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Kenya

Water Act

The Water Resources Regulations

Legal Notice 170 of 2021

Legislation as at 31 December 2022

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The Water Resources Regulations (Legal Notice 170 of 2021)

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WATER ACT
THE WATER RESOURCES REGULATIONS
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1. Citation.

These Regulations may be cited as the Water Resources Regulations.

2. Interpretation.

- (1) In these Regulations, unless the context otherwise requires—

"abstraction" means the taking of water from any water resource, either permanently or temporarily;

"airline" is a tube installed in a borehole or well for the purposes of measuring water level;

"alteration" means any physical change in the depth, diameter, casing, screen or any other structural change in an existing borehole, or any consequent change in Permit yield as a result of an approved Variation;

"analysis" means the testing or examination of any matter, substance or process for the purpose of determining its composition or qualities or its effect (whether physical, chemical or biological) on any segment of water or examination thereof;

"annual potential recharge" means, in respect to an aquifer, annual potential recharge as defined by the Authority in water resources allocation guidelines issued by the Authority from time to time.

"aquifer" means a geological formation, group of formations or part of a formation containing sufficient saturated permeable material to yield significant quantities of water to boreholes or springs;

"artificial groundwater recharge" means the intentional augmentation of groundwater resources by directly improving the infiltration of water to a target aquifer through the construction of suitable recharge structures;

"Association" means a water resources user association;

"authorisation" means authorisation issued by the Authority to construct works;

"authorised" means as approved by the Authority;

"basic human needs" means the quantity of water required for drinking, food preparation, washing of clothes, bathing, basic sanitation and is assumed to be equal to twenty-five litres per person per day;

"basin area water resources management strategy" refers to a document that has been prepared for the purpose of directing the management of the water resources within the basin area;

"borehole" means a hole, usually vertical, drilled for the extraction of or measurement of groundwater;

"canal" means any surface drain, ditch, furrow, channel, flume or other conduit for conveying water, the surface of which is at atmospheric pressure;

"chemical" means a chemical substance in any form whether by itself or in a mixture or preparation, whether manufactured or derived from nature and includes industrial chemicals, pesticides, fertilizers and drugs;

"commercial irrigation" means irrigation primarily for commercial purpose;

"dam" includes any existing or proposed structure together with appurtenant works, which is capable of containing, storing or impounding water (including temporary impoundment or storage) above ground level, whether that water contains any substance or not;

"discharge" means volumetric flow rate;

"driller" or "drilling contractor" means a person, firm or agency which is registered under these potential Regulations to undertake the construction or rehabilitation of a borehole;

"effluent" means waste which is—

- (a) a liquid which flows out of a containing space;

- (b) sewage water or other liquid, untreated, partially or completely treated discharged directly or indirectly into a water resource;

"environment" includes the physical factors of the surroundings of human beings including land, water, atmosphere, climate, sound, odour, taste, the biological factors of animals and plants and the social factor of aesthetics and includes both the natural and the built environment;

"emergency" means a disaster or hazard caused by climatic, hydrologic, tectonic, accidental, natural or man-made events which have or potentially can affect a large population and which require extraordinary measures to be undertaken to safeguard public interests;

"flow" means a volume of water passing a cross section of a body of water, watercourse or works in a unit of time;

"groundwater" 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;

"groundwater potential" means groundwater potential as defined by the Authority in water resources allocation guidelines issued by the Authority from time to time;

"indexation" means the methodology for adjustment of the water use charge whereby the water use charge is allowed to change by the rate of inflation over the initial price;

"inspector" means any water service inspector appointed in accordance with regulation 81;

"irrigation" refers to the artificial application of water to a plant;

"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, customer estate whatsoever is, or 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 (Cap. 306);

"land reclamation" means the process of making land capable of more intensive use by changing its general character, as by drainage of excessively wet land; irrigation of arid or semiarid land; or recovery of submerged land from seas, lakes and rivers;

"measuring device" refers to a fitting, equipment or infrastructure which can be calibrated to provide an accurate measure of the flow or level of water;

"natural resources" include resources of air, land, water, animals and plants including their aesthetic qualities;

"operator" means any person authorized to construct works under these regulations by authorization, or to divert, abstract, or use water by permit;

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

"permit holder" means the person the Authority has issued with a permit or any other person acting under the authority of the permit holder;

"plan" means map or drawing and the associated literature;

"point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, conduit, tunnel, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft from which pollutants are or may be discharged;

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

- (a) less fit for any beneficial purpose for which it is or may 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;

"pon" means a natural depression that contains water;

"qualified water sector professional" means a person qualified under these to provide the services of a professional chemist; hydrologist, hydrogeologist, engineer, surveyor or other professional service required to be performed under the Act;

"receiving water body" means any surface or groundwater body that may be used for effluent disposal under the Act;

"regional office" means an office of the Authority established within or near to a basin area pursuant to the provisions of the Act;

"rehabilitation" means any physical, mechanical or chemical process conducted in any water infrastructure which is undertaken to improve its operational status;

"riparian area" is land which by virtue of the proximity of the land to a water body, management obligations shall be imposed on the owner of the land by the Authority;

"soil and water conservation plan" refers to a set of activities that have to be done in order to reduce the likelihood of soil and water loss from the landscape;

"stakeholder" is a person or entity that has influence over or is affected by a certain activity on the resource;

"standard" means the limits as established under these regulations which are made pursuant to the Act or any other written law;

"subsistence irrigation" means irrigation primarily for household food security purposes;

"use", in relation to water contained in or forming part of a water resource, means—

- (a) abstraction, obstruction, or diversion of the water resource;
- (b) discharge of materials or substances into the water resource;
- (c) derivation of energy from the water resource;
- (d) derivation or extraction of natural resources or other materials from a water resource;

- (e) any other activity, of a kind prescribed by these Regulations, in relation to the water resource;

"variation" means any authorised amendment made to a water permit;

"waste" includes any matter prescribed to be waste and any matter whether liquid, solid, gaseous, hot or radioactive substances, which is discharged, emitted or deposited in the environment in such volume composition or manner likely to cause an alteration of the environment;

"waste disposal" means the action of releasing, depositing, discharging emitting all forms of waste not authorized by the Authority into the environment that has the potential to causing pollution and adversely affecting the quality of water resources;

"waste disposal control plan" means the plan referred to in the Fourth Schedule of these Regulations whose purpose is to control the discharge of any pollutant into a water resource;

"water resources monitoring network" means the set of equipment, infrastructure established for the purpose of monitoring the quantity and quality of the water resources;

"water resource user association " means an association of water users, or other stakeholders who have formally and voluntarily associated for the purposes of cooperatively sharing, managing and conserving a common water resource and resolution of water use conflict;

"Water Tribunal" means the Water Tribunal established by section 119 of the Act;

"weir" means an obstruction placed across the watercourse or body of water for the primary purpose of abstracting or diverting water, or of arresting or retarding its flow, but not for storage; and

"wetland" refers to an area where plants and animals have become adapted to temporary or permanent flooding by saline, brackish or fresh water.

- (2) Unless otherwise provided, the units shall be International System of Units.

3. Application of Regulations.

- (1) These Regulations shall apply to the regulation, management, use and development of water resources.
- (2) These Regulations shall apply to all water resources whether perennial or seasonal and including water resources of the territorial sea.

Part II – PRESCRIPTION OF WATER USE ACTIVITIES

4. Schedule of activities

Without prejudice to the generality of section 2 of the Act, the activities set out in Part 1 of the First Schedule carried out on or in relation to a water resource shall be regarded as water use activities requiring a water use permit.

5. Requirement for a permit for water use activities

The activities listed in Part 2 of the First Schedule are water use activities in respect of which an application for variation of permit shall be required.

6. Categorization of water resource use applications

- (1) Water use activities shall be categorised into four categories on the basis of the criteria stipulated in Part 3 of the First Schedule.

- (2) In the categorisation of water resources under subregulation (1), the views of the Basin Water Resources Committee and the Association shall be taken into account, and, where there is no registered Association, the views of the local representative associations whose objectives are natural resource use or natural resource use conflict resolution shall be considered.
- (3) In determining the category into which a water use activity falls, account shall be taken of and effect given to the differences associated with the characteristics of the catchment or basin in which the water resources is located and the particular circumstances of each water resource as stipulated by the Authority in water allocation guidelines.
- (4) A person aggrieved by the decision of the Authority on the category into which a water use falls may appeal to the Water Tribunal.

Part III – APPLICATION FOR A PERMIT OR OTHER AUTHORITY FOR WATER USE

7. Application for a permit

- (1) A person who intends to undertake an activity involving the use of water from a water resource shall apply to the Authority for a permit before commencing the activity.
- (2) A person who fails to obtain a permit as provided under subregulation (1) commits an offence.

8. Permit for temporary use

Where the activity for which the water is intended to be used is temporary in nature, the application shall be for a permit for a period of one year or such longer period, not exceeding two years, as may be determined by Authority.

9. Water use to be appurtenant to land

- (1) An application for a water use permit shall be made by the owner of the land on which the water use is to take place and, where the applicant is not the landowner, the consent of the owner of the land shall be endorsed on the application.
- (2) An application for a permit under subregulation (1) shall be accompanied with evidence of ownership of the land which shall be—
 - (a) the registered document of title, where the land is registered; or
 - (b) where the land is not registered, other documentary evidence satisfactory to the Authority that the applicant is the lawful landowner or has the authority of the lawful landowner to make the application.

10. Easements, wayleaves, etc.

- (1) A permit holder seeking to use water on land other than the land on which the water use activity is to occur shall obtain an easement, wayleaves or other legal right of access.
- (2) An application for an easement or other right of access under subregulation (1) shall be made in the Form WRA 002 set out in the Thirteenth Schedule and accompanied by the fee set out in the Second Schedule.
- (3) The easement or right of access referred to in this regulation may be in existence at the time of the application or to be granted upon the issue of the water use permit.
- (4) A person intending to enter upon land belonging to other persons for survey or investigative purposes of water resource management or development shall submit to the Authority an application in Form WRA 015 set out in the Thirteenth Schedule and accompanied by the fee set out in the Second Schedule.

- (5) The Authority shall be indemnified against all claims by landowners for damage or losses arising from works developed by a permit holder or a person authorised to construct works for the use of water.

11. Consent of owner of works

- (1) An applicant intending to use works owned by another person shall, at the time of the application and on every renewal thereafter, produce to the Authority satisfactory evidence of the consent or agreement of the owner of the works to the intention to use the works.
- (2) Where in the opinion of the Authority monitoring and control of the water use activity would be best achieved by the issuance of separate permits to applicants intending to share common works, the Authority may issue separate water permits or a supplementary permit in the Form WRA 021 set out in the Thirteenth Schedule.

12. Use of existing works in the public interest

- (1) Where, in the opinion of the Authority, public interest would best be served by the use of existing works, the Authority may, after giving the owner of the works an opportunity to make representations, order the owner of the works to make available the works to any applicant so long as the water use of the owner of the works is not adversely affected.
- (2) The owner of the works whose works are, pursuant to an order of the Authority, to be used by another applicant for a water use activity, shall be entitled to prompt and fair compensation for use of the works.

13. Category A applications

- (1) An application for a permit for a proposed water use activity falling within category A activity specified in the First Schedule shall be—
 - (a) made prior to constructing or installing of the works;
 - (b) made to the Authority in Form WRA 001 set out in the Thirteenth Schedule;
 - (c) accompanied by the fee specified in the Second Schedule;
 - (d) accompanied by evidence of consultations undertaken with respective Associations and, where there is no registered Association, the local representative associations whose objectives are natural resource use or natural resource use conflict resolution and their views.
- (2) Upon receipt of the application under subregulation (1), the Authority shall verify the evidence provided including seeking confirmation of the officials of the consulted Association or local representative association and upon confirmation, the regional office shall process the application.
- (3) If satisfied that the proposed water use activity poses a low risk of impact on the water resource and taking account of the comments of the Association or the respective local representative associations, the Authority shall approve the application by endorsing approval on the application.
- (4) Upon endorsement by the Authority under subregulation (3), the applicant may commence the water use activity described in the application subject to conditions applicable to Category A water users.
- (5) The Authority may at any time require any Category A water user to be re-classified after an assessment of the water resource or for other reasonable cause.
- (6) Where there is a material change in any aspect of the water use—
 - (a) the water user shall notify the Authority within twenty-one days of the change; and

- (b) the Authority shall assess whether, in light of the change, a re-application or a variation of the conditions imposed on the water use is necessary.
- (7) Where a permit holder—
 - (a) fails to notify the Authority of a material change to the water use;
 - (b) uses water in breach of the conditions applicable to the water use;
 - (c) withholds relevant information from the Authority or gives information which is misleading in any material particular, commits an offence and the Authority may, in addition to any other penalties, cause the cancellation of the Category A water use permit.

14. Category B, C and D Applications

- (1) An application for a permit for a proposed water use activity falling within Category B, C or D as specified in Part III of in the First Schedule shall—
 - (a) be made to the Authority in the Form WRA 001 set out in the Thirteenth Schedule;
 - (b) state the intended purpose of water use;
 - (c) be accompanied by a site assessment report, a hydrological assessment report or hydrogeological survey report and an environmental impact assessment study report which is compliant with the requirements in the Third Schedule; and
 - (d) be accompanied by the fee specified in the Second Schedule.
- (2) A separate application for water resource use as specified in the Second Schedule shall be required for each water use activity including for—
 - (a) each abstraction point, whether from surface or groundwater;
 - (b) each effluent discharge point unless covered under another application;
 - (c) each point of storage unless covered under another application; and
 - (d) separate water use activities other than those covered in paragraphs (a), (b) and (c).
- (3) The applicant shall pay the application fees for each complete application before the application is processed by the Authority.

15. Maps to accompany applications

- (1) Every water use applicant shall submit to the Authority a map showing the water body, the location of the works, supply area, location of all authorizations or permits currently held by the applicant which are relevant to the application and any other relevant details as may be required by the Authority.
- (2) All significant points on the map shall be geo-referenced showing Universal Transverse Mercator (UTM) coordinates and zone with respect to the Arc 1960 datum.

16. Technical report

- (1) Without prejudice to the provisions of regulation 14, each application for a water use activity under Category C or D shall be accompanied by a technical report prepared in accordance with the Fourth Schedule:

Provided that following a review of the application, the Authority may, require a category B applicant to submit a technical report.
- (2) A site assessment report or a technical report shall be prepared by a qualified and licensed water sector professional.

- (3) Where it is sufficiently demonstrated that an applicant is unable to use the services of a consultant in the preparation of a technical report as required under subregulation (2), the Authority may, at the request of the applicant, undertake the report preparation.
- (4) A person seeking the services of the Authority in the preparation of the any technical report, shall—
 - (a) make a written request to the Authority; and
 - (b) pay prescribed fees for the Authority's services of preparing the report.
- (5) Where the Authority is satisfied that it is in the interest of the public and the applicant that the Authority undertakes the preparation of any technical report, the Authority shall prepare the report in accordance with these Regulations:

Provided that any water sector professional officer of the Authority who prepares the report shall not be involved in the evaluation of the same report following its submission to the Authority in support of the application for a permit.
- (6) Where a water sector professional officer of the Authority undertakes duties of preparing a site assessment report or any other technical report, he or she shall be deemed to be a qualified water sector professional for the purpose of preparing the site assessment report or any other technical report.

17. Recommendations by Associations on applications

- (1) An water use applicant shall submit with each application evidence of consultations undertaken with the relevant Association and, where there is no registered Association operating in the area of the proposed water use, with the main local representative associations whose objectives are natural resource use or natural resource use conflict resolution and their views on the proposed water use.
- (2) Upon receipt of an application for a water use activity under a category B, C and D, the regional office of the Authority shall provide a copy of the application to the Association and the Basin Water Resource Committee for comments and where there is no registered Association operating in the area of the proposed water use, to the key local representative associations whose objectives are natural resource use or natural resource use conflict resolution named by the applicant as having been consulted.
- (3) The Association or local representative associations shall submit their comments to the Authority in the Form WRA 003 set out in the Thirteenth Schedule and copied to the applicant within thirty days of receipt of the application by the Association or associations as the case may be and the Authority shall make its decision within fourteen days of receipt of the comments.
- (4) Where the Association or local representative association does not submit comments within the period specified under subregulation (3), the Authority may proceed to determine the application after the expiry of thirty days.

18. Public notification

- (1) Applicants for Category C and D permits shall cause the permit application to be published in a national newspaper of wide circulation and in the *Kenya Gazette*.
- (2) At the end of each month, the Authority shall display all permit applications received, within the region, on the Authority's website, its regional and sub-regional offices and at the offices of the county commissioner, deputy county commissioner, assistant county commissioner, chief and assistant chief.
- (3) A public notification issued under this regulation shall specify—
 - (a) the name of the applicant;

- (b) the water resource in respect to which the application has been made;
- (c) the quantity of water applied for;
- (d) the purpose of water use for which the application has been made;
- (e) the land registration number;
- (f) the location or other local administrative unit within which the water use is to be undertaken; and
- (g) any other details relevant to the public with respect to the permit application.

19. Objection to permit application.

- (1) Any person may object in writing to any permit application by stating grounds for the objection.
- (2) The objection shall be lodged with the Authority within thirty calendar days of the public notification issued under regulation 18.
- (3) The Authority shall consider all objections received within the prescribed period for submitting objections before determining the application and in its decision state how it has addressed the objections.

20. Guidelines and procedures for permits of temporary nature

The Authority shall administratively make guidelines and procedures for the application for permits for a temporary period.

21. Open meeting

- (1) If, based on the objections or representations received in response to a category C and D applications or other considerations, the Authority considers it necessary to hold a open meeting with relevant stakeholders and the public, the Authority shall convene such meeting at or near the site of the proposed water use to hear views on objections, representations and other considerations before determining the application.
- (2) The Authority shall give not less than fourteen days written notice of the intention to hold an open meeting on a stated day, time and venue to all the persons whose written objections were received on time and post the notice on the Authority's website, at the site of the proposed meeting and at the Authority's regional and sub-regional office.
- (3) The meeting under subregulation (1) shall be open to the public and, if appropriate, may be conducted using a virtual platform.

22. Rejection of application

- (1) Where the Authority rejects an application for a permit, it shall within thirty days of its decision, notify the applicant, and any objector to the application, of its decision in writing.
- (2) Where the applicant is aggrieved by the decision of the Authority under subregulation (1), the applicant may within fourteen days of receiving the Authority's decision appeal against the decision of the Authority to the Water Tribunal.

23. Authorisation to construct works

- (1) Where the Authority approves an application for a water use permit, it shall issue an Authorisation to Construct Works in Form WRA 004 set out in the Thirteenth Schedule.
- (2) The Authorization issued under this regulation shall specify the period of time for completion of the works which may only be extended with the written permission of the Authority for good cause.

- (3) Failure to complete works within the stipulated time or to comply with the stipulated conditions may result in the cancellation of the Authorization.

24. Limitation on authorization

An Authorization to Construct Works does not authorise an applicant to commence abstraction or the proposed use of the water before the conditions governing the authorisation are certified as having been met.

25. Extension of Authorization

- (1) Where the works are not completed within the time specified by the Authorization—
 - (a) a Progress Report shall be submitted to the Authority in lieu of a Completion Certificate; and
 - (b) the applicant may apply for an extension of time in Form WRA 005 set out in the Thirteenth Schedule accompanied by the Progress Report and an Explanatory Report for the failure to complete the Works within the time stipulated.
- (2) The Authority shall consider the Progress report and explanatory statement and may grant an extension for six months or such longer period as appears necessary to complete the works through Form WRA 006 set out in the Thirteenth Schedule:

Provided that an extension shall not be granted for a period longer than the period initially stipulated for constructing the works.
- (3) If, despite the extension under this regulation, the construction of the Works is still not complete within the extended time, the Authorisation shall lapse and the Applicant shall, within a time stipulated by the Authority, submit to the Authority a plan for restoration of the site to, as near as is practicable, its original condition.

26. Register of authorizations and permits

- (1) The Authority shall maintain a Register of authorisations and a Register of permits in the form shown in the Thirteenth Schedule for each particular resource.
- (2) Any person may obtain a copy of the Register of authorisations or Register of permits on payment of the fee specified in the Second Schedule.

27. Completion certificates

- (1) Upon completion of the works, the applicant shall submit a completion certificate to the Authority in Form WRA 007 set out in the Thirteenth Schedule.
- (2) Upon receipt of the completion certificate, and on payment by the applicant of inspection fees specified in the Second Schedule, the Authority shall inspect the works to ascertain that all the conditions stated on the Authorisation have been complied with to its satisfaction.
- (3) An inspector or a person authorised by the Authority shall inspect the works to ensure compliance to the Act and these Regulations using Form WRA 008 set out in the Thirteenth Schedule.
- (4) Where the inspector is not satisfied with the completion status of the works, then he or she shall issue an Order within fourteen days detailing steps that shall be taken to bring the works to a satisfactory condition.
- (5) Where the inspector is satisfied that the works are complete, and that the conditions have been complied with, the Authority shall, following receipt of a water use permit application, issue a permit on the Form WRA 011 in the Thirteenth Schedule within thirty one days of receipt of a complete application.

28. Application for water use permit for surface and groundwater

Within thirty days of the date of the completion of the works, the applicant shall apply to the Authority for a water use permit in relation to surface water and ground water.

29. Water use permit validity

A water use permit granted under regulation 28 shall be issued for a period of five years but may be renewed or extended for a similar or shorter period following an application by the permit holder.

30. Water resource user identification number

A water use permit shall bear a unique water resource user identification number or security code which shall whenever practicable identify the basin or sub-basin area in which the water use occurs.

31. Permit fees

- (1) The permit holder shall pay the applicable fees as prescribed in the Second Schedule.
- (2) Failure to pay the prescribed permit fees may be a basis for revocation of the permit, disconnection of intakes, variation of the permit conditions, recovery proceedings through a civil suit or other enforcement action deemed appropriate by the Authority.
- (3) Where the permit holder, without due cause, delays in the payment of the water use fees to the Authority, interest at two per cent per month shall accrue on a daily basis until the water use fees are fully paid.

32. Conditions of Permit

- (1) The Authority shall state on the permit, conditions to which the permit is subject to after considering the characteristics of the water resource or body of water, the water use proposed, the technical report, the representations received and any other relevant considerations.
- (2) A permit issued by the Authority shall be subject to such terms, restrictions and limitations as the Authority may deem proper to impose and to any, or all of the following minimum conditions—
 - (a) a permit shall not limit in any way the exercise of existing lawful water use rights of any other person nor imply any guarantee that the quantity of water referred to is or will become available;
 - (b) the water used under a permit if it is to be returned to any water resource shall not be polluted with any matter to such an extent as to be capable of causing injury or damage whether directly or indirectly to any person, public health or to livestock, animals fish, or crops or to any undertaking in respect of which such water is used;
 - (c) the permit holder shall take all reasonable precautions to the satisfaction of the Authority to prevent accumulation in any watercourse of silt, sand, gravel, stones, sawdust, refuse, sewerage, waste or any other substance which may be injurious to the water resource;
 - (d) in every permit issued by the Authority for mining, industrial purposes or hydropower the following conditions are implied—
 - (i) the water used shall be returned, if reasonably practicable, to the water resource from which it was taken or to such other water resource as the Authority may direct; and
 - (ii) the water used shall, in so far as the use to which it is to be put allows, be returned substantially undiminished in quantity or quality to the water resource from which it was taken.

- (3) The permit holder is responsible for fulfilling and meeting the cost of fulfilling all the conditions attached to the permit.
- (4) Failure to comply with the conditions attached to the permit may be used by the Authority as a basis for suspension or cancellation of the permit.
- (5) A permit holder shall maintain a record of all water abstracted, diverted, stored or discharged, giving the date, time, quality and quantity and methods of such abstraction, diversion, storage or discharge and the purpose or purposes for which such water was used and such record shall be furnished to the Authority annually or at such more frequent periods as the Authority may specify.

33. Transfer of permit by permit holder

A permit holder may apply to the Authority for the transfer of the permit to another person in the Form WRA 014 set out in the Thirteenth Schedule.

34. Variation of permit by permit holder

- (1) A permit holder may apply to the Authority for variation of the permit in Form W RA 013 set out in the Thirteenth Schedule and accompanied by the assessment fees set out in the Second Schedule.
- (2) Where the variation does not result in a change in the category of water user or materially change the permitted water use, the Authority may, after taking into account any representations received, grant the application.
- (3) Before granting a variation application, the Authority shall give public notice of the application by posting for a period of thirty days on its web-site and at the regional and relevant sub-regional office particulars of the application and a brief summary of the nature and effect of the proposed variation and inviting persons with comments on the application to provide such comments within the thirty days.
- (4) Where the variation results in a change in the category of water use, the permit holder shall be required to apply for a new permit.
- (5) The permit as varied shall be made available in the register of permits maintained by the Authority.
- (6) A person who contravenes this regulation commits an offence and is liable, on conviction, to the penalties prescribed by these Regulations.

35. Variation or cancellation of permit by the Authority

- (1) The Authority may, on its own motion, vary or cancel a water permit after giving the permit holder thirty days' notice to show cause why the permit should not be varied or cancelled and considering any representations made by the permit holder following receipt of the notice.
- (2) The Authority may undertake the following measures for enforcement
 - (a) suspension;
 - (b) cancellation; or
 - (c) variation of a permit; or
 - (d) confiscation of any equipment or plant, or removal of works.
- (3) Any cost incurred by the Authority in effecting a measure under this regulation shall be a cost recoverable from the permit holder.
- (4) The Authority shall post on its website and at the regional and sub-regional office, particulars of any permit variations or cancellations within thirty days of the variation or cancellation.

36. Renewal of permits

- (1) Three months before the expiry of a permit, a permit holder shall apply for its renewal by
 - (a) making an application in Form WRA 012 in the Thirteenth Schedule; and
 - (b) paying the fees for renewal, any water use charge arrears and works inspection fees as prescribed in the Second Schedule.
- (2) A late submission of the application for the renewal of a permit will attract a penalty of twenty-five thousand shillings for each month of delay.
- (3) The Authority shall inspect the works before processing the application for renewal.
- (4) The Authority may require submission of the technical reports under regulation 16 indicating the condition of the water resources at the time of the application for renewal before processing an application for renewal or impose new conditions or alter existing permit conditions as necessary in response to causes as stipulated in section 46(1) of the Act.
- (5) If the permit holder does not apply for the renewal of the permit on expiry of the permit, the permit will automatically lapse and the Authority shall initiate the cancellation process in accordance with section 49 of the Act.

37. Register of approved water users, water uses and permits

- (1) The Authority shall maintain a Register of approved water users, water uses and permits as required by section 54 of the Act and post an electronic copy of the Register on its website.
- (2) A person may obtain a copy of the Register of approved water users, water uses and permits certified by the Authority on payment of the applicable fees set out in the Second Schedule.

38. Permit of authorisation not a defence

The issue by the Authority of an authorisation or permit shall not be a defence to any civil action or to a criminal prosecution.

39. Public notification of authorisations and permits

- (1) The Authority shall cause to be displayed on the notice board, at its offices and at the offices of the chief, a list of notifications on authorisations, permits and cancellations.
- (2) The list shall include a summary of the information pertaining to the water use activity.
- (3) Any person wishing to obtain full details of a particular permit shall apply using form WRA 020 as set out in the Thirteenth Schedule and pay the required fee as specified in the Second Schedule.

40. Compliance with other laws

The right of a permit holder shall, notwithstanding anything contained in his or her authorisation or permit, be subject to and conditional to his or her compliance with the provisions of the Act and any other applicable laws.

Part IV – SURFACE WATER**41. Surface water allocation plan and guidelines**

- (1) For purposes of the exercise of its water allocation functions under the Act, the Authority shall from time to time and in consultation with the Cabinet Secretary, formulate surface water allocation plans and guidelines which shall comply with the standards in the Sixth Schedule.

- (2) Without prejudice to subregulation (1), for purposes of the allocation of surface water resources—
- (a) "flood flow" means any flow that exceeds the Q80 flow value;
 - (b) "normal flow" means any flow that is less than the Q80 flow value;
 - (c) "Q80 flow value" means the flow value that is equalled or exceeded eighty percent of the time; and
 - (d) the Q80 flow value shall be derived from a naturalised flow duration curve, preferably derived from daily flows.

42. Declaring of a water course

- (1) The Authority may, after public consultation, declare a natural watercourse not to be a watercourse or a constructed channel to be a watercourse for the purposes of water resources management and regulation.
- (2) Where a body of water has changed into a new course, the Authority shall recognise the new course to be a watercourse and shall require the original course to be retained as a flood channel.

43. Boundary of properties defined by a watercourse

If, owing to any natural events or authorised or unauthorised works being constructed on a water body, a body of water which constitutes the boundary of two or more properties ceases to flow between or to separate such properties or has changed into a new course, the boundaries of such properties shall, unless readjusted by mutual agreement between the parties concerned, remain as before.

44. Wetlands

- (1) Any portion of land in excess of one hectare which is naturally subject to seasonal or permanent flooding and has the ecological characteristics of a swamp or marsh shall be considered to be a wetland under these Regulations.
- (2) The Authority may by notice in the *Gazette* and for good cause, declare any portion of land which is less than one hectare as a wetland for purposes of water resources management and regulation.
- (3) The land owner or legally authorised representative of the landowner of the land on which a wetland is situated shall apply to the Authority for approval for any proposed or ongoing activities including drainage, discharge into the wetland or construction that would affect the wetland.
- (4) Whenever any proposal for the drainage and reclamation of a swamp involves the subsequent use by the applicant of all or any of the water conserved by the drainage or reclamation of such swamp, the applicant shall submit an application for a permit for the diversion, abstraction, storage or use of such water with a Hydrological Assessment Report, Hydrogeological Survey Report and Environment Impact Assessment Report and licence.
- (5) No works involving the drainage of a swamp shall deprive any lawful water user of reasonable access to water except by agreement or on payment of compensation, or on supplying water from other sources or by other means, and the applicant concerned shall submit to the Authority all plans and documents showing the proposals to provide such water user with access to water, and any agreements to this effect, and he shall, if the proposals include any works for supplying such water user with water, submit an application for a permit.

45. Land reclamation

- (1) The Authority may in accordance with this regulation, authorise the reclamation of land for infrastructure development over and upon the sea-bed, lake or river irrespective of the ownership of land bordering on any land borders of such sea-bed, lake or river.

- (2) Notification of the proposed land reclamation shall be published
 - (a) in the *Gazette* by the Cabinet Secretary;
 - (b) on the Authority's website; and
 - (c) in two national newspapers of wide circulation in Kenya.
- (3) A notification under subregulation (2) shall—
 - (a) describe the proposed land reclamation and give the approximate area to be occupied in connection therewith; and
 - (b) call upon all persons having objections to the reclamation or any claims of private right in respect thereof to submit to the Authority before the expiration of such period being not less than thirty days or as may be specified in such notification, such objections or claims in writing specifying the nature thereof and giving an estimate of any loss which it is alleged would be incurred by reason of the extinguishment of any private right.
- (4) Whenever claims or objections are submitted pursuant to subregulation (3)(b) and the Authority considers it expedient so to do, it may establish a Panel to hold a public inquiry on such matters as set out in the terms of reference.
- (5) Such Panel shall keep or cause to be kept a record of any evidence taken at the public inquiry and shall transmit the same together with a report of its findings to the Authority.
- (6) The Authority may, after considering the proposed land reclamation together with all objections and claims submitted and, where a public inquiry has been held, the evidence taken by, and the report of the Panel holding the inquiry, authorise such land reclamation with or without modifications or refuse to authorise the land reclamation.
- (7) A notification of an authorisation together with a description of the proposed reclamation shall be published in the *Gazette*.
- (8) Upon the publication of the authorisation of a proposed reclamation, all public and private rights of navigation or fishing and rights ancillary thereto, all public and private rights of access or user, and all other public or private rights in, upon or over the sea-bed, lake or river occupied by the proposed reclamation or by the infrastructure development shall be extinguished and cease to exist.

46. Requirement to obtain permit after land reclamation

- (1) Any person intending to or currently undertaking a water use activity in relation to a water resource on reclaimed land shall apply to the Authority for a water use permit.
- (2) Where the proposed water use is in relation to a lake or river, the application shall be accompanied by a letter of no objection of the Basin Water Resources Committee, the water resource users associations or local representative associations.
- (3) A permit holder is responsible for complying with these Regulations in relation to any activities on reclaimed land.

47. Allocation of water for irrigation

- (1) In allocating water for irrigation, the Authority shall—
 - (a) give priority to irrigation for subsistence purposes;
 - (b) be guided by crop water requirements in the area and the efficiency of water use;
 - (c) limit the permit holder to abstract, impound or divert only flood flow for purposes of irrigation; and

- (d) require the applicant, to the extent practicable, to make provision for not less ninety days' storage of flood flow for use during the dry season unless the abstraction of water is to be from a regulated watercourse or river.
- (2) In considering aggregate water demand for subsistence irrigation, the Authority may declare by public notification for each catchment area or part thereof an upper limit for the allocation of water either in aggregate or for any one permit where the allocation is shared among more than one household.

48. Hydro Power

- (1) Every permit to develop an amount of power less than the full hydro power potential of the site may be subject to special conditions if the Authority considers that the full power development of the site at a later date may be required.
- (2) If an existing permit holder is unable, or unwilling, to enlarge the works to develop the full hydropower potential of the site, and it is considered by the Authority, following consultation with the regulatory agency responsible for matters relating to electricity generation, to be in the public interest to do so, the Authority may cancel the authorization or permit and authorize the works to be carried out by another person provided that the incoming operator shall pay compensation to the person whose permit has been cancelled.
- (3) For the purpose of ascertaining the hydropower potential under any authorization or permit, the Authority shall have access to reports, plans and records of the permit holder and may request for any other information or data it may require.
- (4) A permit issued for hydro power purpose, shall at all times be subject to any law affecting the construction and operation of works for the supply of power.

49. Works associated with fish movement for protection and control of fish

- (1) Where, in the opinion of the Authority, after consultation with the government department responsible for fisheries it is necessary for the free movement of fish upstream or downstream of any dam or weir on any body of water, the Authority may require a person applying for a permit or a permit holder to provide at his or her cost in such dam or weir a fish pass, fish ladder or other structure, approved by the Authority, to enable fish to move freely up or down such a body of water:
- (2) Notwithstanding anything contained in these Regulations, the Authority may, on the application of any person, authorize the construction or erection in a body of water of—
 - (a) works of a temporary nature which are designed solely for the purpose of improving the conditions of fish life or the facilities for fishing, in such body of water provided such works will not have the effect of raising the normal level of the body of water more than one metre
 - (b) fish ladders or other means of ingress and egress for fish provided such works do not cause any obstruction in the flow of such body of water.
- (3) An application under this regulation shall be on Form WRA 001 as set out in the Thirteenth Schedule and shall be submitted to the Authority together with the comments of the department responsible for fisheries.

50. Water resources data

- (1) The Authority shall put in place and maintain measures, arrangements and systems for data gathering, analysis and management including data collection centres, rain gauging stations, laboratories and similar systems.
- (2) On the basis of information gathered by or submitted to it, the Authority shall maintain a surface water database from which data shall be accessible during normal office hours by any person on the payment of the prescribed fees listed in the Second Schedule

Part V – GROUNDWATER

51. Authorisation of groundwater development

- (1) A person intending to abstract ground water shall apply for approval of the activity by Authority in Form WRA 001 set out in the Thirteenth Schedule:
- (2) Upon receipt of an application under subregulation (1), the Authority shall determine the category of the activity in the manner specified in regulation 6.
- (3) Where the Authority determines that the application made under this regulation is for an activity that falls under a Category A water use activity and the method of abstraction does not include motorised pumping, the Authority shall determine the application in accordance with the procedure specified for determining Category A applications.
- (4) Where any borehole or well is to be equipped with a motorised pump, the application shall be accompanied by a Hydrogeological Survey Report prepared in the form set out in the Fourth Schedule.
- (5) Where the Authority determines that the application under this regulation is for an activity that falls under Categories B, C, or D water use activity, the application shall be determined in accordance with the procedure specified for approval of Categories B, C and D applications.
- (6) Before any well or borehole is replaced, deepened or widened, the owner of the well or borehole, or his duly authorized representative, shall file with the Authority an application for authorisation to carry out such replacement, deepening or widening of an existing well or borehole, for any water use category.
- (7) Where, in the course of drilling, the owner of a well or borehole encounters down hole problems, the owner shall drill a replacement borehole on a site not more than fifteen metres from the previously approved site.
- (8) Before any well or borehole encountering down hole problems is moved to a new site in accordance with subregulation (7), the owner of the borehole or well, or his or her duly authorized representative, shall seek the approval of the Authority to move to the new site.
- (9) For purposes of subregulation (7), "down hole problems" means the collapse, loss of tools, or other associated drilling problems excluding a dry borehole,
- (10) A person who contravenes this regulation commits an offence and is liable on conviction to the penalty prescribed in these Regulations.

52. Regulation of groundwater development

- (1) Where any borehole or well is being constructed within five hundred metres of an existing borehole or well, the Authority may by notice require the person constructing the borehole or well to undertake tests, specified in the notice, on 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) Without prejudice to subregulation (1), the Authority shall determine in the allocation plan for a given aquifer or part thereof, the spacing of boreholes or well to be equipped with motorized pump and in doing so shall be guided by—
 - (a) existing borehole or well spacing;
 - (b) individual aquifer characteristics, including water quality;
 - (c) existing aquifer use;
 - (d) existing bodies of surface water; and

- (e) any other relevant considerations.
- (3) The allocation plan shall be available and accessible to the public, during normal working hours, on the Authority's website and from any of the Authority offices.

53. Borehole and well test pumping

- (1) A borehole and well that is to be equipped with a motorised pump shall be subjected to test pumping.
- (2) Test pumping shall comprise a continuous and constant rate pumping test of not less than twenty-four hours duration and recovery duration of not less than twenty hours, or as otherwise stipulated by the Authority.

54. Supervision of works

A borehole and well that is to be equipped with a motorized pump shall be constructed under the supervision of a qualified and licensed water sector professional.

55. Borehole or well completion record

- (1) On the completion of construction of the borehole or well specified in regulation 53, the applicant shall, within twenty-eight days of completion of works, submit to the Authority, a borehole, or well completion record in WRA Form 009 for a borehole or 010 for a well respectively set out in the Thirteenth Schedule, together with the completion certificate.
- (2) A person who contravenes subregulation (1) commits an offence and is liable on conviction to the prescribed penalties.

56. Issue of permit or approval

- (1) Approval to abstract groundwater under Category A for a well, shall be issued by the Authority following the procedure stipulated in regulation 7.
- (2) Where the Authority determines that verification on site is necessary, the Authority shall undertake the verification within twenty eight days upon payment by the applicant of the prescribed site verification fees.
- (3) An approval to abstract groundwater from a borehole, in Category A, shall not be issued until the Authority has analysed the data provided in the Borehole Completion Record Form WRA 009.
- (4) A permit to abstract groundwater from boreholes, or wells intended to be equipped with motorised pumps in Categories B, C, or D as defined in the First Schedule shall not be issued until after the Authority has analysed the data provided in the Borehole or Well Completion Record Form WRA 009 or 010, respectively.

57. Groundwater conservation

- (1) Every borehole owner shall ensure that a wellhead protection area within a radius of ten meters is reserved where any activity including land use activities, are likely to negatively impact groundwater resources.
- (2) Where in its assessment the Authority determines that a proposed borehole is within a radius of ten meters of any activity likely to negatively impact the quality of groundwater resources, it shall not issue an authorization or permit for the drilling of the borehole or well.
- (3) Within twelve months of the coming into effect of these Regulations, all borehole water abstractors shall ensure that—
 - (a) boreholes are fitted with dipper tubes;

- (b) water is not abstracted without passing through a meter; and
- (c) the water meter is periodically inspected to ensure that it is not defective.

58. Artificial ground water recharge

- (1) No person shall undertake construction works for the purposes of conducting the artificial groundwater recharge of an aquifer, whether or not in a groundwater conservation area, unless such a person has been duly authorised by the Authority.
- (2) An application for authorization under subregulation (1) shall be accompanied by a technical report and a Hydrogeological Assessment Report prepared in the form set out in the Fourth Schedule—
 - (a) defining the aquifer parameters and the water quality evolution after recharge;
 - (b) specifying the impacts on the recharged water,
 - (c) specifying the contents of the injection and the proposed geotechnical mechanisms with analysis on its positive and negative impacts on groundwater resources.
- (3) Any person applying for the necessary authorisation under subregulation (1), shall give such particulars relative to his or her application as the Authority may require and such authorisation may, after consideration of the application be granted upon such conditions as the Authority may deem necessary or refuse the application.
- (4) A person who contravenes this regulation commits an offence and is liable on conviction to the prescribed penalties under the Act.

59. Groundwater data

The Authority may, from time to time and in carrying out its responsibilities in respect to groundwater resources protection and regulation, require any person or entity, permit holder or operator, to provide the Authority with abstraction, water levels, water quality or any other specified information within a reasonable time or on a regular basis as it may specify including the requirement to observe protection measures as shall be prescribed by the Authority.

60. Groundwater allocation Guidelines

- (1) The Authority shall from time to time formulate groundwater allocation guidelines on the basis of which it will exercise its groundwater allocation functions under this Part.
- (2) The groundwater allocation guidelines shall be accessible on the Authority's website and during normal office hours to any person.
- (3) The Authority may, on the payment of the prescribed fees listed in the Second Schedule, provide an extract of data from its records to any person.

Part VI – WATER QUALITY MONITORING AND WASTE DISPOSAL

61. Control of water pollution

- (1) No person shall discharge or apply any poisonous, toxic, noxious or obstructing matter, radioactive waste or other pollutants or permit any person to dump or discharge such matter into a water resource unless the discharge of such poisonous, toxic, noxious or obstructing matter, radioactive waste or pollutant is authorised by the Authority and treated to permissible standards.
- (2) A person intending to discharge waste, effluent or other pollutant into a water resource shall apply to the Authority for waste disposal permit.

- (3) The category of effluent discharge disposal permit shall be determined on the basis of the effluent discharge load, the concentration of pollutants, the capacity of the receiving water body and the applicable resource quality objectives.
- (4) A person who discharges waste, effluents or other pollutants into a water resource at the commencement of these Regulations without a waste disposal permit issued by the Authority shall apply for a waste disposal permit within six months of the commencement of these Regulations.
- (5) The right of a permit holder to discharge waste shall be exercised in accordance with the conditions in the effluent discharge permit and shall be limited to the quantity and quality of pollutants stipulated in the permit.
- (6) An effluent discharge permit shall be issued in the Form WRA 001G set out in the Thirteenth Schedule and shall be subject the payment of the water user charges specified in the Second Schedule.
- (7) Any person who contravenes this regulation commits an offence and is liable on conviction to the penalties prescribed in the Act.

62. Waste disposal control plan

- (1) A person in charge of an undertaking or establishment shall formulate and put in place and implement a waste disposal control plan approved by the Authority to prevent and or control the discharge into a water resource of waste, effluent or other pollutants from run-off or point and non-point sources in, on or adjoining the establishment or undertaking.
- (2) A waste disposal control plan shall be prepared by a licensed and registered water sector professional and be substantially in the form stipulated in the Fourth Schedule.
- (3) Any person who contravenes this regulation commits an offence and is liable on conviction to the penalties prescribed in the Act.

63. Water quality requirements

In determining the water quality standards for a waste disposal permit, the Authority shall be guided by the following criteria—

- (a) the capacity of the receiving water resource to assimilate the effluent without violating the water resource quality objectives for that water resource;
- (b) the toxicity and persistence of the pollutant; and
- (c) any other criteria as determined from time to time by the Authority.

64. Liquid Waste Disposal Records

- (1) A person who disposes liquid waste shall maintain monthly records of the liquid waste discharged in terms of quantity and quality in accordance with the Waste Disposal Control Plan approved by the Authority.
- (2) The waste disposal records shall be submitted to the Authority and verified by the Authority on a quarterly basis.
- (3) The waste disposal records shall be maintained and shall be available for inspection by the Authority.
- (4) Any person who falsifies information about the waste disposed into a water resource, in the records submitted to the Authority commits an offence and is liable, on conviction, to the penalties specified in the Act.

- (5) The falsification of information in the waste disposed into a water resource may be used by the Authority as a basis for the cancellation of the waste disposal permit.

65. Consideration of category waste disposal applications

- (1) The Authority shall consider an application for a waste disposal permit falling into Category A using the specified procedure for consideration of Category A applications.
- (2) The Authority shall process Category B, C and D applications for waste disposal permits using the procedures provided for consideration of applications for category B, C and D.
- (3) Where the Authority is satisfied that the waste discharge to a water resource meets the limits stipulated by the Authority, the Authority may issue an authorisation and append the necessary conditions including volume and waste discharge requirements.

66. Issuance of waste disposal permits

- (1) Upon inspection and approval of the authorised waste discharge works, the Authority shall issue a waste disposal permit and shall append the necessary conditions including limits to and monitoring frequency for volume and quality of effluent discharge.
- (2) A water service provider shall provide effluent quality and quantity data to the Authority on a quarterly basis for the facilities supplied with water including those connected and discharging into a sewer line.

67. Spillage

- (1) No person shall wilfully and deliberately allow any substance to spill out into any water resource or onto land where such spillage may contaminate a body of surface or groundwater.
- (2) In the event of accidental spillage where such spillage may contaminate a body of surface or groundwater, the person in charge of the spilt substance shall immediately, and in any case within twenty four hours, inform the Authority of the accident, urgently take measures to prevent spread of the spillage and take remedial measures as may be required by the Authority to mitigate against likely adverse effects to water resources.
- (3) The Authority shall upon receiving information of a spillage, take measures to notify the public of the spillage and cause appropriate action to be taken to address likely adverse effects of the spillage on water resources.
- (4) The costs incurred by the Authority in regard to notifying the public and addressing the spillage shall be recovered from the person in charge of the spilt substance as a debt.
- (5) Any owner of a spilt substance who fails to inform the Authority immediately after spillage or fails to take immediate action to prevent spread of the spillage and its likely adverse effects to water resources commits an offence and is liable on conviction to the penalty specified under these Regulations or the Act.
- (6) The Authority shall undertake periodic assessment of pollution impacts to various water resources and as necessary issue precautionary public notices in line with the precautionary principles.
- (7) The Authority may require, in a format prescribed by the Authority, information and reports of the annual state of any infrastructure that may cause spillage or compromise a water resource.

68. Water quality monitoring

- (1) The Authority may inspect any premises and sample any sources of water pollution for water quality monitoring without the need to give prior notice of the inspection.

- (2) A person, who obstructs, constrains or prevents an inspector who has identified himself or herself from undertaking a pollution control inspection commits an offence and is liable, on conviction to the prescribed penalties under these Regulations.

69. Water quality, liquid waste disposal and effluent discharge data

- (1) The Authority shall maintain a water quality database that will include effluent discharge data.
- (2) The Authority's shall maintain data on it's website and at the Authority's offices during normal office hours and any person may obtain a copy of such data from the Authority on the payment of the fees specified in the Second Schedule.

70. Water quality sample procedure

- (1) In the event that an inspector intends to take a water quality sample for purposes of prosecution, the procedure stipulated in the Eleventh Schedule shall apply.
- (2) The Authority may, notwithstanding the procedures prescribed in the Eleventh Schedule, install automatic water quality monitoring and sampling equipment for any purpose.

71. Pollution control enforcement

The Authority may, with good cause, order any person or entity being the landholder or occupier or having charge over a piece of land to put in place adequate measures for the safe disposal of, solid or other wastes including agricultural chemicals present on the land which may present a risk to the water resource quality.

Part VII – WORKS

72. Inspection of works prior to, during and post construction

The Authority may undertake an inspection or series of inspections of the site associated with a proposed, ongoing, existing or abandoned water works.

73. Temporary works

- (1) Where it is necessary for purposes of a construction activity to divert, abstract, impound, obstruct, store or use water temporarily, an application shall be made to the Authority for a permit for temporary waterworks.
- (2) A permit for temporary waterworks shall authorise the diversion, abstraction, impoundment, obstruction, storage or use of water temporarily to such extent only as may be necessary for such construction, and at such times and in such manner as to interfere as little as possible with the works of other operators and cause as little damage as possible to property.
- (3) The holder of a temporary waterworks permit shall be liable for any interference or damage resulting from the temporary works.
- (4) All temporary works shall be removed by the temporary works permit holder within a period of three months, or such other period as the Authority may specify, from the date of completion of the works which made it necessary to acquire the temporary waterworks permit or from the date of expiry of the authorization, whichever is earlier:

Provided that any quarries, burrow-pits, excavations, cuttings, tunnels or other temporary works which cannot be economically rehabilitated or removed shall instead be rendered safe in the interest of the health and safety of person and property by fencing or such other measure as the Authority may consider necessary.

- (5) In the event that any temporary works are not removed, rehabilitated or rendered safe within the prescribed period, the Authority shall issue an order for the removal, rehabilitation or rendering safe of the works.
- (6) A person who fails to comply with an order issued by the Authority under this regulation commits an offence and is liable on conviction to the penalties prescribed in these Regulations or the Act.

74. Abandoned Works

- (1) Despite, the abandonment or cancellation of an authorization or permit or any part thereof, the owner or permit holder, is liable for any damage resulting from any works constructed, operated or maintained by the permit holder, or for any defect or insufficiency in the works.
- (2) The Authority may, within six months of the cancellation or expiry of an authorization or permit, serve upon the permit holder or former permit holder whose authorization or permit has been cancelled or expired, an order for the disposal of all or any portion of the works previously used under the authorization or permit.
- (3) A person who fails to comply with the order on abandoned works commits an offence.

Part VIII – CONDITIONS OF AUTHORISATION, PERMITS AND APPROVED WATER USES

75. Compliance with the Environmental Management and Coordination Act

The Authority shall require an applicant as a condition to the grant of a water resource use permit to—

- (a) provide evidence of compliance with the provisions of the Environmental Management and Coordination Act ([No. 8 of 1999](#)) regarding integrated environmental assessments, and any other provisions as the Authority may deem necessary; and
- (b) if not already a member, join and maintain membership of a water resource users association.

76. Inspection

- (1) The Authority may place on any authorisation or permit, a schedule of inspection by an inspector which may be at specified intervals or at the completion of specified milestones during the construction of any works.
- (2) Any person who undertakes any activity that damages or hinders the proper functioning of the water resource monitoring network shall be given the opportunity of meeting the cost of repair, within a period of time determined by the Authority.
- (3) Any person under subregulation (2) who fails to make good the damage or cover the costs of repair, commits an offence and is liable on conviction to the penalties prescribed under these Regulations and the Act.

77. Controlling and measuring devices

- (1) Within two years of the coming into effect of these Regulations, every Category B, C or D water user, whether for water abstraction or effluent discharge, shall install an automated measuring meter or smart meter for the accurate measurement of water abstracted, obstructed or diverted and the effluent discharged.
- (2) A Category B, C or D water user shall inspect, or cause to be inspected, at such intervals as may be necessary, any automated measuring meter or "smart" meter prescribed in the permit in order to ensure that the quantity of water abstracted, diverted or stored, or effluent discharged is accurately measured.

- (3) A permit holder shall ensure that every adjustable device or controlling device, including any sluice gate, valve or other works, where such device or work is used to control the quantity of water diverted, abstracted or stored, or effluent discharged, has a means of locking it sufficiently to prevent any unauthorized person from interfering with such adjustable device or controlling device.
- (4) The keys of such locking device or works shall be immediately availed to an officer of the Authority when required provided that the locking device may be designed in such way that two people shall be required to operate it during opening and locking.
- (5) Any measuring device used for the purpose of measuring abstraction or effluent discharge shall be calibrated and such calibration results shall be made available to the Authority upon request.
- (6) The calibration of the flow measuring device may be verified by the Authority or an agent of the Authority.
- (7) In case of doubt over the accuracy of a flow measuring device the Authority may require the accuracy of the device to be verified and where required, the device shall be recalibrated at the cost of the permit holder.
- (8) A measuring device shall be automated and be in the form of a calibrated meter for piped or pumped systems and a calibrated weir or flume for open channel abstraction or discharge systems, or other appropriate device approved by the Authority.
- (9) The controlling device shall be located at the point where the water is abstracted or diverted or the liquid waste discharged or at a point approved by the Authority while a measuring device shall be located at a point approved by the Authority.
- (10) Where a water user fails or neglects to comply with any order given under this regulation, the Authority may take such steps as it may consider necessary to execute the order, and any expenses incurred in taking such steps shall be recoverable as a civil debt from the water user or person upon whom such order is made.
- (11) The automated meters and measuring devices installed under these Regulations shall be sealed by the Authority with an approved seal bearing the Authority's distinguishing brand or mark impressed thereon.
- (12) Where any seal affixed is broken without the approval of the Authority, the water user upon whose premises the seal was placed commits an offence and is liable on conviction to the penalties prescribed under the Act:

Provided that, where it can be proved that the offence was committed by some person other than the water user, that person shall be punishable as if he were the water user upon whose premises the breach occurred.

78. Limitation of flow or quantity

- (1) Notwithstanding the quantity of water granted by the permit, a permit holder shall not abstract or divert more water from a body or bodies of water than can, for the time being, be beneficially used by him or her in accordance with the terms of his or her permit.
- (2) Having due regard to the priority of the purpose for which the water is granted, a permit holder shall, on being so directed by the Authority—
 - (a) abstract, impound, or divert the quantity of water which may be necessary for his or her purpose at such times and in accordance with a schedule of abstraction that encompasses all other permit holders using the same body of water, or other body of water, as may, in the opinion of the Authority, secure the most equitable use of water; and
 - (b) discharge the quantity of water in accordance with a schedule of releases that encompasses all other permit holders using the same body of water, or other body of water, as may, in the opinion of the Authority, secure the most equitable use of water.

79. Collection and submission of abstraction, water quality and effluent discharge data

- (1) Each Category B, C or D permit holder is required to maintain a record of the daily abstraction or effluent discharge, in cubic metres per day, made by him or her.
- (2) The record shall state the permit number, date and volume of abstraction or discharge.
- (3) The records for abstraction or discharge for the preceding twenty-four months shall be available for inspection by the Authority.
- (4) The Authority may require an applicant for water use, or applicant for permit renewal to take water quality samples and cause the samples to be analysed at the permit holder's cost in a water quality laboratory approved by the Authority.
- (5) Where the water analysis results show that the water is not fit for human consumption, the water use permit shall be conditional on the requirement that appropriate treatment is undertaken and evidence provided to the Authority before the water may be used for human consumption.

80. Airline

- (1) Every permit holder, shall install an airline in his or her boreholes, such that the measurement of water levels is possible by the Authority or any authorised person.
- (2) A permit holder who fails to install an airline commits an offence and is liable on conviction to the penalties prescribed under the Act and these Regulations.

81. Water resources inspector

- (1) The Authority may, in writing, authorize any person employed in the public service, or any servant, agent or contractor of such person, to perform any of the powers, duties or obligations vested in it by these Regulations.
- (2) The following persons shall perform the duties and have the powers of a water resources inspector —
 - (a) any person appointed to a post that is equal to or more senior than that of a water resources officer or water rights officer in the Authority;
 - (b) persons other than officers of the Authority, appointed by the Authority by notice in the *Gazette*, as water resources inspectors, which persons may receive such payment in respect of their services as the Authority may determine;
- (3) Every person appointed to perform the duties of a water resources inspector shall carry a document of identification and shall produce the document when required in the performance of his or her duties.

82. Water resources data

- (1) The Authority shall, on the basis of data gathered by or submitted to it maintain a database for purposes of water resource management.
- (2) The database shall contain data on climate, surface water, groundwater, water quality, catchment conditions, abstractions, permits, water use and any other data relevant to the management of the water resources.
- (3) Any person requiring water resource data from the Authority shall apply for such data in writing and pay for the data according to the fees prescribed in the Second Schedule, except where the Authority is satisfied that the data is to be used for research or non-commercial purposes.
- (4) In responding to a request for data the Authority shall be guided by Article 35 of the Constitution of Kenya.

- (5) A person who sells any data obtained from the Authority or transfers such data to a third party commits an offence.
- (6) The Authority shall not be held liable for any errors or omissions in its data.
- (7) A person who uses the citation for a publication that derives data from the Authority shall submit to the Authority such citation with a brief summary of the publication within thirty days of the date of publication.

83. Register of water Bodies

- (1) To the extent practicable, the Authority shall maintain a register and map of all water bodies which shall contain the official name and class (if any) of each water body.
- (2) The official name of the Register shall be determined by the Authority after consultation with other government departments and other stakeholders.

Part IX – WATER USE CHARGES

84. Water use charges

- (1) A person in possession of a valid water use permit or who is required to have a valid permit for water use, shall pay to the Authority water use charges on the basis of the water abstracted, diverted, obstructed or used including energy derived from a water resource at the appropriate rate as set out in the Second Schedule.
- (2) A person in possession of a valid water use permit or who is required to have a valid permit for water use shall pay in addition to the water use charge, a levy amounting to 5 percent of the monthly water use charge as a water conservation levy.
- (3) Water use charges payable to the Authority under subregulation (1) shall be used by the Authority to meet the costs of discharging the regulatory functions pursuant to section 12 of the Act together with reasonable overhead and incidental costs incurred in exercising its mandate.
- (4) The monies collected by the Authority as a water conservation levy shall be segregated from the water use charges and reported on separately and, on the basis of agreements entered into between the Authority and county government entities and water resource users associations used to finance part of the costs of the implementation by water resources associations and county government entities of catchment or sub-catchment soil and water conservation plans.
- (5) Payment of water use charges and conservation levies shall be made to the Authority by the 15th day of every month for water used in the preceding calendar month.
- (6) With the approval of the Authority, payment of the water use charge and conservation levies may be remitted to the Authority in instalments exceeding monthly instalments.

85. Annual adjustment of water use charges

The Authority shall adjust the water use charges annually in order to give effect to indexation by reference to the officially published annual inflation index.

86. Review of water use charges

The Authority may at any time, following public consultation, review and gazette new water use charges on the basis of—

- (a) a significant increase in the cost of regulating the water resources;
- (b) the desire that water use charges facilitate water resources demand management; and

- (c) any other criterion that the Authority may consider appropriate.

87. Automated measuring device

- (1) A permit holder or any person who is required to have a valid permit shall ensure that there is an automated measuring device for the assessment of the quantity of water used with respect to each permit.
- (2) The permit holder shall take readings from the measuring device and submit the readings to the Authority in the Form WRA 015 set out in the Thirteenth Schedule.
- (3) In the event that the permit holder does not submit readings of the quantity of water used, the Authority shall take readings of the quantity of water used provided that if the Authority reasonably believes that the meter readings are inaccurate, the Authority shall make a fair estimate of the quantity of water used.
- (4) In making the assessment, the Authority shall be guided by the allocation in the permit and by observations and evidence of water use activities.
- (5) In the event that the assessed quantity of water used, as determined by the Authority, is 25 percent more or less than the permitted allocation, taking into account seasonal variations, the Authority may re-evaluate and vary the permitted allocation.
- (6) Where the permit holder and the Authority cannot agree on the assessment of the quantity of water used, then the opinion of the Authority shall prevail and the permit holder shall pay the amount assessed by the Authority.
- (7) The permit holder may lodge a complaint under these Regulations notwithstanding having made the payment under subregulation (6).
- (8) Without prejudice to the provisions of subregulation (6), the Authority shall be at liberty to adopt alternative methods in assessment of water use charges including reference to crop production, resources extracted and similar methods.

88. Time limitation on arrears

- (1) Where the Authority discovers that a permit holder, or a person who is required to have a water permit, has not paid water use charges, the Authority may charge arrears.
- (2) Where the Authority discovers that a permit holder has tampered with or has caused such meter to be tampered with and under declared his or her water use, the Authority shall be entitled to charge for the under declared water use in arrears.

89. Groundwater conservation charge

An additional 10 percent shall be added to the water use charges payable for any water use within a groundwater conservation area or protected area gazetted under the Act to cover for the cost of enhanced regulation required in such areas.

90. Penalty for over-abstraction

In the event that the water abstracted exceeds the permitted amounts by over 5 percent, the excess shall be charged at a penalty rate of ten shillings per cubic metre.

91. Waiver of premium payable

- (1) A water user in possession of a valid permit who has installed and used water from its own flood water storage facilities shall be entitled to a waiver of the premium payable under applicable Regulations on use of water from a regulated watercourse.

- (2) The waiver shall only apply in the case of storage that equals or exceeds ninety days water demand otherwise the premium payable shall be calculated on a pro rata basis.

92. Penalty for failure to use automated measuring device

If the assessment of the water used is not based on continuous measurement by means of an automated and appropriately sealed flow measuring device, a penalty of 10 per cent shall be charged on the full amount of water used.

93. Revenue collection agents

The Authority may appoint revenue collection agents and shall pay for the cost of the services rendered.

94. Modes of payment

Water use charges shall be paid directly to the Authority or where applicable to a revenue collection agent.

95. Interest for late payment

Late payment of water use charges shall attract a simple interest charge of 2 percent per month until the whole amount is paid in full.

96. Failure to pay water use charges

- (1) Failure to pay the appropriate water use charges is a breach of the conditions of a permit and may be a basis for the revocation or suspension of the permit.
- (2) The Authority may within fourteen days, following notice given to the permit holder, suspend, initiate the cancellation process or vary in whole or in part the permit if the permit holder fails to pay in full the water use charges for any one payment period for a period of four months after the due date.
- (3) Any permit holder whose permit has been suspended, cancelled or varied due to non-payment may not apply for a lifting of the suspension or a new permit or amendment until the outstanding amount and any associated cost is paid in full.
- (4) Any application for a new permit or amendment of an existing permit shall not be considered if the permit holder has arrears.
- (5) A person who reconnects abstraction facilities without permission from the Authority, after the Authority disconnects or dismantles an intake or abstraction equipment or facility, due to nonpayment of water use charges, commits an offence.

Part X – WATER RESOURCE USERS ASSOCIATIONS

97. Registration and Operation of associations

- (1) A water resource user association shall register with the Authority by submitting Form WRA 018 in the Thirteenth Schedule.
- (2) For a water resource users association to qualify for registration by the Authority, it shall—
 - (a) be registered under the Societies Act (Cap. 108) as an Association:

Provided that prior to the registration, the association shall seek a letter of no objection from the Authority;

- (b) have a constitution conducive to collaborative management of the water resources of a particular sub-catchment and which promotes public participation, conflict mitigation and resolution, gender main-streaming and environmental sustainability;
 - (c) have a delineated boundary map of its coverage area;
 - (d) submit minutes of the meeting of elections of its officials and a list of members.
- (3) The Authority shall respond in writing within thirty days of the receipt of the application for registration of a water resource users' association.
- (4) If after thirty days there are no objections or if any objections received have been satisfactorily addressed, the Authority shall issue the association with a certificate of registration in Form WRA 019 set out in the Thirteenth Schedule and enter its name in the Register of water resource users associations.
- (5) A Water resource user association's operations shall be guided by the following—
 - (a) its Plans shall be facilitated by the Authority and any review sanctioned by the Authority;
 - (b) it shall receive and utilize funds with approval from the Authority in related water resource management activities;
 - (c) it must adhere to its Constitution and shall not develop by laws that contradict the Constitution;
 - (d) it shall submit an annual report to the Authority and as when required;
 - (e) it shall make annual returns to the Registrar General and share the same information with the Authority; and
 - (f) it shall not engage in any political activity.
- (6) Without prejudice to subregulation (5), the Authority shall develop standards, guidelines and manuals of water resource users associations that shall contain the following—
 - (a) training manuals for association;
 - (b) association's institutional framework;
 - (c) operations guidelines;
 - (d) financing framework;
 - (e) reporting guidelines; and
 - (f) guidelines on preparation of Sub Catchment Management Plans.
- (7) For a water resource users association to qualify to enter into a tripartite water resource management Memorandum of Understanding with the Authority and the respective county government, it shall—
 - (a) be registered under the Societies Act (Cap. 108);
 - (b) have a constitution that promotes collaborative management of a water resource or resources, active membership open to all water users in the area and public participation, conflict mitigation and resolution, gender main-streaming and environmental sustainability;
 - (c) have a sub-catchment management plan developed in line with the basin area water resources management strategy in accordance with section 29 (3) of the Act;
 - (d) have a functioning and duly functioning management committee;
 - (e) have requisite technical, administrative and organizational capacity to perform the functions specified in the Memorandum of Understanding; and

- (f) have a record of compliance with financial procedures and obligations, including the remittance of statutory deductions, income tax and other applicable taxes.
- (8) Where a water resource users' association traverses more than one County, the Memorandum of Understanding shall be between the Authority, the water resource users associations and all the counties traversed by the water resource users associations.
- (9) The conditions for entering into the Memorandum of Understanding shall be as provided under the requirements in subregulation (7).
- (10) The Authority, county government and the water resource users associations shall before entering into a water resource management Memorandum of Understanding—
 - (a) identify the sub-basin and water resource proposed to be subject of the agreement including on a map; and
 - (b) assess and agree on a proposed mechanism for collaborative management of the water resource.
- (11) The Authority shall maintain a Register of water resource users associations in the Form R001 set out in the Thirteenth Schedule.
- (12) The Authority shall publish on its website annually, details of
 - (a) registered water resource users associations;
 - (b) water resource users associations under suspension;
 - (c) deregistered water resource users associations
- (13) A person may make a written application to the Authority for certified copies of the information in subregulation (12) upon payment of the prescribed costs.
- (14) Whenever the particular details of the water resource users' associations change in Form WRA 018 in the Thirteenth Schedule should be re-submitted to the Authority.
- (15) The Memorandum of Understanding shall identify modalities for administrative technical or financial support to the water resource users associations by the Authority and county government in respect of activities related to collaborative water resource management.
- (16) Without prejudice to financial support mechanisms referred to in subregulation (12), the Authority shall equitably allocate financing to water resource users associations for conservation and management of water resources.
- (17) The Authority may with good cause suspend a water resource user association from its register of water resource users associations in the following circumstances—
 - (a) if the association fails to adhere to its own Constitution;
 - (b) if the association becomes deregistered under the Societies Act (Cap. 108);
 - (c) if the association breaches any conditions under these Regulations or fails to honour the tripartite Memorandum of Understanding with the Authority and the county government; or
 - (d) any other justifiable cause which in the view of the Authority undermines the objectives of association.
- (18) Where the Authority intends to remove a water resource users associations from its Register of water resource users associations, it shall give the water resource user association thirty days' notice in writing to show cause why it should not be suspended and during this period, the associations shall be suspended.

- (19) During the period a water resource user association is suspended, it shall not be engaged in any activities related to any Memorandum of Understanding entered into with the Authority and county government, without the approval of the Authority.
- (20) The Authority may lift the suspension upon being satisfied that the water resource users' association has taken corrective measures on the issues that led to the suspension.
- (21) Failure to take corrective measures, within a specified time, the Authority shall remove the water resource user association from its register and the association shall cease to be engaged in any water resource management activity covered under any Memorandum entered into with the Authority and county government.
- (22) The registration of a water resource user association with the Authority does not confer any legal standing on the association, but serves only to affirm the entity considered by the Authority to be a water resource users associations for a particular water resource.
- (23) The officials of any water resource user association under suspension that violates the conditions of the suspension, or of any water resource user association that has been removed from the register that engages in water resources management activities covered in the Memorandum of Understanding entered into with the Authority commits an offence.

Part XI – BASIN WATER RESOURCES COMMITTEES

98. Consideration of Category B, C and D applications

- (1) Following the establishment of the basin water resources committees, all Category C and D water use applications shall be submitted by the regional office of the Authority for consideration and advice before the Authority makes a decision on the application.
- (2) The Authority shall take into account the advice of the basin water resources committee in making its decision and where the decision differs from the advice in any material particulars the Authority shall before implementing provide to the members of the committee the reasons for departing from the advice of the committee.
- (3) Where an applicant for a water use permit appeals against the decision of the Authority the reasons for the decision of the Authority, the advice of the basin water resources committee and the explanation provided to the committee for departing from its advice will be disclosed to the Tribunal and to the appellant.

99. Quorum of basin water resource committee

- (1) Notwithstanding the First Schedule of the Act, provisions of Basin Area Management Strategies developed under section 28 of the Act in respect to soil and water conservation for implementation by County Governments or the operations of a water resources users association in implementing sub-catchment management plans in the sub-basin is to be discussed, the committee shall only be quorate if at least one-third of the county governments participate in the meeting at which that item is to be discussed.
- (2) Subregulation (1) shall not limit or in any way constrain the basin water resources committee in discussing and determining an application for a water use permit or its cancellation or suspension or the recommendation for the taking of other enforcement action by the Authority against a permit holder.

100. Regional offices

- (1) The regional office of the Authority shall facilitate the work and activities of the committee through the provision of technical, administrative, financial, logistical and other support.

- (2) The regional officer of the Authority in charge of the basin area shall provide secretariat services to the basin water resources committee.
- (3) The Authority shall make requests in accordance with the provisions of the Public Finance Management Act (Cap. 412A) for budgetary allocation to be utilized for the payment of salaries, allowances and other expenses of the basin water resources committees as determined under section 26(7) of the Act.

101. Publication of committee reports

- (1) A basin water resources committee shall publish each year, a report of its activities for the government financial year.
- (2) A copy of the report shall be submitted by the Authority to each county government within the area of the basin and where appropriate the Authority shall convene a meeting of the county governments in the basin to discuss the report and identify priorities for action in the following year.

Part XII – PROTECTED AREAS AND GROUNDWATER CONSERVATION AREAS

102. Identification of protected or designated groundwater conservation areas

- (1) Pursuant to sections 22 and 23 of the Act, the Authority may identify a catchment area, part of a catchment area or water resource to be identified as areas to be protected or designated as groundwater conservation areas if the Authority is satisfied that doing so is necessary for the protection of the water resource and its multiple uses.
- (2) In identifying a protected area or groundwater conservation area, the Authority shall be guided by the criteria shown in the Seventh Schedule and any other relevant considerations.
- (3) The Authority shall in conjunction with relevant institutions and stakeholders, describe the boundaries of the proposed protected area or ground water conservation area for gazettment.

103. Management Regulations

- (1) The Authority shall, in conjunction with relevant institutions and stakeholders, establish management regulations or plans that shall apply to each protected area or groundwater conservation area.
- (2) The management regulations or plans shall contain the items listed in the Seventh Schedule.
- (3) A person who fails to comply with the gazetted management regulations or plans commits an offence.

104. Public Consultation

The Authority shall undertake public consultation with respect to the establishment of areas to be protected or designated as groundwater conservation areas and the management regulations or plans that shall apply with respect to these areas.

Part XIII – THE RESERVE

105. Composition of the Reserve

The Reserve in all instances shall comprise of one element related to the quantity of the resource and the respective probability associated with that quantity and a second element related to the quality of the resource.

106. Reserve Quantity

- (1) In all instances where water resource records are available, the Authority shall establish the Reserve.
- (2) The Reserve Quantity for—
 - (a) streams and rivers, shall not be less than the flow value that is exceeded ninety-five per cent of the time as measured by a naturalised flow duration curve at any point along the water course;
 - (b) lakes and naturally occurring stagnant waters, shall not be less than the water volume that is exceeded ninety-five per cent of the time as measured by a naturalised volume duration curve or, failing bathymetric data, a naturalized level duration curve;
 - (c) aquifers shall be the Annual Potential Recharge minus the Groundwater Potential as determined by the Authority; and
 - (d) aquifers whose recharge rate has not been determined by the Authority, for each point of abstraction shall be seventy-five per cent of the tested yield expressed in cubic metres per day as determined by test pumping analysis.
- (3) In all instances where water resource records are not available or where there are significant ambiguities, the Authority shall establish the Reserve and shall be guided by—
 - (a) ecological vulnerability;
 - (b) vulnerability of local populations dependant on that water resource;
 - (c) local observations with respect to the naturalised flows or water levels of minimum values observed during periods of prolonged droughts;
 - (d) in all instances where water flow is known to be normally perennial, then the Reserve Quantity shall be sufficient to ensure perennial flow;
 - (e) consultations with the water resources users associations if such exist.

107. Information on and protection of the Reserve Quantity

- (1) The Authority shall make the Reserve information on water resources accessible to the public.
- (2) Any person may make a verbal or written report or complaint to any office of the Authority within the relevant catchment or to the Chief Executive Officer if—
 - (a) he or she is unable to obtain sufficient water from the water resource for basic human needs as a result of the Reserve being violated;
 - (b) as a result of his or her observations, she or he considers that the ecology is threatened as a result of the Reserve being violated.
- (3) Each complaint or report registered with the Authority in regard to a violation of the reserve quantity or quality, shall be given a Complaint Number by the Authority which shall be used for purposes of monitoring the response to the complaint or report.

- (4) In any instance where a complaint or report has been registered with the Authority in regard to a violation of the Reserve Quantity or Quality, the Authority shall take measures within forty-eight hours to respond to the complaint or report including activities listed in the Eighth Schedule.
- (5) Within thirty days after each report of a Reserve violation, the Authority shall prepare a report detailing the nature of the reserve violation and the measures taken to restore the Reserve.
- (6) If the Authority considers that the Reserve Quantity or Quality is threatened, it shall cause to be placed in or near the water resource or in a public place frequented by the water users of a particular resource a legible signboard displaying the current condition of the resource and action required by the water users to safeguard the Reserve.

Part XIV – REGISTRATION OF WATER SECTOR PROFESSIONALS

108. Categories of qualified water sector professionals

The categories of qualified water sector professionals shall be as shown in the Ninth Schedule.

109. Licensing of qualified water sector professional or qualified contractor

- (1) No person or entity shall carry out the work of a qualified water sector professional or qualified contractor under these Regulations unless that person has been licensed as a water sector professional by the Cabinet Secretary.
- (2) The Cabinet Secretary shall constitute and maintain a Technical Advisory Committee at all times to advise him on the registration, and all other matters regarding the conduct, of qualified water sector professionals and qualified contractors under these Regulations.
- (3) The Technical Advisory Committee shall comprise of not more than eight members excluding the Chairperson all of whom shall be appointed by the Cabinet Secretary.
- (4) Membership to the Technical Advisory Committee shall comprise of a representative from the Authority, Water Services Regulatory Board, National Water Harvesting and Storage Authority, representatives of regulatory bodies of relevant professions and representatives of professional associations.
- (5) The Cabinet Secretary shall develop administrative guidelines to govern the conduct of business of the Technical Advisory Committee and such guidelines may be revised from time to time as need arises.
- (6) No final decision on the application for licensing or conduct of a qualified contractor or qualified water sector professional under these Regulations shall be made except on the basis of a recommendation of the Technical Advisory Committee.
- (7) A final decision on the application for a licence or conduct of a qualified contractor or qualified water sector professional under these Regulations shall be communicated to the concerned party within fourteen days from the date of the decision.
- (8) Any qualified contractor or qualified water sector professional aggrieved by the final decision of the Cabinet Secretary may appeal to the Water Tribunal.

110. Persons qualifying

The following persons shall be entitled to apply for a qualified water sector professional licence—

- (a) a person who has graduated with a degree from any recognized university and who has had at least five years practical experience in a profession or discipline relevant to the management water resources or provision of water and sewerage services; and

- (b) a person who is registered member of the respective professional body where the relevant profession is governed by a professional body.

111. Professionals holding non-Kenyan qualifications

- (1) The Cabinet Secretary, may register and issue a licence to a professional holding non- Kenyan qualifications to practice as a qualified water sector professional or qualified contractor for the purpose of any specified task or in regard to a task which the person so applying for registration and licencing has been engaged to undertake under a contract with an entity established or operating under the laws of Kenya.
- (2) Every water sector professional or foreign contractor licenced under subregulation (1) during and for the purposes of completing a task shall be deemed to be a qualified water sector professional or qualified contractor.
- (3) No water sector professional or contractor holding non-Kenyan qualifications shall be entitled to carry out works until he has been licenced by the Cabinet Secretary and has paid the prescribed fee.
- (4) Where a complaint is made in respect of a water sector professional or contractor holding non-Kenyan qualifications, the Cabinet Secretary may immediately suspend the licence of such water sector professional or contractor from performing any tasks in Kenya pending the making of a final determination.

112. Application for a licence

Any individual who provides or is proposing to provide professional services related to water resources or the provision of water or sewerage services shall apply for a licence as a qualified water sector professional under the appropriate area of specialisation to the Cabinet Secretary in Form WRP 001 as prescribed in the Thirteenth Schedule.

113. Professional interview

The Cabinet Secretary, after receiving an application for a qualified water sector professional licence, may require the attendance of the applicant before the Technical Advisory Committee, and the Committee may examine or question him or her on any matter relevant to the application.

114. Qualified water sector professional licence

- (1) If, on the basis of the recommendations of the Technical Advisory Committee, the Cabinet Secretary is satisfied that the applicant is qualified to be licensed, the Cabinet Secretary shall issue a licence in Form WRP 002 in the Thirteenth Schedule for such period and on such conditions, as it may deem desirable.
- (2) A qualified water sector professional is required to pay an annual licence fee as set out in the Second Schedule.
- (3) Payments of the licence fees shall be made to the Cabinet Secretary no later than the end of the third month each year.
- (4) Failure to renew the licence fee is a breach of the conditions of the licence and shall result in the licence being suspended in which case the person may not practise as a qualified water sector professional.
- (5) A suspended licence may be reinstated after payment of all outstanding fees.
- (6) Failure to renew the licence for a consecutive period of three years shall result in the licence being revoked.

115. Codes of Practice for qualified water sector professionals

- (1) The Cabinet Secretary shall in consultation with the relevant professional bodies develop and publish Codes of Practice to regulate the various professions.
- (2) All qualified water sector professionals shall comply with the applicable Codes of Practice.

116. Register of qualified water sector professionals

- (1) The Cabinet Secretary shall keep a Register in accordance with the Thirteenth Schedule of all qualified water sector professional licences issued under these Regulations providing for different classes of approved water sector professionals.
- (2) The Cabinet Secretary shall, once in every year and not later than the 30th April, publish in the *Gazette* a list containing—
 - (a) the names and addresses of all licensed qualified water sector professionals; and
 - (b) the names and addresses of qualified water sector professionals deleted from the Register.
- (3) A qualified water sector professional shall inform the Cabinet Secretary in writing of any change in the particulars of his or her licence within twenty-eight days of such change.
- (4) A qualified water sector professional who fails to notify the Cabinet Secretary of any changes in the licence may face disciplinary action, including suspension of the licence.

117. Complaints

- (1) A complaint may be made to the Cabinet Secretary against any person licensed as a qualified water sector professional under these Regulations if the professional—
 - (a) is incapable of carrying out the work of a qualified water resource professional;
 - (b) is unfit, on account of any reason, to practise as a qualified water resource professional;
 - (c) has failed to comply with or is in breach of the conditions of his or her licence or any provisions of the Act or of these Regulations; or
 - (d) is guilty of professional malpractice or negligence in the performance of his duties.
- (2) The Cabinet Secretary shall refer all complaints received against water sector professionals to the Technical Advisory Committee which shall hold an inquiry within thirty days of the complaint being lodged, and if after such inquiry the Technical Advisory Committee is satisfied that the complaint is justified, the Committee shall provisionally suspend the licence of the professional and immediately thereafter submit its findings to the Cabinet Secretary with a recommendation of the appropriate action.
- (3) A water sector professional found culpable of professional misconduct shall be subject to the cancellation or suspension of his or her licence, the removal of his name from the register and notification of the suspension or cancellation of the licence in the *Gazette* and websites of the relevant regulatory authorities.
- (4) Pending the decision of the Cabinet Secretary on the recommendation of the Technical Advisory Committee, the water sector professional shall, on the basis of the provisional suspension of the licence, cease to undertake any professional assignments in the water sector.
- (5) The person against whom a complaint has been made shall be entitled to appear and be heard at such inquiry, before his or her case is determined.
- (6) Any person whose licence has been suspended or cancelled or whose name has been deleted from the register of qualified water sector professional under subregulation (3) may, within thirty days of the date of notification of such cancellation and deletion, appeal to the Water Tribunal.

118. Validity of certificates, documents or plans

- (1) No certificate, document or plan required by the Act or these Regulations to be signed by a qualified water sector professional shall be valid unless it is signed by a person whose name is in the register referred to in these Regulations and who is not at the time of signing under a suspension.
- (2) Despite subregulation (1), an officer of the Ministry, if he or she is so authorized to sign by the Cabinet Secretary, shall be deemed to be a person whose name is in the said register.

119. Misrepresentation as licensed qualified water sector professional

Any person who wilfully and falsely takes or uses any name, title or addition implying that he or she is a qualified water sector professional licensed under these Regulations commits an offence and is liable on conviction to the penalties prescribed under section 147 of the Act.

Part XV – LICENSING OF CONTRACTORS**120. Categories of qualified contractors**

The categories of qualified contractors shall be as shown in the Ninth Schedule.

121. Criteria for qualified contractors

- (1) The Cabinet Secretary shall develop detailed criteria for different categories of qualified contractors.
- (2) The detailed criteria, which shall be provided to any person upon request, shall be based on the following
 - (a) plant and equipment;
 - (b) qualifications and experience of professional staff;
 - (c) past experience and performance;
 - (d) any other criteria that the Authority considers to be relevant.

122. Application to register as qualified contractor

- (1) Any individual, corporate entity, non-governmental or charitable organisation, or public body that constructs or is proposing to construct, modify, rehabilitate or service water works shall apply for registration under the appropriate category as a qualified contractor to the Cabinet Secretary, in the Form WRC 001 in the Thirteenth Schedule.
- (2) No contractor shall be licensed or continue to hold a valid licence as a qualified contractor unless he is in possession of a valid certificate issued by the National Construction Authority for the category of works he proposes to undertake.

123. Qualified contractor licence

- (1) The Cabinet Secretary shall verify the details of the application by visiting the premises and reviewing the state of the equipment and the experience and qualifications of the applicant and his, her or its staff.
- (2) If the Cabinet Secretary is satisfied, on the basis of recommendations of the National Construction Authority, Regulatory Board or Storage Authority as appropriate, that the applicant is qualified to be licensed, the Cabinet Secretary shall issue a licence in the Form WRC 002 in the Thirteenth Schedule for such period and on such conditions as he or she may deem suitable.

- (3) A qualified contractor shall pay the annual licence fee set out in the Second Schedule and payments shall be made to the Cabinet Secretary no later than the end of the third month in each calendar year.
- (4) A qualified contractor who fails to renew the licence fee is in breach of the conditions of the licence and the Cabinet Secretary may suspend the licence.
- (5) A suspended licence may be reinstated after payment of all outstanding fees.
- (6) Failure to renew the licence for a consecutive period of three years shall result in the licence being revoked.

124. Verification of necessary and valid authorisation

- (1) A contractor engaged to undertake any works shall verify that all necessary and valid authorisations have been obtained by the client in regard to the proposed works prior to commencement of the works.
- (2) Commencement of works by the contractor without having verified the availability of the required authorisations may be used as a basis by the Cabinet Secretary to take disciplinary action, which may include the de-registration of the contractor.

125. Code of Practice for qualified contractors

- (1) The Cabinet Secretary shall in consultation with the relevant professional bodies develop and publish a Code of Practice to regulate contractors.
- (2) All qualified contractors shall comply with the Code of Practice.

126. Complaints

- (1) A complaint may be made to the Cabinet Secretary against any person licensed as a qualified contractor under these Regulations if such contractor—
 - (a) is incapable of carrying out the work of a qualified contractor;
 - (b) becomes unfit, through any reason, to practise as a qualified contractor;
 - (c) fails to comply with the conditions of his or her licence or any provisions of the Act, or of these Regulations; or
 - (d) is guilty of malpractice or negligence.
- (2) The Cabinet Secretary shall hold an inquiry within thirty days of the complaint being lodged and if after such inquiry the Cabinet Secretary is satisfied that the complaint has been justified, the Cabinet Secretary shall take disciplinary action which may include suspension or cancellation of the licence of the contractor and if the licence is cancelled the name of the contractor shall be deleted from the register of qualified contractors.
- (3) The contractor against whom a complaint has been made shall be entitled to appear and be heard at such inquiry, before the case is determined.
- (4) A contractor whose licence has been suspended or cancelled and whose name has been deleted from the register of qualified contractors under subregulation (2) may, within thirty days of the date of notification of such suspension or cancellation and deletion, appeal to the Water Tribunal.

127. Register of qualified contractors

- (1) The Cabinet Secretary shall keep a register as set out in the Thirteenth Schedule of licences for qualified contractors issued under these Regulations.

- (2) The Cabinet Secretary shall, once in every year and not later than the 30th April, publish in the *Gazette* a list containing
 - (a) the names and addresses of all licensed qualified contractors; and
 - (b) the names and addresses of qualified contractors deleted from the Register.
- (3) A qualified contractor shall inform the Cabinet Secretary in writing of any change in the particulars of his or her licence within twenty-eight days of such change.
- (4) A qualified contractor who fails to notify the Cabinet Secretary of any changes in the licence may face disciplinary action, including suspension of the licence.

128. Misrepresentation as qualified contractor

Any individual, corporate entity, non-governmental or charitable organisation, or public body who wilfully and falsely takes or uses any name, title or addition implying that he, she or it is a qualified contractor licensed under these Regulations commits an offence.

Part XVI – MISCELLANEOUS

129. Recognized water quality laboratories

A water quality laboratory which is registered, accredited or gazetted by the National Environment Management Authority shall be recognised by the Authority.

130. Orders

- (1) The Authority may issue an Order to any person to desist from any activity, or for the carrying out of corrective measures to improve compliance to these Regulations or conditions for better water resource quality and or catchment conditions.
- (2) The Order shall be in Form WRA 015 in the Thirteenth Schedule and shall specify what measures are required to be taken, the period of time for compliance with the Order and any other conditions pertaining to compliance with the Order.
- (3) A person who has been served with an Order by the Authority and fails to comply within the stated period of time shall be considered to be in breach of these Regulations and guilty of an offence punishable under these Regulations.
- (4) Failure to comply with an Order by the Authority may be a reason for suspension, cancellation or variation of a permit in addition to any other prescribed penalties.
- (5) Any person who objects to any part of an Order served on him or her by the Authority shall respond in writing to the Authority within fourteen days, giving justification for the basis of his or her objection.
- (6) In the event of an objection to an Order, the Authority shall, within seven days of receiving the objection, notify the person served with the Order of changes to the conditions of the Order, if any.
- (7) In the event that an Order is not complied with within the timeframe stated on the Order, the Authority may take any appropriate measures to prevent the activity mentioned in the Order including the confiscation of equipment, plant or works, and any costs incurred by the Authority in effecting these measures is a cost recoverable from the recipient of the Order.
- (8) If the complainant is dissatisfied, he or she may follow the complaints mechanism as specified in these Regulations.
- (9) In the event that the Authority determines that an activity may cause deterioration of the resource quality, the Authority shall take immediate corrective measures as an emergency without reference

to the person who caused it, and any costs incurred by the Authority in effecting these measures may be recovered from the person responsible.

131. Emergency Order

- (1) In the event of unusual climatic, accidental or hydrological events, the Cabinet Secretary may impose by public notification an Emergency Order in the interests of maintaining the Reserve and domestic water supplies.
- (2) The Emergency Order shall comprise of the details listed in the Twelfth Schedule.
- (3) An Emergency Order will be lifted or varied by public notification.
- (4) Any person who fails to comply with an Emergency Order commits an offence.

132. Complaints mechanism

- (1) A person with a complaint related to any matter under these Regulations shall submit his or her complaint to the relevant department of the Authority by providing the particulars set out in the Tenth Schedule.
- (2) The Authority shall reply to the complainant, copied to all other relevant parties, within twenty-one days of receiving the complaint stating what action is being taken, the position of the Authority on the matter and any recommendation to the complainant.
- (3) If the complainant is dissatisfied with the decision made in subregulation (2), he or she may forward the matter to the Chief Executive Officer of the Authority.
- (4) The Chief Executive Officer shall reply to the complainant, copied to all other relevant parties, within twenty-one days of receiving the complaint stating the final decision of the Authority including whether the Chief Executive Officer upholds or annuls the decision as the case may be, and give reasons for his decision, and any recommendation to the complainant.
- (5) If the complainant is dissatisfied with the final decision of the Authority, he or she may appeal this decision at the Water Tribunal.
- (6) Each complaint shall be given a complaint number by the Authority which shall be used for purposes of monitoring any remedial action taken and the response to the complainant.

133. Penalties

- (1) Penalties for offences committed under these Regulations are as set out in the Fifth Schedule.
- (2) A person who commits an offence under these Regulations shall, if no other penalty is prescribed in respect of the offence, be liable to the penalty prescribed under section 147 of the Act.

134. Revocation of LN No 171 of 2007

The Water Resources Management Rules, are hereby revoked.

FIRST SCHEDULE [r. 4, 5, 6, 13(1), 14(1), 56(4), 99(1)]

WATER USE ACTIVITIES AND PERMIT DETAILS

WATER USE ACTIVITIES THAT REQUIRE APPROVAL BY AUTHORITY:

<i>Item</i>	<i>Water Use Activity</i>
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1.	Temporary abstraction for construction
2.	Diversion of water from a water course;
3.	Abstraction from surface water;
4.	Diversion of a water course
5.	Abstraction from groundwater, either by a borehole or a shallow well;
6.	Groundwater recharge augmentation;
7.	Water storage in dams and pans;
8.	Liquid waste including the effluent discharged, disposed or emitted into the environment likely to adversely impact on a water resource;
9.	Swamp, marsh or wetland drainage;
10.	Obstruction of water;
11.	In-streamworks;
12.	Mixing of waters from different water resources;
13.	Hydropower generation;
14.	Exploiting and using sea water for salt production;
15.	Dredging of the bed of a watercourse, lake, territorial sea or other water bodies;
16.	Construction of boundary walls adjoining a water body, retaining walls, dykes and similar structures;
17.	Dumping of debris or waste materials into a water resource;
18.	Reclamation of land either on account of the recession of a water body or the seabed or for other reason;
19.	Non-consumptive utilisation involving recreational activities including training exercises if routinely carried out by a group of persons either formally or informally organised;
20.	The extraction of salt or other non-living natural resources from the waters of the territorial sea or other water bodies;

21.	The extraction of geothermal resources;
22.	Drilling, tunnelling, the use of explosives, excavation, quarrying and other extractive activities into or in close proximity to a water resource;
23.	Sand harvesting.

PART 2 - ACTIVITIES FOR WHICH APPLICATION FOR VARIATION OF PERMIT SHALL BE MADE:

<i>Item</i>	<i>Activity</i>
(a)	Modifications at the point of diversion or abstraction;
(b)	Varying the water use;
(c)	Changing the point of use;
(d)	Mixing water covered under different permits;
(e)	Replacement, deepening, widening or any other modification to an existing borehole, shallow well or any water works requiring approval by the Authority;
(f)	Abandonment of an existing waterworks that would normally require approval by the Authority;
(g)	Artificial recharge of groundwater;
(h)	Any other type of water use activity that may, from time to time, be determined by the Authority

PART 3 - CATEGORY OF WATER RESOURCE USE ACTIVITIES:

<i>Category</i>	<i>Description</i>
A	Water use activity deemed by virtue of its scale to have a low risk of impacting the water resource. Applications in this category will be determined by Regional Office.
B	Water use activity deemed by virtue of its scale to have the potential to make a significant impact on the water resource. Permit applications in this category will be determined by Regional Office following consultation with the WRUA or equivalent local representative association whose objective is natural resources management and conflict resolution.

C	Water use activity deemed by virtue of its scale to have a significant impact on the water resource. Permit applications in this category will be determined by regional offices on the basis of advice of the basin water resource committee and following consultation with the concerned WRUAS local representative association(s) whose objective is natural resources management and conflict resolution.
D	Water use activity which involves either two different catchment areas, or is of a large scale or complexity and which is deemed by virtue of its scale to have a large impact on the water resource. Permit applications in this category will be determined by the Authority headquarters on the basis of the advice of the concerned basin water resource committees.

SECOND SCHEDULE [r. 10(2), 10(4), 13(1)(c), 14(1)(d), 14(2), 26(2), 27(2), 31(1), 34(1), 36(1)(b), 37(2), 39(3), 50(2), 60(3), 61(6), 69(2), 82(3), 84(1), 114(2), 123(3)]

FEES AND WATER USE CHARGES

PART A - FEES

1 GENERAL FEES

<i>Relevant Form (if applicable)</i>	<i>Description of Activity</i>	<i>Fees KSh.</i>
WRA 001A, 001B, 001C, 001D, 001E, 001F, 001G	Application for Water Permit	See second schedule, Part 2
WRA 002	Application for Easement	4000
WRA 005	Application for Extension of Time of Authorisation	4000
WRA 006	Extension of Authorisation to Construct Works	2000
WRA 011	Water Permit	See second schedule, Part 2
WRA 012	Application for Renewal of Water Permit	See second schedule, Part 2
WRA 013	Application for Variation of Water Permit	4000
WRA 014	Application for Transfer of Water Permit	4000
WRA 017	Application for Authority to Enter Land	4000

WRA 020	Application of Search of Water Permit	2000
WRA 021	Supplement to Authorisation/Supplementary Permit	6000
WRP 001	Application for registration as Qualified Water Sector Professional	6000
WRP 002	License as Qualified Water Sector Professional	6000
WRC 001	Application for registration as Qualified Contractor	10000
WRC 002	License as Qualified Contractor	10000
	Annual License Fee for Qualified Water Sector Professional	4000
	Annual License Fee for Qualified Contractor	4000
	For re-issue of or alteration to Authorizations, Permits, and Licences	4000

FEES FOR ASSESSMENT AND ISSUANCE OF WATER USE PERMITS BY CATEGORY

<i>Applications</i>	<i>Assessment of Application (Kshs)</i>	<i>Issue of Initial Permit (Kshs) (for 5 years)</i>	<i>Assessment for renewal and/or variation of Permit</i>
Water Use Category A	2,000	1,000	1,000
Water Use Category B	20,000	25,000	45,000
Water Use Category C	40,000	50,000	90,000
Water Use Category D	80,000	100,000	180,000

NOTE:

- Application fees in respect of Ground Water Permits shall be accompanied with payment for physical chemical analysis.
- For permits issued for less than 1 year, the cost of the permit will be charged on a pro rata basis.

- (c) The fees for Assessment for renewal and/or variation of Permit is inclusive of issuance of the Permit (renewal).

2. FEES FOR DATA, INVESTIGATIONS, LABORATORY ANALYSIS AND RELATED SERVICES

<i>Item</i>	<i>Type</i>	<i>Unit</i>	<i>Rate (Kshs)</i>
Groundwater Data	Basic data (WSL, WRL, Yield, Depth) up to a maximum of 10 boreholes	Per request	5,000
	Borehole or Well Completion Record (Form 008A or 008B) including test pumping	Per borehole	5,000
Hydro—meteorological Data	Rainfall (daily, monthly, or annual)	Per station record	5,000
	Climatic parameter	Per station record	5,000
	Water level and rating equations	Per station record	5,000
	discharge	Per station record	5,000
	lake/ reservoir level	Per station record	5,000
	sediment load	Per station record	5,000
Water Apportionment	Copy of Authorisation or Permit	Per copy	1,000
Water Quality Data	All parameters (up to a Maximum of 20 data sets)	Per request	5,000
INVESTIGATIONS			

Groundwater	Hydrogeological Assessment or surveys including borehole siting	Per site	40,000/- plus staff days based on contracted consultancy day rate and AA rates for mileage exclusive of lab analysis costs
Surface water	Hydrological Assessment or surveys	Per request	Ditto
WQ and pollution Control	Water Quality Assessment or surveys	Per request	Ditto
Surface water	Flow measurement	Per site	20,000/- plus staff days based on contracted consultancy day rate and AA rates for Mileage
Thematic maps and Reports	blue prints	Per copy	2,000
	coloured prints	Per A 1 copy Per AO copy	5,000 5,000
	coloured prints	Per A4 copy Per A3 copy	1,000 1,000
	Digital Maps	Per Theme	20,000

	Reports	Per page	50
Equipment Hire		Per day	As per prevailing schedule of rates issued by WRA from time to time
Copy of Register of WRUAs		Per region	5000
Copy of Register of Water Bodies		Per region	5,000
Copy of Register of Authorisations or Permits		Per 100 or part thereof	5,000
Copy of Register of Qualified Water Sector Professionals or Qualified Contractors		Per copy	5,000
Recommendations by WRUA on Application for Permit <i>Note recommendation by WRUA does not confer or imply a Permit for water abstraction by the Applicant</i>	Permit	Per Permit	2,000
Certified Copy of Register of WRUAs		Per Sub region	1,000

WRUA Development Cycle			4,000
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**PART B - WATER USE CHARGES RATES FOR WATER USE
CHARGES FOR PERMIT CATEGORIES A, B, C AND D.**

Type of Water Use	Criteria	Rate
Domestic, Public, Livestock	Domestic, public, and livestock purposes	5 Kes/m ³
Hydropower Generation	Amount of energy generated First 1 MW	No charge
	Over 1 MW	2 Kes per kWh
Irrigation	First 300 m ³ /day	2 Kes/m ³
	Over 300 m ³ /day	2.5 Kes/m ³
Fish Farming	Amount supplied	1 Kes/m ³
Commercial / Industrial	First 300 m ³ /day	5 Kes/m ³
	Over 300 m ³ /day	6 Kes/m ³
Effluent Discharge		As per the Amendments.
Salt Extraction		
Desalination		
Suspended Buildings On Lakes And Ocean		
Temporary Permit For Temporary Diversion Of Rivers/Sea/Water Courses During Construction Of Bridges		

Permit For Dredging And Training Of Rivers/Water Courses For Construction Of Roads		
Lab Analysis Charges		
Change Of Use (WR Infrastructure)		
Searches	Riparian WRUAs Wetlands Dams Swamp List of Professionals	
Data Sets	WR Maps	
Registration Of Professionals	Registration Renewal	5,000 5,000
Registration Of Contractors		1,000

NOTE:

- (a) All water use under category A, B, C and D attract water use charges.
- (b) Water use charges apply to water abstracted, diverted, stored and or used for hydropower generation.

PART C - LABORATORY WATER QUALITY TESTING CHARGES

<i>Parameter</i>	<i>CHARGES (KSh.)</i>	<i>Individual Parameters</i>	<i>Charges (KSh.)</i>
Physical Chemical Analysis	5000	22. Total Hardness	600
Biological Analysis	3500	23. Sulphides	350
Partial Effluent Analysis	5000	24. Dissolved Oxygen	300
Full Effluent Analysis	8000	25. Temperature	200
<i>Individual Parameters</i>		26. Salinity	300

1. pH	200	27. Chemical Oxygen Demand	1000
2. Colour	200	28. Biochemical Oxygen Demand	1000
3. Turbidity	300	29. Chlorine Demand	1000
4. Conductivity	300	30. 4Hr. Permaganate Value	500
5. Magnesium	400	31. Oil & Grease	1000
6. Total Alkalinity	350	32. Total Suspended Solids	500
7. Free Carbon Dioxide	200	33. Pesticides (each)	8000*
8. Orthophosphate	500	34. Detergents	2000
9. Total Phosphorus	700	35. Residue Chlorine	300
10. Chloride	300	36. Total Nitrogen	1000
11. Iron	700	37. Phenols	500*
12. Nitrate	500	38. Heavy metals (each)	1000
13. Nitrite	500	39. Coliforms & <i>E. Coli</i>	3500
14. Total Dissolved solids	300	40. Legionella	5000
15. Sulphate	400	41. Jar Test	5000
16. Fluoride	400	42. Water Treatment Chemical Analysis	5000
17. Calcium	400	43. Arsenic	1000
18. Manganese	700	44. Water quality Data for all parameters (up to Max. 20 datasets)	2000
19. Potassium	350		
20. Sodium	350		
21. Ammonia	500		

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THIRD SCHEDULE [r. 14(1)(c)]

REGULATION OF DAMS

Table 1: Classification of Storage Dams

<i>Class of Dam</i>	Maximum Depth of Water at NWL (m)	Maximum Depth of Water at NWL (m ³)	Catchment Area (km ²)
SD1	0 —4.99	< 100,000	< 100
SD2	5.00— 14.99	100,000 to 1,000,000	100 to 1,000
SD3	> 15.00	> 1,000,000	> 1,000

NWL = Normal Water Level

Table 2: Risk Factors of Storage Dams and other waterworks

Classification	Population at Risk	Incremental Consequences of Failure		
		Loss of Life	Environmental and cultural values	Infrastructure, economics and other property

SD 1 (Low Risk)	Temporary/ Permanent	Minimal numbers	(a) Limited presence of:	Low economic losses affecting limited infrastructure and residential buildings, public transportation or services or commercial facilities; alternatively, limited destruction or damage to locations used occasionally and irregularly for temporary purposes.
			(b) important Fisheries	
			(c) important wildlife	
			(d) habitats	
			(e) rare or endangered species, or	
			(f) unique landscapes	
			(g) sites of cultural significance	
			and additionally	
			Restoration or compensation in kind for losses and damage is possible.	
SD 2 (Medium Risk)	Permanent	Significant numbers	Significant presence:	Moderate economic losses affecting important infrastructure, public transportation or services or commercial facilities, or moderate destruction or severe damage to residential areas.
			(a) critical fisheries;	
			(b) critical wildlife habitats;	
			(c) rare or endangered species, or	
			(d) unique landscapes	
			(e) sites of cultural significance and additionally	

			Restoration or compensation in kind for losses and damage difficult.	
SD 3 (High Risk)	Permanent	Large numbers	Presence of:	High economic losses affecting critical infrastructure, public transportation or services or commercial facilities, or significant destruction or damage to residential areas.
			(a) critical fisheries;	
			(b) critical wildlife habitats;	
			(c) rare or endangered species, or	
			(d) unique landscapes	
			(e) sites of cultural significance and additionally	
			Restoration or compensation in kind for losses and damages is impossible or impracticable.	

Table 3: Minimum Return Period for Spillway Design

Class of Dam	Minimum Period for Design of Spillway
SDI	1 in 50 years
SD2	1 in 100 years
SD3	1 in 500 years

Table 4: Dam Safety Inspection Schedule

<i>Class of Dam</i>	<i>Frequency of inspection</i>	<i>Inspection by</i>
SD1	Once in 5 years	Panel I C I ,Panel I C 2, Panel II C
SD2	Once in 3 years	Panel I C 2, Panel I C I
SD3	Once every 2 years	Panel I C 2

FOURTH SCHEDULE [r. 16(1), 51(4), 58(2), 62(2)]

CONTENT AND FORMAT OF TECHNICAL REPORTS

The following are guidelines for Technical Reports and compilers are expected to exercise their professional judgement in including other appropriate items in the Technical Report.

FORMAT OF REPORTS

All reports shall be submitted to the Authority in the following format:

<i>Item</i>	<i>Format</i>
1.	One original paper hardcopy of all documents, duly signed, and adequately bound together;
2.	Two paper copies of all documents;
3.	A digital Portable Document Format (PDF) format of the document and drawings submitted on a Compact Disk or any other appropriate electronic medium.

FORMAT OF DRAWINGS

All technical drawings submitted to the Authority shall comply with the following format:

<i>Item</i>	<i>Format</i>
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1.	One original paper hardcopy of all drawings, duly signed, and adequately bound together;
2.	Two paper copies of all drawings;
3.	A digital DXF (Digital Exchange Format) format of the technical drawings submitted on a Compact Disk (CD) or other electronic medium as appropriate;

Every plan shall be signed and dated by the person making it, and, if it is made by any person other than the applicant to whom it relates, the application or his or her lawfully authorized agents shall also approve, sign and date it.

Every plan prepared by a qualified professional shall have endorsed thereon a certificate in the following form:—

CERTIFICATE

I/We of

hereby certify that this plan was made by me/us [or under my/our direction] and that it correctly represents the places, lands, areas and works shown thereon.

.....

Qualified Professional(s)

All reduced levels or elevations shown on any plan, or set of plans, longitudinal sections cross sections of any work or works shall be to the same datum, and reference shall be made on a least one sheet of any set of plans, longitudinal sections or cross sections indicating the datum used, and also the positions of all bench marks, which shall be properly located and described on the general map (and which benchmarks one shall be in the immediate vicinity of the point of diversion, abstraction or storage), from which the datum may be gained.

The location of the datum shall be described by the Grid Reference in UTM Coordinates based on the Arc 1960 datum. The elevation shall be referenced to mean sealevel. The nature of the datum shall be adequately described.

FORMAT OF MAPS AND DRAWINGS

All technical drawings and maps submitted to the Authority shall comply with the following format:

<i>Item</i>	<i>Format</i>
1.	A digital Tagged Image File Format (TIFF) format of the maps submitted on a CD, or other appropriate media

SITE ASSESSMENT REPORT

A Site Assessment Report shall substantially provide the following details:

<i>Item</i>	<i>Format</i>
1.	Name and details of Applicant;
2.	Description of Proposed Activity
3.	Confirmation of Site details;
4.	Relevant hydrological features;
5.	Relevant catchment features;
6.	Recommendations

TECHNICAL REPORTS

The following technical reports shall substantially provide the details required.

DAM DESIGN REPORT (FOR CLASS SD1, SD2 AND SD3 DAMS)

<i>Item</i>	<i>Format</i>
1.	Details of location
2.	Details of hydrological assessment
3.	Details of design flood and return period
4.	Details of embankment
5.	Details of reservoir
6.	Details of draw-off and compensation works
7.	Details of spillway(s)
8.	Details of ancillary structures
9.	Details of construction materials
10.	Details of construction schedule

11.	Details of operational regulations
12.	Procedures to notify and protect downstream inhabitants, infrastructure and environments
13.	Schedule of inspection and maintenance
14.	Assessment of impacts and risks

TECHNICAL DESIGN REPORT

<i>Item</i>	<i>Format</i>
1.	Name and details of Applicant;
2.	Description of Proposed Activity;
3.	Analysis of Demand;
4.	Details of Hydrological Assessment
5.	Details of Structures to be built;
6.	Details of Equipment to be installed;
7.	Details of Controlling Device;
8.	Details of Measuring Device;
9.	Details of operating procedures;
10.	Details of safety devices

PROGRESS REPORT

<i>Item</i>	<i>Detail</i>
1.	Name and details of applicant;
2.	Description of proposed Activity;

3.	Details of Authorisation including the time frame;
4.	Cause of delay;
5.	Revised timeframe for completion;

DAM INSPECTION REPORT

<i>Item</i>	<i>Detail</i>
1.	Current condition of dam with respect to approved design and "as-constructed" condition
2.	Any action required to restore the functional and structural integrity of the dam to the required state
3.	Any changes with regard to the risk of or impact in the event of dam failure
4.	Review appropriateness of the action plan in event of dam failure
5.	Revised timeframe for completion;

DAM DAMAGE OR FAILURE REPORT

<i>Item</i>	<i>Detail</i>
1.	Details of location
2.	Date and time of dam failure or damage
3.	Preceding climate
4.	Preceding hydrology
5.	Cause of dam failure or damage
6.	Steps taken to notify downstream inhabitants
7.	Nature and extent of damage caused to the dam or caused by the dam failure

HYDROLOGICAL ASSESSMENT REPORT

<i>Item</i>	<i>Details</i>
1.	Name and details of Applicant;
2.	Location and Description of Proposed Activity;
3.	Details of Climate;
4.	Details of river or water body (name, nearest Regular Gauging Station, Sub-catchment);
5.	Details of catchment (area, slopes, soils);
6.	Details of vegetation and land use;
7.	Details of Registered and Non registered Abstraction on the resource;
8.	Details of all other permits related to this application;
9.	Hydrological characteristic sand analysis (annual, monthly, extreme events, flow duration or probability of events occurring);
10.	Hydrochemistry;
11.	Analysis of the Reserve;
12.	Assessment of availability of flow;
13.	Impact of proposed activity on flow regime, water quality, other abstractors;
14.	Recommendations on Proposed Activity;

HYDROGEOLOGICAL SURVEY REPORT

<i>Item</i>	<i>Details</i>
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1.	Name and details of applicant
2.	Location and description of proposed Activity
3.	Details of climate
4.	Details of geology and hydrogeology
5.	Details of neighbouring boreholes, and neighbouring proposed valid authorizations, including location, distance from proposed borehole or boreholes, number and construction details, age, current status and use, current abstraction and use.
6.	<p>Description and details (including raw and processed data) of prospecting methods adopted, e.g. remote sensing, geophysics, geological and or hydrogeological cross sections Hydro-geological characteristics and analysis, to include but not necessarily be limited to, the following:</p> <p>(a) Aquifer transmissivity;</p> <p>(b) Borehole specific capacities;</p> <p>(c) Storage coefficient and or specific yield;</p> <p>(d) Hydraulic conductivity;</p> <p>(e) Groundwater flux;</p> <p>(f) Estimated mean annual recharge, and sensitivity to external factors.</p>
7.	Assessment of water quality and potential infringement of National standards
8.	Assessment of availability of groundwater;
9.	Analysis of the reserve
10.	Impact of proposed activity on aquifer, water quality, other abstractors, including likelihood of coalescing cones of depression and implications for other groundwater users in any potentially impacted areas.
11.	<p>Recommendations for borehole development, to include but not limited to, the following:</p> <p>(a) Locations of recommended borehole(s) expressed as a coordinate(s) and indicated on a sketch map</p> <p>(b) Recommendations regarding borehole or well density and minimum spacing in the project area</p> <p>(c) Recommended depth and maximum diameter</p> <p>(d) Recommended construction characteristics, e.g. wire-wound screen, grouting depth</p> <p>(e) Anticipated yield</p>

12.	Any other relevant information (e.g. need to monitor neighbouring boreholes during tests)
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WASTE DISPOSAL CONTROL PLAN

<i>Item</i>	<i>Details</i>
1.	Name and details of applicant
2.	Quantity and quality of in flow water and waste
3.	Type and source of waste
4.	Design of waste treatment plant
5.	Location and description (frequency, quantity, quality and nature) of effluent
6.	Description of treatment and operations, if any
7.	Hydrology, hydrogeology and hydrochemistry of receiving water body
8.	Impacts on receiving water body in terms of quantity and quality
9.	Proposed water quality requirements for the permit and the timeframe for achieving compliance
10.	Monitoring programme, (measuring device, controlling device, sampling, records, reporting procedures)
11.	Emergency plan for accidental discharges and their risks.

WATER QUALITY AND POLLUTION CONTROL ASSESSMENT REPORT

<i>Item</i>	<i>Details</i>
1.	Name and details of applicant
2.	Location and description of activity or proposed activity;

3.	Details of river or water body (name, nearest Regular Gauging Station, Sub-catchment);
4.	Details of flow regime and hydrochemistry;
5.	Nature and characteristics of waste disposed;
6.	Impact of waste upon water resource and other water users;
7.	Other sources of pollution in the project area;
8.	Conclusions and recommendations.

SOIL AND WATER CONSERVATION PLAN

<i>Item</i>	<i>Details</i>
1.	Existing soil and water conservation structures and practises;
2.	Potential sources of sediment and other pollutants to the water course;
3.	Slope of land;
4.	Land use;
5.	Condition of the riparian land;
6.	Proposed measures and targets for improved soil and water conservation;
7.	Targets and timeframe for adoption and implementation of proposed soil and water conservation structures and practices;
8.	Schedule of inspection of the Soil and Water Conservation Plan;
9.	Site sketch showing—
	(a) Demarcation of boundaries of land covered under the Soil and Water Conservation Plan;
	(b) Identification of significant features.

BASIN AREA WATER RESOURCES MANAGEMENT STRATEGY

<i>Item</i>	<i>Details</i>
1.	A description of the institutional framework for water resource management detailing institutional roles and responsibilities;
2.	A strategy for the conservation of the catchment areas;
3.	Slope of land;
4.	A stakeholder participation strategy that will include mechanisms for encouraging the formation and establishment of Water Resource Users Associations and strengthening them once established;
5.	A communication strategy that will capture the communication needs and mechanisms for the catchment;
6.	A water resource monitoring strategy that will capture the resource monitoring network and flow prediction targets;
7.	A compliance strategy that will detail the time frame, approaches and requirements to bring water users into compliance with water management regulations;
8.	A water demand management strategy that will capture approaches and targets for improving water allocation and use efficiencies;
9.	A water allocation plan detailing:
	(a) A description of the class of resources and their resource quality objectives;
	(b) An analysis of current and future water demands;
	(c) Allocation of the resource to the Reserve and to different types of uses;
	(d) Measures to be taken to ensure that water use approvals remain true to the allocations;
	(e) Measures to be taken when resource availability is limited;
	(f) A compliance plan;
	(g) An enforcement plan;

(h) Mechanisms for reviewing the allocation plan from time to time as the need arises.

FIFTH SCHEDULE [r. 133]
PENALTIES FOR SPECIFIED OFFENCES

<i>Relevant Regulations</i>	<i>Offence</i>	<i>Minimum Penalty</i>	<i>Maximum Penalty</i>
130(3)	Failure to comply with An Order	Ksh 20,000/- or 6 months imprisonment and compliance with the order at his or her cost	Penalty prescribed in section 147 of the Act.
77(12)	Damage to Water Resources monitoring network	Ksh 20,000/- or 6 months imprisonment and repair damage at his or her cost	Penalty prescribed in section 147 of the Act and repair damage at his or her cost
7(2)	Failure to Apply for Water Use Permit	Ksh. 20,000/- or 6 months imprisonment	Penalty prescribed in section 147 of the Act.
34(6)	Failure to apply for Variation of Permit	Ksh. 20,000/- or 6 months imprisonment	Penalty prescribed in section 147 of the Act.
86(3)	Failure to Follow Notification Procedure with respect Dam releases	Ksh. 20,000/- or 6 months imprisonment	Penalty prescribed in section 147 of the Act.
87(2)	Failure to submit damp damage or failure report	Ksh. 20,000/- or 6 months imprisonment	Penalty prescribed in section 147 of the Act.
55(2)	Failure to submit a Borehole or Well Completion Record	Ksh. 20,000/- or 6 months imprisonment	Penalty prescribed in section 147 of the Act.
58(4)	Failure to apply for approval to undertake artificial groundwater recharge	Ksh. 20,000/- or 6 months imprisonment	Penalty prescribed in section 147 of the Act.
61(7)	Unapproved Effluent Discharge	Ksh. 20,000/- or 6 months imprisonment	Penalty prescribed in section 147 of the Act.

67(5)	Failure to Inform with Respect to spillage	Ksh 20,000/- or 2 months imprisonment	Penalty prescribed in section 147 of the Act.
70(2)	Obstructing a Water Resources Inspector	Ksh20,000/-or 6 Months imprisonment	Penalty prescribed in section 147 of the Act.
74(3) 73(6)	Failure to remove or make safe Temporary or Abandoned Works	Ksh. 20,000/- or 6 months imprisonment	Penalty prescribed in section 147 of the Act.
115(9)	Failure to comply with Soil and Water Conservation Plan	Ksh. 20,000/-or 6 months imprisonment	Penalty prescribed in section 147 of the Act.
103(3)	Failure to comply with Management Regulations for Protected Area or Groundwater Conservation Area	Ksh. 20,000/- or 6 months imprisonment	Penalty prescribed in section 147 of the Act.
119,128	Misrepresentation as Qualified Water Sector Professional or Qualified Contractor	Ksh. 20,000/- or 6 months imprisonment	Penalty prescribed in section 147 of the Act.
131(4)	Failure to Comply with an Emergency Order	Ksh. 20,000/- or 6 months imprisonment	Penalty prescribed in section 147 of the Act.