpose and that book shall be open at all reasonable hours to the inspection, free of charge, of any person.

(4) After a member has, or is deemed to have, disclosed the nature of an interest in any matter or thing under subparagraph (1) or (2), the member shall not, unless it is otherwise determined—

- (a) be present during any deliberation, or take part in any decision of the board or committee with respect to that matter; or
- (b) exercise or perform any powers or functions under this Act with respect to the subject matter of the disclosure.

(5) A determination under subparagraph (4) may only be made—

- (a) in relation to the Management Board, Regulatory Board, Board of Trustees or the Water Storage Board by the Cabinet Secretary;
- (b) in relation to a basin area Advisory Committee by the Authority; or

(c) in relation to a water services provider by the Regulatory Board.

(6) Subparagraph (4) does not apply to a member whose interest consists merely of the fact that the member is the holder of a permit.

(7) A contravention of this paragraph does not invalidate any decision of the board or committee or the exercise or performance of any power or function under this Act.

(8) A reference in this paragraph to a meeting of a board or committee includes a reference to a meeting of any subcommittees of the board or committee.

General
procedure.

8. Except as otherwise provided by or under this Act—

(a) meetings of a board or committee shall be held as often as maybe necessary for the dispatch of their business but they shall not be less than four any financial year.

(b) a meeting of the board or committee shall be held on such date time and place as the chairperson may decide;

(c) the chair person shall, on the written application of one third of the members

convene a special meeting of the board or committee;

(d) unless the majority of the total membership of the board or committee otherwise agree, at least fourteen days written notice of every meeting of the board or committee shall be given to every member of the board or committee; and

(e) the procedure for the convening of meetings and for the conduct of business at those meetings shall be as determined by the Chairperson.

Quorum. **9.** A third of the members of a board or a committee shall constitute a quorum at any meeting of the board or committee.

Presiding members. **10.** The Chairperson or, in the absence of the Chairperson, the acting Chairperson or in his or her absence, a member appointed by the members then present shall preside at a meeting of a board or committee.

Decisions. **11.**

Proceedings. **12.** Subject to paragraph 9, proceedings of the board or committee shall not be invalid by reason only of a vacancy among the members.

Record of proceedings. **13.**(1) The presiding member at a meeting of a board or committee shall cause a record of the proceedings at the meeting to be made.

(2) Records made for the purposes of this paragraph may be destroyed after the expiry of the period prescribed by Regulations made under this Act.

First meeting. **14.** (1) The first meeting of the board of the Authority, Commission, the Fund or the National Water Storage Authority shall be called by the Cabinet Secretary.

(2) The first meeting of a basin area advisory committee shall be called by the Authority in such manner as the Authority thinks fit.

(3) The first meeting of a water services provider shall be called by the county government establishing it in such manner as it thinks fit.

Application of first schedule. **15.** The First Schedule applies to the county and cross-county water service providers and the Regulatory Board will set additional criteria.

SECOND SCHEDULE (S 26)
CONDITIONS RELATING TO CONSTRUCTION OF WORKS

Meaning of “authorized works” **1.** In this schedule, "authorised works" means works the construction of which is authorised by a permit.

Inspection of works during construction. **2.** Any authorised works may, if the Authority or Commission so determines, be inspected during construction by its officers.

Works to be made secure. **3.**(1) Upon any inspection made under this Schedule, the Authority or Commission may order the permit holder to make any addition or alteration which it considers necessary for the security of any authorised works, whether completed or in the course of construction.

(2) If such an order is not complied with to the satisfaction of the Authority or Commission within such period as it may specify, the permit authorising construction of the works may be cancelled or modified by the Authority or Commission.

Road crossings. **4.**(1) A Permit holder constructing any authorised works—

(a) shall, during the construction, keep open for safe and convenient travel all public roads and rights of way publicly used as

such, when they are crossed or interfered with by the works; and

(b) shall, before water is admitted to the works, construct to the satisfaction of the county government concerned or, at the option of the county government, refund to it the costs of construction by it —

(i) a substantial bridge with proper and sufficient approaches thereto over the works; and

(ii) such railings, fences, guard posts, culverts, face-walls and other structures and appurtenances as the county government, with the approval of the Authority or Commission, may declare to be necessary in the public interest.

(2) All respective bridges, approaches and appurtenances shall be maintained by the permit holder, or alternatively, at the option of the county government, by the county government at the expense of the constructor.

(3) The county government concerned may at any time at its own cost, renew or alter any such bridge or any structure or works in connection therewith.

Completion 5.(1) Upon the expiration of the time limited by a

certificate and inspection. permit for construction of works authorised by the permit, or where the construction is completed before the expiration of that time, the permit holder shall submit a completion certificate in the prescribed form.

(2) On submission of the certificate in sub-paragraph (1), an officer appointed for the purpose by the Authority or Commission, may make an inspection of the works to ascertain that—

- (a) the works have been completed in accordance with the permit;
- (b) the easements, if any, for the works have been obtained;
- (c) agreements, if any are necessary, have been entered into for the supply of water for utilization on lands which are not the property of the permit holder or for the drainage of lands; and
- (d) the works as constructed are of the required capacity.

(3) If construction is not completed within the time limited by the permit, a progress report shall be submitted in lieu of a completion report, and the permit holder may apply for an extension of time.

(4) An extension of time under subparagraph (3) may be refused or may be sanctioned upon such terms as the Authority or Commission may specify.

Forfeiture of rights if works not completed within time allowed.

6. Upon the expiration of the time set out in the permit or any extension of that time for the construction of works authorised by the permit, the rights granted to the permit holder under the permit shall cease, and any works constructed, erected, fixed or acquired at the date of such determination may be taken over and operated, or disposed of, in such manner as the Authority or Commission may specify.

Works to be kept in repair.

7. (1) Every permit holder shall maintain and retain his or her works in a good, proper and workman like manner to the satisfaction of the Authority or Commission.

(2) Pursuant to subparagraph (1), every permit holder shall ensure that-

- (a) the works at all times are of sufficient strength and capacity for the fulfilment of the purposes for which they were constructed; and
- (b) no damage occurs to any road, property or work in their vicinity.

THIRD SCHEDULE

(S.32)

EASEMENTS

Encumbrances.

1. The acquisition of an easement in accordance with this schedule shall not affect the burden or benefit

of any encumbrance on the land existing at the date of the acquisition or the liability or right of any person in respect thereof.

Easement includes rights of access. **2.** (1) An easement shall include the right of access, along a route to be approved by the Authority or Commission after consultation with the owner, to any piece of land contiguous to the water of the permit holder in so far as may be necessary for the purpose of constructing, inspecting, maintaining, operating or repairing the works of the permit holder and for any purpose necessary for the effective enjoyment of the easement.

(2) The permit holder shall give reasonable notice to the occupier of the land over which the easement is held of his or her intention to enter the land for any of the purposes mentioned in this paragraph.

Permit holder to avoid flooding lands and maintain canal satisfactorily. **3.** A permit holder who has acquired an easement which authorises the construction of a canal—

(a) shall take and maintain adequate measures for preventing the introduction into the canal of a greater quantity of water than that which the canal is capable of carrying; and

(b) shall not cause damage to any land in respect of which the easement is held by permitting the accumulation of weeds, silt or any other obstruction or nuisance which

might cause flooding, or any other damage.

Damage caused by works of permit holder. **4.** (1) If damage is caused, as the result of works of a permit holder to the land over which the easement is held, the landholder may require the permit holder to construct such additional works as are necessary, in the opinion of the Authority to prevent such damage, and the Authority may by order require the permit holder to construct such additional works at his or her sole expense.

(2) If the permit holder fails to comply with an order of the Authority given under this paragraph, the Authority may cancel the permit.

Permit holder to construct works to landholder's land which prevents the landholder passing freely over or on the land or interferes with his or her existing works, structures or devices upon the land shall, at his or own expense, construct and maintain in repair, to the satisfaction of the Authority or Commission and under such conditions as it may prescribe—

(a) such bridges and other structures and devices as shall make communication safe and convenient; or

(b) such works, structures or devices as the Authority or Commission considers necessary to enable the landholder to enjoy the use of

any work, structure or device interfered with.

(2) Any permit holder who fails to comply with the provisions of this paragraph commits an offence.

Permit holder desiring easement to serve notice on landholder.

6.(1) A permit holder claiming an easement under this Act shall serve a notice on the holder of the land on, over or through which the permit holder desires to acquire the easement, and shall in the notice state the following particulars, and such further particulars as may be required by Regulations made under this Act—

- (a) a description of the proposed works and a statement of their use;
- (b) a statement of the quantity or discharge of water, if any, to be diverted or dealt with;
- (c) a map showing clearly the nature and locality of any works or area of swamp or land to be reclaimed, if the easement is for reclamation of a swamp or lands;
- (d) a statement of the area of the land (if any) which is or will be—
 - (i) occupied by the works;
 - (ii) flooded as a result of the works;
 - (iii) required for the purposes of inspection and maintenance of the

works;

(iv) required for the excavation or collection of material for the works, or for the deposit of soil or material derived from the works;

(v) required for a road or roads to obtain access to the works; or

(vi) required for the control or prevention of pollution of the water to be used; and

(e) a statement of the compensation which is offered and the period of time during which the permit holder wishes to enjoy the easement.

(2) A copy of the notice shall be sent by the permit holder to the Authority or Commission .

Consent of landholder to easement.

7. If the landholder agrees to the claim for an easement, either as originally proposed or as modified by agreement, the permit holder—

(a) shall execute a deed including the particulars of the claim as agreed and any other relevant matter; and

(b) after the execution of the deed by the parties concerned, shall send two copies of the deed certified by the Registrar of

Titles to the Authority.

Application where landholder does not consent. **8.** If the landholder does not, within two months after the service of the notice provided for in paragraph 6 of this Schedule, agree to the claim for an easement or to any other matter necessary for an easement, the permit holder may apply to the Authority, in the prescribed manner, for an easement, and shall serve notice of such application upon the landholder.

Determination of application for easement. **9.** (1) The Authority may either dismiss the claim for an easement or grant the claim with or without modification and subject to such conditions, and to the payment of such compensation, as the Authority shall deem just.

(2) The Authority shall notify the permit holder and the landholder of its decision.

(3) When the claim for an easement has been granted the permit holder shall embody the particulars and other matters pertaining to an easement granted under subparagraph (1) of this paragraph in a deed or other instrument suitable for registration, and shall tender the deed or instrument, together with the amount of any award of compensation made, to the landholder for execution.

(4) If the landholder fails within such time as may be specified by the Authority to execute and deliver the deed or instrument to the permit holder, the Authority

may do so on his or behalf, and thereupon the deed or instrument shall have the same effect as if it had been executed by the landholder.

(5) The Registrar of Titles shall register the deed or instrument against the title affected, and two copies of such deed or instrument, certified by the Registrar of Titles, shall be sent by the permit holder to the Authority.

(6) Where an appeal has been lodged under subparagraph (2) of this paragraph, no action shall be taken under subparagraphs (3), (4) or (5) of this paragraph until the appeal has been decided.

Lapse of easement. **10.(1)** An easement acquired under this Act shall lapse-

- (a) if the works authorised are not completed and the water is not utilized within one year from the date of acquiring the easement or within such further period as the Authority may determine; or
- (b) if, at any time, substantial use is not made of the permit in accordance with the terms of the permit for a continuous period of two years, or such longer period as the Authority may, from time to time, determine.

(2) Upon the lapse of an easement, the Authority shall notify the Registrar of Titles, who shall, without

charge, cancel the registration of the easement against the title affected.

Permit holder to keep works in state of repair. **11.** (1) if any work constructed on the land of a person other than the permit holder is out of repair or require cleaning, the permit holder or his or her agent shall, if required in writing by the landholder, repair or clean such works within a reasonable time.

(2) If the permit holder fails to keep the works in a state of repair the landholder may r carry out the necessary repairs or cleaning and may recover the cost from the permit holder in any court of competent jurisdiction.

(3) The repairs or cleaning under this paragraph shall not be unreasonably demanded, and, in the event of a dispute between the parties, the Authority shall decide what constitutes reasonable repairs or cleaning.

(4) A permit holder who allows any such works to fall into disrepair or, in the opinion of the Authority to be in such a state as to require cleaning, shall be liable for all damage which may arise as a consequence.

Land holder may demand and obtain use of works. **12.** (1) Any landholder on, over or through whose lands an easement has been applied for or been granted may, by application to the Authority either before or after the construction of any works, apply for a permit to make use of such works or the proposed works for the diversion, abstraction, storage or use of whatever

water he or she may become entitled to divert, store or use under this Act.

(2) Before such a permit or authorisation is issued by the Authority —

- (a) the landholder shall prove, to the satisfaction of the Authority, that the works of the permit holder can be satisfactorily used for the purpose of the landholder and without material detriment to the permit holder; and
- (b) a proportionate cost of the works shall be paid by the landholder to the permit holder who constructed or is constructing the works as may be agreed on between the parties or, failing agreement, as may be determined by the Tribunal.

(3) The permit holder may require the landholder to enter into an agreement to continue to pay the proportionate cost of maintaining the portion of the works made use of, until either party has in writing surrendered such right of user and, in the event of disagreement, the matter shall be decided by the Tribunal.

(4) If such works require modification to enable the landholder to enjoy their use, he or she shall, unless the matter is otherwise agreed, pay to the permit holder—

- (a) the entire cost of modifying them in the manner approved by the Authority; and
- (b) the cost of constructing and maintaining such devices for apportioning the quantities of water as the Authority may prescribe or approve.

(5) When it is proved to the satisfaction of the Authority that due to altered conditions it is just and equitable to revise the rate of payment,, the Authority shall inform the parties concerned, and, failing agreement between such parties on any such revision of the rate of payment, the matter shall be referred to and decided by the Tribunal.

Landholder may use land occupied by excavated material for own purposes.

13. When works have been excavated by a permit holder on another person's land—

- (a) any land used solely for the deposit of excavated material from the works executed shall, notwithstanding the payment of compensation and except in the case of an easement for drainage or reclamation, remain available to the landholder for his or her own purposes; and
- (b) the landholder may remove such excavated material except that, no

damage shall be done to the works of the permit holder, nor shall the works be obstructed or interfered with by such removal.

Easements to be registered. **14.** The deed or other instrument creating an easement acquired under this Schedule shall be registered against the title affected, and a plan, which shall be approved and signed by, or by the Authority of, the Director of Surveys, shall be attached to each document granting the easement.

Determination of easement. **15.(1)** An easement acquired under this Act shall determine if and when the permit for the exercise of rights under which the easement has been acquired is cancelled as provided for in this Act.

(2) On the determination of the relevant permit, any works constructed by the permit holder on the lands of another person shall, where the permit holder is the sole permit holder, become the property of such other person unless removed by the permit holder—

- (a) voluntarily, within two years from the date of such determination; or
- (b) at the order of the Authority at the request of the other person.

Registration of determination or variation of **16.** On the determination or variation of an easement, the Authority shall notify the landholder over whose land the easement was granted, and the Registrar

easement. of Titles and the landholder concerned may, at the expense of the person in whose name the easement is registered, take such action as is necessary to cause his or her title to be freed from the easement or to record the variation, as the case may require.

FOURTH SCHEDULE

(S. 49)

ABSTRACTION OF GROUND WATER

Application of this Schedule. **1.** This Schedule shall apply to the extraction of ground water.

Notice of intention to construct well. **2.** (1) A person shall not construct or begin to construct a borehole or well without having first given to the Authority notice of his or her intention to do so.

(2) A person intending to construct a borehole or well shall apply to the Authority for a permit and shall comply with such requirements as may be imposed by the Authority.

(3) Unless otherwise exempted, a person constructing a well shall keep a record of the progress of the work which shall include—

- (a) measurements of the strata passed through and specimens of such strata;
- (b) measurements of the levels at which water was struck; and

- (c) measurements of the quantity of water obtained at each level, the quantity finally obtained and the rest level of the water.

(4) A person to whom subparagraph (2) applies shall allow any person authorized by the Authority, at any reasonable time—

- (a) to have access to the well;
- (b) to inspect the well and the material excavated from it;
- (c) to take specimens of such material and of water abstracted from the well; and
- (d) to inspect and take copies of or extracts from the record required to be kept under this paragraph.

(5) Where the person constructing a well on any land is not the occupier of the land, the obligation to allow any person authorized by the Authority to exercise his or her rights under this paragraph shall be the obligation of the occupier of the land as well as of the person constructing the well.

(6) The Authority may by notice, whether conditionally or subject to specified conditions, exempt any person, in such circumstances as may be specified in the notice, from the operation of subparagraphs (2) and (3).

Submission of records.

3. A person constructing a well, if required to keep records under this Part, shall, within one month of the cessation of the construction send to the Authority —

- (a) a complete copy of the record, together with the specimens referred to in the record;
- (b) particulars of any test made, before such cessation of the construction, of the yield of water, specifying—
 - (i) the rate of flow throughout the test and the duration of the test; and
 - (ii) where practicable, the water levels during the test and thereafter until the water level has returned to its natural level;
- (c) a statement of whether, in his opinion (as determined by tasting) the water is suitable for drinking or is highly mineralized, as the case may be; and
- (d) if required by the Authority, such water samples as it may consider necessary.

Tests on neighbouring wells.

4. (1) Where any well is being constructed within the proximity of an existing well at a distance to be specified by the Authority, the Authority may by notice require the person constructing the well to apply tests, to

be specified in the notice, to the existing well and to supply to the Authority the particulars of the results of such tests including the rate of pumping and rest levels of water.

(2) Where the well to which the tests are to be applied is situated on the property of a person other than the person constructing the well and the person constructing the well is unable for any reason to apply the test, the Authority may, by notice, require the person upon whose property the existing well is situate to apply the tests to be specified in the notice to him or her, and to supply to the Authority the particulars of the results of such tests.

Contractor deemed to be constructor. **5.** Where any borehole contractor constructs a borehole for the purposes of a well on land belonging to or occupied by any other person, the borehole contractor shall be deemed, for the purposes of this Act, to be the person constructing the well.

Records may be required to be treated as confidential. **6.** (1) A person constructing a well or the owner or occupier of the land on which construction takes place may give notice to the Authority requesting that—

(a) any copy of, or extract from, the record required to be kept under this Act; or

(b) any specimen taken or any other particulars connected with the well, be treated confidentially

(2) In response to such the notice mentioned in subparagraph (1), the Authority shall, if sufficient cause has been shown, to not allow such copy, extract, specimen or other particulars, except in so far as it contains or affords information as to water resources or supplies, to be published or shown to any person other than a member of the Authority without the consent of the person giving the notice.

(3) If at any time the Authority gives notice to the person constructing a well or the owner or occupier of the land on which the construction is being done, that, in its opinion, his or her consent is unreasonably being withheld the person may, within three months after the notice given by the Authority, appeal to the Tribunal.

(4) If, at the expiration of the period in the notice, no appeal has been made or, after hearing the appeal, the Tribunal does not make an order restraining it from doing so, the Authority may proceed as if such consent had been given.

Waste of ground water. **7.** (1) A person shall not, except with the written permission of the Authority —

(a) cause any ground water to run to waste from any well, except for the purpose of testing the extent or quality of the supply or cleaning, sterilizing, examining or repairing the well;

(b) abstract from any well water in excess of

his reasonable requirements and which he cannot use in a reasonable and beneficial manner;

(c) conduct the water from any well through any channel or conduit so that more than twenty per cent of the water is lost between the point of appropriation and the point of beneficial use except that, where the water from any well is conducted through channels or conduits together with water from other sources, no person shall permit the waste of more than twenty per cent of the water in conducting the water from the point of appropriation of the well water to the point of beneficial use;

(d) use any water from any well for the purpose of domestic use or the watering of stock, except where such water is carried through pipes fitted with float valves or other satisfactory means of control, to prevent waste: Except that, where ground water interferes or threatens to interfere with the execution or operation of underground works, whether water works or not, the WRRRA may, in any particular case, by notice permit such water to waste upon such conditions, regarding quantity and method of disposal, as the notice may

specify.

Defective wells.

8. (1) Any well which encounters salt water, in this Part referred to as a "defective well", shall be securely cased, plugged or sealed off by the owner of the well, so that the salt water is confined to the strata in which it was found, and such casing, plugging or sealing shall be done in such a manner as effectively to prevent the salt water from escaping from the strata in which it was found into any other water-bearing strata or on to the surface of the ground except where the Authority or the Regulatory Board has approved the use of desalination systems to make such water potable.

(2) This paragraph shall apply to wells constructed before or after the commencement of this paragraph.

Interference with defective well.

9. Any person who re-cases or removes the plugs or seals from a defective well, or deposits, or causes or knowingly permits the deposit of, any dirt, rubbish or other material in any such well except with the written permission of the Authority commits an offence.

Application to carry out work on a defective well.

10.(1) Before any defective well is re-cased or the plugs or removed, the owner of the well, or his duly authorized representative, shall file with the Authority an application for permission to carry out such re-casing or the removal of the plugs or seals.

(2) The application shall contain such information as the Authority may require in relation to—

- (a) the name and address of the owner of the well;
- (b) its location, depth and size;
- (c) the amount and location of casing or sealing in the well;
- (d) the distance below the surface of the ground to the water level in the well;
- (e) the strata penetrated;
- (f) the distance from the surface of the ground to the top of the salt water stratum and the thickness of the salt water stratum; and
- (g) any other matter specified by the Authority in respect of the well.

(3) The application shall also state the methods proposed for re-casing, re-plugging or resealing of the well.

Instruction to deal with defective well.

11. The Authority, after consideration of any application under paragraph 10, may call for additional data, and may make such investigation as it considers necessary, and if the well is found to contain salt water, shall by order give instructions to the applicant, specifying—

- (a) the work that shall be done by the owner to place it in a satisfactory condition; and
- (b) the time that shall be allowed to complete the work, and may inspect such work while it is in progress.

Authority may inspect the well. **12.** The Authority may on its own initiative, or upon information or complaint from any source, make an examination of any well suspected of containing salt water, and may by order issue instructions for curing any defects in the well.

Sworn statement to be submitted. **13.**(1) Upon completion of the works in pursuance of any instructions issued under this Schedule—

- (a) the contractor who carries out the work; or
- (b) if the work is done without a contractor, the owner of the well, shall file with the Authority a statement sworn or affirmed specifying in detail the manner in which such work was done.

(2) The statement shall be filed within thirty days after the completion of the work.

Additional work on defective well. **14.** (1) Upon receipt of a statement under paragraph 13, the Authority shall determine, either from the statement or from inspection or test, whether the work has been satisfactorily performed.

(2) If the Authority determines that the work has not been satisfactorily performed, it shall by order issue additional instructions specifying the additional work required to place the well in a satisfactory condition, and specifying the time for the completion of such additional work.

(3) Upon the completion of such additional work, a statement sworn or affirmed shall be filed with the Authority as provided for in paragraph 13.

Contamination and pollution of ground water. **15.** Every person abstracting ground water by means of a well shall, in order to prevent contamination or ground pollution of the water—

- (a) effectively seal off to a sufficient depth any contaminated or polluted surface or shallow water in rock openings or soft broken ground;
- (b) effectively seal the top of the well between the surface casing and the internal pump column, and the suction or discharge pipe;
- (c) dispose of all return or waste water by means other than by return to the well;
- (d) extend the well casing to a point not less than twenty centimetres above the elevation of the finished pump house or

pump pit floor;

- (e) use either welded or screw type well joints on the casing if made of metal;
- (f) dispose of effluents or drainage from any household, stable factory, trade premises or other premises in such a manner as will prevent any such effluent or drainage from reaching such seal or ground water; and
- (g) carry out such other work as the Authority may by order direct, from time to time, for the prevention of contamination or pollution.

Authority may order special measures to safeguard ground water resources.

16. If—

- (a) during the construction of a well, water is encountered in an aquifer; and
- (b) water from a water table or lower aquifer tends to flow from the upper aquifer to the lower aquifer; and
- (c) in the opinion of the Authority this is likely to prove detrimental to the ground water resources of the area,
- (d) the Authority may order what special measures shall be taken by the owner of the well so that

the water from the higher aquifer cannot flow to the lower aquifer.

Artesian wells to be ceased.

17. Every artesian well and every sub-artesian well shall be efficiently cased, capped or furnished with such appliances as will readily and effectively arrest and prevent the flow there from over the surface of the ground or wasting from the well through the strata through which it passes.

Offence and penalty.

18. (1) A person who neglects or fails to comply with any order or requirement given or imposed on him by or under this Schedule shall be guilty of an offence and liable on conviction to a penalty not exceeding one hundred thousand shillings.

(2) Liability of any person under this paragraph is in addition to any liability of the person under paragraph 18.

(3) A licensee shall pay compensation on just terms to the owner or occupier, as the case may be, of any premises within the prescribed area in respect of—

(a) any curtailment of or injury to his legal rights by restrictions imposed by such regulations; and

(b) any expenses incurred by him complying with a requirement to construct and maintain any works, or take other action, which would not, but for the provisions of

this Act, lawfully have been required,
and any disagreement as to the amount of
such compensation shall be resolved and
determined by the Tribunal.

(4) Where any person has failed to comply with a
requirement notified to him —

(a) he has not appealed against the
requirement and the time for appeal has
expired; or

(b) his appeal has been dismissed or the
requirement has been affirmed or varied
in consequence of his appeal and he has
failed to comply with the requirement as
so affirmed or varied, the licensee may,
without prejudice to his right to take
proceedings in respect of such failure,
execute and keep in good repair the
works specified in the requirement as
originally made or as varied on appeal
and may in the Tribunal recover from the
owner or occupier concerned, as a debt,
expenses reasonably incurred by him in
so doing.

(5) Expenses recoverable under subsection (8) do not
include expenses incurred in respect of the licensee may,
without prejudice to his right to take proceedings in

respect of such failure, execute and keep in good repair the works specified in the requirement as originally made or as varied on appeal and may in the Tribunal recover from the owner or occupier concerned, as a debt expenses reasonably incurred by him in so doing.

(6) Expenses recoverable under subsection (8) do not include expenses incurred in respect of —

(a) works the construction of which; or

(b) action which,

could not lawfully have been required otherwise than upon payment of compensation by the licensee.

(7) Two or more licensees may combine for the purpose of making and enforcing regulations under this section, and the provisions of this Act shall in any such case have effect as if references therein to a reference were references to two or more such licensees acting jointly.

(8) Section 34 of the Interpretation and General Provisions Act shall not apply to any regulation made under this section.

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