

Document for the,
**National Workshop on Water Legislation and
Policy as Relates to Poverty Alleviation**

at Mbagathi, 2nd- 4th February 2000

Draft

Water Amendment Bill 1999

**An act of Parliament to repeal the Water Act Cap 372, and
to provide for the use, protection and management of
Water Resources and Supply; to provide for the
constitution of Water and Sanitation Authorities; and to
facilitate the devolution of Water Supply and Sanitation
provision in Kenya.**

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provision in Kenya.**

THE WATER ACT

AN ACT of Parliament to repeal the Water act Cap 372, and to provide for the use protection and management of Water Resources and supply; to provide for the constitution of water and sanitation authorities; and to facilitate the devolution of water supply and sanitation provision in Kenya.

PART I – PRELIMINARY

Short title

1. This Act may be cited as the Water Act, and in the event of any conflict between the provisions of this Act relating to the provision of water and sanitation services and those of any other Act, the provision of this Act shall prevail.

Interpretation

- 2.(1) In this Act, except where inconsistent with the context –

“applicant” means any person, local authority, private or public company, NGO, institution, co-operative society, water user association or any other body that has applied for a Permit under this Act;

“aquifer” means a geological formation or structure or textures that hold water or permit appreciable water movement through them;

“arbitration” means arbitration under the Arbitration Act;

“artesian well” means a well in which water rises to the surface of the ground by natural pressure, and “sub-artesian well” means a well in which water rises by natural pressure above the base of the first impermeable stratum immediately overlying the aquifer in which the water was encountered, but does not rise to the surface of the ground;

"authorization" means an authorization to construct works under this Act;

"authorized" means authorized under this Act;

"body of surface water" means water flowing continuously or intermittently in natural surface channels or depressions and water flowing through, or into, lakes, ponds, swamps and marshes, but does not include the water in a spring which is situated wholly within the boundaries of the land owned by any one landholder and which does not naturally discharge water into a watercourse extending beyond the boundaries of such land or abutting on the boundaries of such land;

x
? flood plain

IT IS IMPORTANT THAT
A RIVERS FLOOD PLAIN
ARE UNDERSTOOD TO BE
PART OF A WATERCOURSE
BECAUSE OBSTACLES
THEREON CAN HAVE A
MATERIAL EFFECT ON
FLOWS AND UPSTREAM
WATER LEVELS

"body of water" means ground water and water contained in, or flowing in, a spring, stream, natural lake or swamp, or in, or beneath, a watercourse, or in a zone of saturation, and includes the water diverted or abstracted therefrom, or stored therein, by means of works carried out under a licence, sanction or permit, but does not include the water in a spring which is situated wholly within the boundaries of the land owned by any one landholder, and which does not naturally discharge into a watercourse extending beyond the boundaries of such land or abutting on the boundaries of such land;

"borehole" includes a well, excavation or any artificially constructed or improved underground cavity used or to be used for one or more of the following purposes of:

- (i) intercepting, collecting or storing water in or removing water from an aquifer;
- (ii) observing and collecting data and information on water in an aquifer; or

- (iii) recharging an aquifer.

"charge" includes any fees, rates, tariffs or levy imposed under this Act;

"coastal marine water" includes that part of the sea between the high water mark and the edge of the continental shelf;

"community project" means a community project as described in section 41 of this Act;

"company" means any incorporated or limited company the objects and powers of which extend to or include the construction or operation of works for the exercise of a permit;

"Concerned Board" means the Board upon whom this Act confers the powers or imposes the duties or functions which are subject-matter in question and for the purposes of this Act the concerned Board may mean the National Water Board, a River Basin Board or a District Water Board as the circumstances and context may require;

"conservation" in relation to water resources mean their efficient use;

"defective well" means any well drilled, dug or excavated which encounters salt water, and which well is not securely cased, plugged or sealed off so that the salt water is not confined to the strata in which it is found but may escape into other water-bearing strata or on to the surface of the ground;

or
becomes
saline
during use

"develop" means make available for reasonable beneficial use;

The Water Act

"drilling" means drilling for the purpose of abstracting ground water;

"easement" means the right to occupy so much of the lands of another as may be necessary for, or incidental to, the construction or maintenance of authorized works or the exercise of a permit;

"estuary" means a partially or fully enclosed body of water which is either;

"estuary"

- (i) open to the sea permanently or reasonably; or
- (ii) within which the sea water can be diluted, to an extent that is measurable, with fresh water drained from land.

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

definition of
a 'flood plain'
is required.

definition of
'flood water'
is required

"ground water" means the water of underground streams, channels, artesian basins, reservoirs, lakes and other bodies of water in the ground, including the water in the zone of saturation;

NOT
UNDERSTOOD
UNLESS
'GROUND' WK

"irrigation" means the practice of causing water to flow upon or spread over or under the surface of land, by any means, for agricultural purposes;

"landholder" in relation to land means the Government or a county council, or the registered owner of the land, or the person in whom the land is vested by law, or any person to whom the land is vested by law, or any person to whom a mining lease or mining location has been granted under the Mining Act, and includes -

x

- (a) any person lawfully holding or occupying land in accordance with

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the provisions of any law empowering the allotment of land upon the promise of title, subject to the fulfillment by the allottee of prescribed conditions;

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

"land surveyor" means a surveyor licensed under rules made under the Survey Act;

"licensee" means the holder of a licence;

"limits of supply" in relation to any water undertaking means the limits within which the water undertakes are for the time being authorized to supply water; *

"Minister" means the Minister for time being responsible for matters relating to water affairs;

"National Council of Non-Governmental Organizations" means the council established by section 23 of the Non Governmental Organizations Co-ordination Act, 1990;

No 10 of 1990

definition needs
some hydrological
means of estimation,
at least as a
'minimum' value.

"normal flow" means the ordinary flow at any particular point of a stream as certified by the Water Apportionment Board from time to time to be the normal flow at that point;

"operator" means any person authorized to construct works under this Act by authorization, or to divert, abstract or use water by licence, sanction or permit;

...../10

'obstruction' in relation to
a man-made structure or earthworks
in a watercourse or its flood
plain needs defining

'offence' a breach of the law for
which a fine and/or a term of imprisonment
can be imposed by a court of law, the
magnitude of which shall be as from time to
time

"performance contract" means a contract made under Section 30

"permit" means a document issued under this Act authorizing the abstraction, diversion, obstruction, storage or use of water or the drainage of lands;

"person" means any person or body of persons or body corporate, and the heirs, executors, administrators, assigns or other legal representatives of such person, and the successors of such body corporate to whom the context may lawfully apply, and includes a water undertaker;

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

- (i) less fit for any beneficial purpose for which it is or may reasonably be expected to be used; or
- (ii) harmful or potentially harmful to –
 - (aa) the welfare, health or safety of human beings;
 - (bb) any aquatic or non-aquatic life or organisations;
 - (cc) property; or
 - (dd) the quality of ^{the} water resource concerned.

organisms

The Water Act

"protection" in relation to water resources mean –

- (i) maintenance of the quality of ^{the} water resource;
- (ii) sustainable utilisation of the water resource;
- (iii) prevention of the degradation of the water resource; or
- (iv) rehabilitation of the water resource.

"public authority" means the Government or any department or branch of the Government;

"qualified engineer" means a person registered under this Act as a qualified engineer;

"Registrar of Titles" means the person appointed under any Act for the purpose of the registration of title to land or of documents relating to land;

"reserved area" means an area of land forming part of Trust land;

"rest level" means the maximum level to which the water in a well will rise without being pumped;

"salt water" means water containing salt or other minerals or substances in such quantities as, in the opinion of the National Water Board, to be injurious to vegetation, agriculture, husbandry or health, having due regard to the purposes for which it is to be

The Water Act

used and the availability of alternative supplies;

"sanitation" includes ~~solid~~ and liquid waste;

the dipe
of

"riparian habitat" means the dynamic complex of plant, animal, micro-organism communities and their non-living environment adjacent to and associated with a water course and which may be characterised by alluvial soils or inundated or flooded to an extent;

"sanction holder" means the holder of a valid sanction which has not lapsed or been determined;

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

"state scheme" means –

- (a) a scheme, whether formulated in detail or not, for the use for any public purpose of the water or any portion of the water of any body of water; or
- (b) a reservation by the Minister, after consultation with the Water Resources Authority, of the water or any portion of the water of a body of water for use for any public purpose; or
- (c) a scheme for draining a land, which has been declared by

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the Minister, after consultation with the National Water Board, to be a state scheme for purposes of this Act;

"storage" means the collection, impounding and conservation of water for beneficial use for any of the purposes specified in section 35 of this Act;

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

"supply of water in bulk" means a supply of water for distribution by the water undertakers taking the supply, and "supplying water in bulk" has a corresponding meaning;

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

Provided that this definition shall be subject to the provisions of section 31 of this Act;

"~~Waste~~" in relation to water resources includes any matter, whether liquid, solid gaseous or radioactive which when suspended, dissolved or transported in water in any volume, composition or manner is likely to cause pollution of the concerned water resource;

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"water and sanitation services provider" means any person or body appointed by Minister to manage a water supply and or sanitation utility be it a local authority private or public company, NGO, co-operative society, water user association, institution or other body established for that purpose;

"Water Appeal Board" means the Water Appeal Board established by section 163 of this Act;

"water bailiff" means any person authorized under this Act to perform the duties of a water bailiff;

"watercourse" means a –

- (i) river or spring;
- (ii) natural channel in which water flows regularly or intermittently;
- (iii) wetland, lake or dam into which, or from which water flows; or
- (iv) any collection of water declared to be a watercourse under this Act;

and any reference to a watercourse includes, where relevant, its bed, ~~and~~ banks *Land flood plain*;

Provided that this definition shall be subject to the provisions of section 31 of this Act;

"^wWater management institution" means any Government ministry, department, parastatal, state corporation, local authority, statutory boards under this Act or any other

The Water Act

written law, in which the law vests functions of control or management of any water resource and includes water utilities, Ministers and public officers;

“Water Reserve” means that quantity and quality of water required to --

- (i) satisfy basic human needs for all people who are, or who may be, supplied from the relevant water resource; or
- (ii) protect aquatic ecosystems in order to secure ecologically sustainable development and use of the relevant water resource.

“Water Resource” includes a water course, surface water, estuary, aquifer or any other underground collection of water;

x x

“Water Resources quality” means the Lof all the aspects of a water resource including the-

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missing

- (i) quantity, pattern, timing, water level and assurance of instream flow;
- (ii) water quality and the physical, chemical and biological characteristics of the water;
- (iii) character and condition of the instream and riparian habitat; and
- (iv) characteristics, condition and distribution of the aquatic biota.

“water table” means --

The Water Act

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

pervio
?

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

x

x

"Water use" means a use of water permitted under this Act;

"Waterwork" includes any borehole, structure, earthwork or equipment installed or used for or in connection with a water use;

"well" means any orifice made in the ground by any means for the purpose of abstracting ground water therefrom and includes a borehole, tunnel and adit;

"Wetland" means areas permanently or seasonably flooded by water where plants and animals have become adapted;

"well construction" includes the extension or the improvement of any well;

"works" means any structure, apparatus, contrivance, device or thing for carrying, conducting,

providing or utilizing water or liquid waste, excepting hand utensils or such other contrivances as may be specified by the National Water Board, by order in the Gazette;

“zone of saturation” means the zone below the water table, in which the interstices are filled with ground water.

(2) For the purposes of this Act, a drought in any area shall be deemed to exist when the Minister upon such information as he deems sufficient by order published in the Gazette, declares that a drought exists in that area.

PART II – FUNDAMENTAL PRINCIPLES OF MANAGEMENT AND USE OF WATER IN KENYA

3. In exercising any of the powers conferred, or in discharging any of the functions or performing any of the duties imposed by this Act or any other written law in the field of water management and its L, every water management and development institution shall be guided by the following principles:

- (a) Fresh water is a finite unitary and vulnerable resource, essential to sustain life, development and the environment. Consequently, its effective management demand a holistic approach linking social and economic development with protection of the environment, including linkages between land and water uses hence the need for progressive introduction of appropriate standards and techniques for the investigation, use, control, protection, management, and administration of water resources and sanitation;

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- (b) Water development and management must be based on a participatory approach, involving users, planners and policy-makers at all appropriate levels calling for the coordination, allocation and delegation of responsibilities among public authorities for the investigation, use, control, protection, management, administration and regulation of the use of water resources and sanitation;
- (c) Water has an economic value in all its competing uses and should be recognised as an economic and social good;
- (d) Watercourse States should cooperate on the basis of sovereign equality, territorial integrity, mutual benefit and good faith in order to attain optimal utilization and adequate protection of an international watercourse; and
- (e) Water required for basic human needs and the needs of the environment shall enjoy priority over other uses of water.

PART III – OWNERSHIP REGULATION AND CONTROL OF WATER AND SANITATION

Water vested
in Government.

4. The water of every body of water under or upon any land is vested in the Government, subject to any rights of user in respect thereof which, by or under this Act or any other written law, have been or are granted, or recognized as being vested, in any other person.

Control of
water exercisable.

5. The control of every body of water shall be exercised by the Minister in accordance with this Act.

Right to use
water vested
in Minister.

6. Except as to rights acquired under the Water Ordinance, 1929 (now repealed), or specifically granted before the 1st July, 1935, by or on behalf of the Government in any title under the Government Lands Act or under the

The Water Act

Crown Lands Ordinance, 1902 (now repealed), or in any written agreement, and existing at the commencement of this Act, the right to the use of every body of water is hereby declared to be vested in the Minister, and, except in accordance with any such right, no person shall divert, abstract, obstruct or use water from a body of water otherwise than under this Act.

Right to use
water may
be acquired
only under
this Act

7. After the commencement of this Act, no conveyance, lease or other instrument shall be effectual to convey, assure, demise, transfer or vest in any person property or right or any interest or privilege in respect of any body of water, and from and after such commencement no such property, right, interest or privilege shall be acquired otherwise than under this Act.

Duty of Minister.

8. It shall be the duty of the Minister to promote the investigation, conservation and proper use throughout Kenya of the water resources of Kenya and the provision of water supplies in Kenya, and to secure throughout Kenya effective exercise by any authority or person under control of the Minister of their powers and duties in relation to water.

PART IV – GENERAL POWERS OF MINISTER

Power to
acquire land

9.(1) If the Minister decides, on the recommendation of the Water Resources Authority, that it is ~~is~~ in the public interest so to do, he may purchase or acquire land by any other means for the conservation, improvement or use of water. x

(2) The acquisition of land for any of the purposes of this Act shall be deemed to be an acquisition for a public ~~of~~ the landholder concerned, if it appears to him to be in the public ~~purpose~~ under any law for the time being in force relating to the compulsory acquisition of land. purpose from interest

Power to
construct works.

10.(1) The Minister may, on the recommendation of the National Water Board, and after reasonable notice to the landholder concerned, if it appears to him to be in the

The Water Act

rates in
connection with
communities

public moneys and such works are required for the purpose of a community project, a water rate or other charge shall, if so decided by the Minister on the advice of the National Water Board, have benefited or could benefit as a result of such works be levied on those who

x

x

(2) The water rate ~~or~~ charge payable under this section shall be decided by the Minister on the advice of the Water Resources Authority

(3) No works shall be constructed for the purpose of a community project except upon the request of two thirds of the persons who could benefit by such works.

Power to
impose water
rate on local
authorities in
reserved areas

13. Where the works constructed under subsection (1) of section 9 of this Act have been paid from public moneys and such works are required for the purpose of a community project in a reserved area, a water rate or other charge shall, if so decided by the Minister on the advice of the Water Resources Authority, be payable to the Government by all local authorities in such reserved area who have, in the opinion of the Minister on the advice of the Water Resources Authority, benefited or could benefit as a result of such works:

except

Provided that no such works shall be constructed for the purpose of a community project in a reserved area ~~unless~~ at the request of a majority of the local authorities in such reserved area.
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x

Procedure for
rates setting

14.(1) All rates applications shall be submitted to the National Water Board for consideration, processing and recommendation to the Minister.

(2) All rates applications shall be processed within sixty days after the National Water Board confirms to the Minister in writing that the application is materially complete in all aspects.

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(3) In making recommendations to the Minister on any rates application, the National Water Board shall apply the following criteria:

- (a) that the rates recommended are just and reasonable;
- (b) that the metering equipment is owned, installed and maintained by the public water utility; and
- (c) that the rates recommended ensure that a reasonable return can be earned to enable the public water utility to, *inter alia*,
 - (a) maintain its financial integrity;
 - (b) operate efficiently; and
 - (c) fully compensate investors for the risks assumed.

(4) Before approving any rates application, the Minister shall give notice in the Kenya Gazette –

- (a) stating that he proposes to approve a rates application and the reasons for such approval;
- (b) specifying the time (not being less than thirty (30) days from the date of publication of the notice within which representations or objections with respect to the proposed rates may be made; and shall consider any representations or objections duly made and not withdrawn.

(5) The Minister shall, upon considering representations and objections made under this section, approve the rates applied for subject to such terms and conditions as may be specified by him.

The Water Act

Power to
order drainage
of swamp or
removal of
an obstruc-
tion

15.(1) If there exists wholly or partly, upon any swamp or any obstruction to the natural flow of water as determined by the National Water Board and which is not authorized by the Board, and which tends to cause a diminution of the flow by evaporation, absorption or otherwise, the Minister, upon application by the National Water Board, and on the advice of the National Water Board, and subject to the payment of such compensation as may be decided, may order that such swamp be drained or that such obstruction be removed; and, in this subsection, "drained" includes the by-passing of the flow around any such swamp.

x
x

(2) The Minister may, for the purpose of such drainage or removal, order such work and such method of execution of work as the public interest may appear to justify or require, and may make such order as to the allocation and collection of the cost of such works, including such compensation as may be payable, and as to their subsequent maintenance as may appear to be equitable having regard to the benefits which will accrue to other parties from the execution of such works and the increased provision of water expected therefrom, and such order may provide that such work shall be aided by public moneys, to such extent as may be authorized by Parliament.

Provided that, except by agreement or on payment of compensation, or on supplying water from other sources or by other means, no works involving the drainage of a swamp shall deprive of reasonable access to water any landholder with a licence, sanction or permit to divert or abstract water from such swamp or any other person who before such drainage had lawful access thereto.

(3) If there exists upon any land any obstruction to the natural flow of water as determined by National Water Board and which is not authorized by the Board, and which causes or is likely to cause flooding, or the accumulation of water, to the prejudice of any person or to the detriment of any land, the Minister, upon the application

or in
any flood
plain

or
increase

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of the National Water Board, may order the owner or occupier of the land upon which such obstruction exists to remove such obstruction within such period as may be specified in the order or within such further period as the Minister may determine; and any person who, without reasonable cause or excuse, fails to comply with an order served upon him in accordance with this subsection shall be guilty of an offence.

(4) Where any person has, without reasonable cause or excuse, failed to comply with an order served upon him in accordance with subsection (3) of this section, the Minister may cause entry to be made on the land of such person for the purpose of removing such obstruction and may cause such obstruction to be removed, and may recover from such person the costs necessarily incurred in removing the obstruction, and no compensation or damages shall be payable to such person for any damage occasioned to the land, or any part thereof, or anything thereon, by virtue of the exercise of the powers conferred by this subsection.

Power to
establish
protected
catchment area.

16 Where the Minister, after consultation with, or the advice of, the National Water Board, is satisfied that special measures are necessary for the protection of the water resources in or derived from any area, he may declare such area, or any part thereof, to be a protected catchment area, and may, by order, require, regulate or prohibit the doing by any person in such protected catchment area of any act which he considers necessary for the protection of the water supply obtained therefrom; and any person so ordered who fails to comply with the provisions of such order shall be guilty of an offence, and liable to a fine not exceeding ten thousand shillings.

Power to
Expropriate
works.

17.(1) It shall be lawful for the Minister, on behalf of the Government, to enter upon, use, order the use of, maintain, vary, destroy or remove abandoned works, wherever situated.

(2) Works shall be deemed to be abandoned when it is proved to the satisfaction of the National Water Board that they have remained substantially unused, for any of the purposes of this Act, by any licensee or sanction or permit holder lawfully entitled to make use of them under this Act for a period of two years, or such longer period as the National Water Board may in any particular case determine.

(3) No action shall be taken by the National Water Board under this section, except after publication of a notice in the Gazette to the effect that works have been proved to the satisfaction of the National Water Board to be abandoned and that, failing lawful use or disposal thereof within the period of one month from the date of such publication, or within such longer period as the Minister may decide, ~~the right to use, vary or dispose of such works will be assumed by the Minister may decide,~~ the right to use, vary or dispose of such works will be assumed by the Minister ^{who} may destroy or remove such works at the cost of the licensee or sanction or permit holder.

(4) The onus of proving that such works have been lawfully used within such period of one month, or within such longer period as the Minister may have decided, shall be on the licensee or sanction or permit holder, who shall in such case notify the National Water Board, within such period, that the works are being lawfully used in accordance with the terms of his licence, sanction or permit.

(5) Where any works are deemed to have been abandoned in accordance with this section, and the Minister has thereafter destroyed or removed such works, the cost reasonably incurred in such destruction or removal, or so much thereof as the Minister may determine, may be recovered from the licensee or sanction or permit holder concerned as a civil debt.

Powers in

sect 8g

emergency

18. (1) If the Minister, on the advice of the National Water Board, is satisfied that, by reason of an exceptional shortage of rain or by reason of accident or other unforeseen circumstances, a serious deficiency of water for essential domestic purposes exists, or is threatened, in any area, he may by order declare that an emergency exists, and direct that any person who has a supply of water in excess of his domestic purposes shall supply to such area or to any other person, for such period as the Minister may state in such order, such water, as the Minister shall specify, from such excess quantity of water; and any person so directed by the Minister who fails to comply with the provisions of such direction shall be guilty of an offence, ~~and liable to a fine not exceeding ten thousand shillings.~~

(2) Any order given under subsection (1) of this section may require or authorize the laying of pipes and the construction of works on any land, and the entry on to any land, and any other matters necessary for the giving and taking of any such water, and no other authority to do any of the things mentioned in this order, except the authority of this section, shall be required.

Provided that, where the laying of pipes or the construction of works is likely to interfere with a railway track of the Kenya Railways Corporation or of a road under the control of a road authority, no such laying of pipes or construction of works shall be commenced without prior notification to such Corporation or road authority.

(3) If a person upon whom an order under this section is made fails to comply with such order, the Minister, or any person deputed by him for that purpose, may take possession of the water supply and operate the water works of any of the powers of such person in connection therewith during the period of such order and subject to any conditions which may be imposed thereby.

(4) The amount of any compensation payable for water supplied under an order made under this section, or for any loss or damage suffered as a result of any act done under such order, shall be determined and paid by the Minister, who may recover such payment, as a debt due to the Government, from the person benefiting by the supply of such water, in such proportion as the Minister may decide, and if the decision of the Minister is not acceptable to the parties concerned the matter shall be referred to arbitration.

(5) Any person who, without lawful authority, interferes with any work constructed under this section shall be guilty of an offence.

(6) No person shall apply for any injunction or other process or order restraining the Minister from exercising any of his powers under this section.

Financial powers.

19.(1) The Minister may, from funds provided by or with the authority of Parliament for that purpose, pay such expenses as he may determine of any authority, board, committee or body established under this Act.

(2) The Minister may expend, for the purposes of this Act, in such manner as he thinks fit, all moneys granted to him for those purposes by Parliament.

PART V – NATIONAL WATER BOARD.

National Water Board

20. (1) There is hereby established a Board, to be known as the National Water Board to advise the Minister in charge of water affairs on issues of water policy and shall exercise such powers and perform such duties as are conferred and imposed upon it by the Act.

(2) Any of the powers conferred or duties imposed by this Act on the National Water Board may, by resolution of the National Water Board, be delegated to:-

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- (i) The water and sanitation regulatory board established under this act section and shall be subordinate to the National Water Board.
- (ii) The River Basin Boards under section 25
- (iii) The District Water Board under section 26
- (iv) Committee
- (v) Body or
- (vi) Person

Composition of the National Water Board

(3) The National Water Board shall consist of:-

- a) The chairman appointed by the Minister in charge of water affairs and whom at the time of the appointment shall hold at least a degree from a recognised University in the field of Water Engineering or Hydrology/Hydrogeologist/Water Chemist and has at least fifteen years working experience in the water field.
- b) The Director of water affairs who shall also be the technical adviser of the Board
- c) The Registrar of Water Rights who shall be the secretary of the Board
- d) The Director of Agriculture
- e) The Chief Conservator of Forests
- f) The Director-General of the National Environmental Management Authority
- g) The Director of Medical Services
- h) The Director of Industries
- i) The Director of Kenya Wildlife Services
- j) The Commissioner of Lands
- k) The Director of Physical Planning
- l) The Chairman of all the River Basin Boards
- m) A representative of the Attorney-General
- n) Two representatives of the Non-Governmental Organisations active in the water field appointed by the Minister from a list of nominees submitted by the National Council of Non-Governmental Organisations one whom must be a woman.
- o) A representative of research institutions, specialised in water management appointed by the Minister

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In all cases 'Chairman' or 'Chairperson' ?

The Water Act

- p) Two representative of water and sanitation services providers appointed by the Minister, one of whom ^{is} from urban water and sanitation providers x
- q) A representative of the public universities in Kenya appointed by the Minister
- r) Two representatives of water user associations appointed by the Minister from a list nominees ^{provided} by River Basin ^{Boards}, one of whom must be a woman x x
- s) Such number of other members not exceeding three (3) as may from time to time be co-opted by the Minister ~~to be~~ x
- t) One representative nominated by the Kenya Consumers Organisation whom shall be a woman. x

(4) No chairman of a River Basin ~~National Water~~ Board shall vote on any appeal submitted to the National Water Board from the decision of the River Basin Board. x

(5) Every appointment under paragraphs (a), (n), (o), (q), (s) and (t) of subsection (3) shall be by name and by notice in the Gazette and shall be for a renewable period of three years, but shall cease if the appointee –

- (a) serves the Chairman with a written notice of resignation;
- (b) is absent from three consecutive meetings of the Board without permission of the Chairman;
- (c) is convicted of an offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings; or
- (d) is incapacitated by prolonged physical or mental illness from performing his duties as a member of the Board;
- (e) conducts himself in a manner deemed by the Chairman, in consultation with the Board, to

The Water Act

be inconsistent with membership of the Board; or

(f) is adjudged bankrupt or has entered into a scheme or arrangement with his creditors

**Procedure of
the Board**

21.(1) The Board shall meet at least three times in every year, at such place as it may deem appropriate for the transaction of its business.

(2) The Chairman shall preside at all meetings of the Board but in his absence a person appointed by the Board shall preside on his behalf at such a meeting.

(3) The Secretary of the Board shall prepare and keep all the records of the Business conducted at the meetings of the Board.

(4) The powers of the Board shall not be affected by any vacancy in the membership thereof nor by any defect in the appointment of a person purporting to be a member of the Board.

(5) Subject to this section, the Board shall regulate its own procedure.

Duties of the Board

22. (1) (a) Advise the Minister on Water Policy issues

(b) The prescribing of norms for the quantity, quality, price, conditions of supply and use of water in consultation with Water and Sanitation Regulatory Board within the scope of the purpose thereof, and rules for the efficient and economic utilisation of water, and upon his doing so, a person shall not supply or use water otherwise than in accordance with such norms and rules

(c) The declaration for rationing areas

The Water Act

- (d) Co-ordinate apportionment of all national water resources *construction* x
- (e) Approval of the ~~construction~~ of the following water works: x
 - (i) Dams for Water Conservation
 - (ii) Flood control facilities
 - (iii) Apportionment of water involving interbasin water transfers, under section 25
- (f) Co-ordinates the activities of River Basin Boards, and District Water Boards x
- (g) The prescribing of rules for the calculation of Water use charges
- (h) Preside on appeal cases emanating from Water and Sanitation Regulatory Board and River Basin Boards
- (i) To furnish the Minister and by his direction to water and sanitation providers, bodies or other persons, such information relating to water supplies or resources as is available x

Board may
require or
obtain
information.

23.(1) The National Water Board may require any person to furnish information relating to any existing or proposed waterworks of such person, including particulars as to the use of, and demand for, water supplies.

(2) The National Water Board may require any person to keep such records and furnish such returns as to the quantity and quality of water abstracted by him from any source and to such matters relating to such source as may be required by the National Water Board.

Provided that if, upon representation by any such person so required to furnish information under this section, the Minister is satisfied that in all the circumstances, compliance with such requirements is impracticable or unnecessary or that undue expense would thereby be incurred, he may excuse such compliance.

- (3) (a) The Registrar of Water Rights and any water bailiff shall have the right at all x

The Water Act

reasonable times to enter any premises and inspect any records required to be kept under this section, and to take copies of or extracts from such records.

- (b) The National Water Board or any board, committee, authority or person authorized by it shall have the right to enter any premises for the purposes mentioned in this subsection, after first giving twenty-four hours' notice to the occupier of the intention so to do.

(4) For the determination of any subject under its consideration, the National Water Board may request any person to submit to it any book, plan, document or information, and if any person fails to comply with such request within thirty days of receipt thereof the National Water Board may apply to the court for an order for the production of such book, plan, document or information, and the court may make an order accordingly.

PART VI - WATER AND SANITATION REGULATORY BOARD

Regulatory
Board

24. (1) "Notwithstanding the operations of this Act, the Minister shall by notice published in the Gazette, establish a regulatory body to be known as Water and Sanitation Regulatory Board which shall regulate water supply and sanitation services by Water and Sanitation Providers and provide for the licensing of all matters pertaining thereto".

Service

Features of
the Board

(2) The Regulatory Board shall be a body corporate with perpetual succession and common seal and shall, in its corporate name, be cable of -

- (a) suing and being sued,
(b) borrowing or lending money.

The Water Act

- (c) taking, purchasing or otherwise acquiring holding, charging and disposing of movable and immovable property, and
- (d) doing or performing all such other things or acts for the proper performance of its functions under this Act which may be lawfully done or performed by a body corporate.

Composition of the Board

- (3) (a) The management of the Board shall vest in the Board of Directors which shall consist of eleven (11) members appointed by the Minister as follows:-
 - (i) Two persons who are at the level of Deputy Director of Water and above nominated by the Director of Water Affairs.
 - (ii) One person appointed by the Minister from a panel of persons nominated by urban water and sanitation service providers.
 - (iii) One representative nominated by the Kenya Consumers Organisation who shall be a woman.
 - (iv) Two representatives nominated by the Institution of Engineers of Kenya, one of whom shall be a woman
 - (v) One representative nominated by the Institute of Certified Public Accounts of Kenya
 - (vi) One representative nominated by the Architectural Association of Kenya
 - (vii) Two representatives nominated by the Kenya Association of Manufacturers one of whom shall be a woman
 - (viii) One representative nominated by the Minister for the time being responsible for Local Authorities
- (b) The members shall elect one of their members to be the chairman for a period of

The Water Act

three (3) years. The chairman shall be non-executive

CONTRADICTS
(b) ABOVE



- (c) The members shall elect one of their members to be the chairman for a period of one year.
- (d) In making appointment of members regard shall be taken to such technical qualifications or experience by virtue of involvement in industry, agriculture, finance, public service or administration as would enable that person to make a useful contribution to the deliberations of the Board and to assist it in the furtherance of its functions.

Terms of office

- (4)(a) A member shall hold office for a term of three years from the time of his appointment, and shall be eligible for re-appointment for a further term of three years.
- (c) A member may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehavior, and shall not be removed except in accordance with this section.
- (d) A member shall be removed from office by the Minister if the tribunal appointment under this Section has recommended to the Minister that the person ought to be removed from office for

inability to perform the functions.

- (e) Upon the Chairman representing to the Minister that the question of removing a member under this Section ought to be investigated:-

(i) The Minister shall appoint a tribunal which shall consist of the Chairman and four other members selected by the Minister from among persons who hold or have held the office of Judge of the High Court.

(ii) The tribunal shall inquire into the matter and recommend to the Minister whether that members ought to be removed or not.

Functions of Board

(5) The functions of the Board shall be:-

- (a) to exercise ^aregulatory function in respect of water supply and sanitation services in the Republic of Kenya, including the establishment of standards relating to equipment attached to water and sanitation systems. x
- (b) To provide guidelines on tariffs chargeable for the provision of water and sanitation services. x
- (c) To examine and approve tariffs chargeable for the provision of water supply and sanitation services.

The Water Act

~~Those~~ *Those* ~~wishing~~ *should*
~~to be considered~~ *as*

*'Water and Sanitation
Service Providers'*

*those wishing
to be considered
as*

- (d) To protect the interest of consumers and water providers
- (e) To monitor water quality and standards of performance in the provision of water supply and sanitation services by water providers.
- (f) To initiate and conduct investigations into standard, quality and level of service to consumers
- (g) To promote fair competition among water providers.
- (h) To conduct studies relating to economy and efficiency of water providers.
- (i) To appoint auditors for the Board.
- (j) To collect and compile such data on water providers as it considers necessary for the performance of its functions
- (k) To advise any person or authority in respect of water providers.
- (l) To license and maintain a register of water providers.
- (m) To advise the Minister on the performance of the water providers and make the necessary recommendations.
- (n) To appoint technical officers or other staff as are necessary for the proper discharge of its functions.
- (o) To perform such other functions as are incidental to the foregoing.

Funds of the Board

- (6) The funds of the Board shall consist of-
 - (a) such sums as may be payable to the Board pursuant to such levies and charges on water providers

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- (b) such sums as fees payable pursuant to its functions relating to monitoring, penalties, funds from donations, grants, bequests and loans.

Accounts and audit

- (7) (a) The Board shall cause to be kept proper books and record of accounts of the income, expenditure, assets and liabilities of the Board.

- (c) Within a period of three months after the end of each financial year the Board shall submit to the Minister the audited accounts of the Board together with:-

- (i) a statement of income and expenditure during that year and
(ii) a statement of assets and liabilities of the Board on the last day of the financial year.

Board Regulations

THIS SUGGESTS THEY
COULD BE IF SO
DESIRABLE. IS THIS THE
INTENTION?

- (8) The Board shall make regulations relating to financial, sales purchases and staff schemes of service under the Board. These regulations may not be published in the Gazette but the Board shall arrange for publication of such notice of regulations to all persons or institutions affected by the Regulations.

PART VII - LOCAL PLANNING

Catchment areas.

25. The National Water Board shall divide Kenya into catchment areas, and may from time to time subdivide or amend such catchment areas.

River Basin Boards.

- 26.(1) The Minister shall by notice in the Gazette and in consultation with the National Board appoint for each catchment area a River Basin Board.

...../38

A CATCHMENT
AREA HAS
HYDROLOGICAL
MEANING.
WHILST SUB
DIVISION MAY
BE POSSIBLE
DIVISION INTO
CATCHMENT
AREAS HAS
ALREADY BEEN
UNDERTAKEN.

The Water Act

(2) It shall be the duty of the River Basin Board, in respect of its catchment area, to advise the National Water Board on the following matters -

- (a) the apportionment and use of existing and potential water supplies where such apportionment and use have no inter-basin water transfers implications; and
- (b) the adjustment, cancellation or alteration of any licence, sanction or permit of an inter-basin character;
- (c) facilitate the investigation, conservation of water resources within its basin

and to exercise such powers as may be delegated to it under this Act by the National Water Board.

(3) Every River Basin Board shall consist of -

- (a) the chairman of the regional development authorities whose areas of jurisdiction or any part thereof fall within the catchment area concerned;
- (b) one representative of the Director of Water whom shall also be the secretary to the Board.
- (c) one representative for each of the Ministries responsible for the matters specified in the First Schedule at the provincial level;
- (d) representatives of the institutions listed in the First Schedule;
- (e) the chairman of every District Water Board whose ^{area}~~are~~ of jurisdiction falls wholly or in part within the catchment area concerned;

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- (f) a representative of every local authority whose area of jurisdiction falls wholly or partly within the catchment area concerned;
- (g) two representatives of farmers or pastoralists within the catchment area concerned;
- (h) two representatives of the business community operating within the catchment area concerned; and
- (i) two representatives of the non-governmental organisations engaged in water management programmes within the catchment area concerned to be appointed in consultation with the National Council of Non-Governmental Organisations;

(4) Every appointment under paragraphs (f), (g) and (h) of subsection (3) shall be by name and by notice in the Gazette and shall be for a renewable period of three years, but shall cease if the appointee –

- (a) serves the Chairman with a written notice of resignation; or
- (b) is absent from three consecutive meetings of the Board without the permission of the Chairman; or
- (c) is convicted of an offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings; or
- (d) is incapacitated by prolonged physical or mental illness from performing his duties as a member of the Board; or

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- (e) conducts himself in a manner deemed by the Chairman, in consultation with the Board, to be inconsistent with membership of the Board; or
- (f) is adjudged bankrupt or has entered into a scheme or arrangement with his creditors.

5.(1) Each River Basin Board shall meet at least three times in every financial year, at such place as it may deem appropriate for the transaction of its business.

(2) Each River Basin Board shall elect its chairman and who shall preside at all meetings of the River Basin Board but in his absence a person appointed by the River Basin Board shall preside on his behalf at such a meeting.

SECRETARY ALREADY
INDICATED IN
26(3)(b)

(3) ~~Each River Basin shall have its secretary~~ ^{The} representative of the Director Water who shall prepare and keep all the records of the business conducted at the meeting of the River Basin Board. ^{of the Board}

(4) The powers of a River Basin Board shall not be affected by any vacancy in the membership thereof nor by any defect in the appointment of a person purporting to be a member of the River Basin Board.

(5) Subject to this section, a River Basin Board shall regulate its own procedure.

District Water
Boards.

27.(1) There shall be for each district a District Water Board appointed by the Minister, whose duties and responsibilities in respect of such district shall be –

- (a) to advise the Minister on water conservation, development and policy in respect of their districts;

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- (b) to submit to the National Water Board recommendations on water development;
- (c) to receive proposals for water development projects from local authorities and private individuals, to consider and advise thereon;

(2) The National Water Board may, from time to time, require a District Water Board to submit written reports on any matter referred to in subsection (1) of this section, and all such requirements shall be complied with:

Provided that if, upon the representation of a District Water Board required to furnish such information, the Minister is satisfied that compliance with any such requirement is impracticable or unnecessary, or that undue expense would thereby be incurred, he may direct that there need not be such compliance.

(7) Each District Water Board shall consist of the following persons appointed by the Minister –

- (a) a chairman;
- (b) representatives of each of the Ministries responsible for the matters listed in the First Schedule at the district level;
- (c) two representatives of farmers or pastoralists within the district one of whom must be a woman;
- (d) two representatives of the business community operating within the district;
- (e) a representative of every local authority within the district;
- (f) two representatives of the non-governmental organizations engaged in water management programmes within the district to be

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		appointed in consultation with the National Council of Non-Governmental Organizations;	
n) a representative of each water and sanitation service provider in the District	→	(g) a representative of ^a Water User Association from the district;	x x x
		(h) such number of other Members as may from time to time, be co-opted by the Board;	x
		(j) Every appointment under paragraphs (c), (d), (f), (g) and (h) of subsection (4) shall be by name and by notice in the Gazette and shall be for a renewable period of three years but shall cease if the appointee –	x x x x
		i (g) serves the Chairman with a written notice of resignation; or	x
		ii (h) is absent from three consecutive meetings of the Board without the permission of the Chairman; or	x
		iii (i) is convicted of an offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings; or	x
		iv (j) is incapacitated by prolonged physical or mental illness from performing his duties as a member of the Board; or	x
		v (k) conducts himself in a manner deemed by the Chairman, in consultation with the Board, to be inconsistent with membership of the Board; or	x
		vi (l) is adjudged bankrupt or has entered into a scheme or arrangement with his creditors.	x

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WHY
FINANCIAL ?

(5)(1) Each District Water Board shall meet at least three times in every (financial) year, at such place as it may deem appropriate for the transaction of its business.

(2) The Chairman shall preside at all meetings of the District Water Board but in his absence a person appointed by the Board shall preside on his behalf at such meeting.

THE DISTRICT WATER
OFFICER IS NOT
INDICATED AS BEING A
MEMBER OF THE
BOARD.

(3) The District Water Officer shall be the Secretary of the Board and he shall prepare and keep all records of the business conducted at the meetings of the Board.

(4) The powers of the District Water Board shall not be affected by any vacancy in the membership thereof nor by any defect in the appointment of a person purporting to be a member of the Board.

(5) Subject to this section, each District Water Board shall regulate its own procedure.

REVISED
CHAPTER TITLE
IS NOW

PART VIII - WATER APPORTIONMENT BY RIVER BASIN

MISLEADING
AS IT

BOARDS AND LOCAL WATER AUTHORITIES

INCLUDES

Water
Apportionment.

MINISTERS
POWERS TO

28. The River Basin Boards exercise such ~~exercise such~~ powers and perform such duties as are mentioned in this Part relating to water apportionment within their respective water catchment areas..

ESTABLISH

Delegation of
powers of Board.

WATER AND
SANITATION
AUTHORITIES
ETC.

29.(1) Any of the powers, duties or obligations vested in the River Basin Board under this Act may, by resolution of the River Basin Board, be delegated by it to any authority, board, committee or person;

Provided that the Board shall not, without the prior approval of the Minister in that (behalf) delegate the power to grant, amend or cancel licences, sanctions, permits or easements; and every such delegation approved by the Minister shall be published in the Gazette.

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(2) The Board 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 conferred upon or delegated to him.

Community
Committees and
water and
sanitation
authorities

30. (1) The Minister may appoint any number of persons to be a Community Water Committee for the management and use of water or the drainage or reclamation of lands in any area under a permit granted to it in respect of a community project, and to exercise any powers, duties or obligations that may be delegated to the Community Water Committee by the River Basin Board, and also subject to the approval of the Minister, to investigate, construct, operate and maintain any community project or any other project for the provision of water within its area.

(2) (a) "The Minister, in consultation with the Minister for the time being responsible for Local Authorities, may, by notice published in the Gazette, declare and establish autonomous urban water and sanitation authorities for the management and use of water, the collection and safe disposal of waste, in the areas so declared and established.

(b) "The Authorities so declared may be managed a private or public company, NGO, co-operative society, water user association, institution or other body established for the purpose.

(3) Autonomous Urban Water and Sanitation Authorities so declared by the Minister means, in an urban area, the area of jurisdiction of a City Council, a Municipal Council, a Town Council and includes urban area or syndicated urban areas other than a village, village settlement or a minor settlement".

(4) "The Minister may by notice published in the Gazette require water providing Local Authorities to create autonomous departments or companies to provide water and sanitation services on behalf of the

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Local Authorities and may give directives in respect of revenues collected by the provider and may further have such powers requiring all water and sanitation providers to furnish the Regulator with all financial information and development of the provider.

Proposals

(5) "The Minister shall enter into performance contracts with each authority appointed by him and the contract shall include among other things:-

- (a) terms of reference of the authority relating to its rights and obligations;
- (b) the extent of the authority's interest in any land, or works constructed or financed by the Government or works constructed by the authority;
- (c) terms of reference of the authority relating to the operations of the authority in the exercise of its functions;
- (d) provisions under this part of the Act, if any, that will not apply to the authority;
- (e) the period of contract; and
- (f) any other information or matter that the Minister and the authority may find necessary for the better operations of the authority;

Provided that in the performance of the contract, an authority shall make a report to the Minister on the achievements of the authority since the making of the contract or the last report by the authority at such intervals and in a manner that the Minister may prescribe in relation to that authority and further the Minister may from time to time give directions to any authority on general policy and the authority shall give effect to such policy.

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(6) The roles of ^{every} urban water and sanitation authority will include:-

- (a) to provide water supply services for domestic, stock, horticultural, industrial, commercial, recreational, environmental and other beneficial uses as is required by the declaration establishing the authority or the performance contract
- (b) to manage the water resources entrusted to it
- (c) to provide and manage sanitation services as may be required by the declaration or performance contract
- (d) to give effect to any directive by the Minister relating to water and sanitation; and
- (e) to do anything in connection with or incidental to the above.

Board may
Prescribe
measuring and
controlling
devices.

31.(1) The River Basin Board may prescribe in a permit that the operator shall construct, fix and maintain in a sound and efficient manner weirs, flumes, sluice gates, valves or other controlling or measuring devices, ensuring that only the quantity of water, or proportion of the flow of the stream, which the operator is authorized to abstract, divert, use or store shall be abstracted, diverted, used or stored by the operator in exercise of such permit, or it may, at any time after the issue of such permit or of a licence or sanction, require the operator to ~~contract~~ fix and maintain such weir, flume, sluice gates, valve or other controlling or measuring device.

Construct

(2) The River Basin Board may determine the design, materials and method of construction of any such

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controlling or measuring devices, having regard to local conditions and circumstances.

(3) Every operator storing water in a reservoir shall, at the discretion of the River Basin Board, and according to plans approved by it, construct, fix and maintain in a sound and efficient manner flumes, weirs, sluice gates, valves or other controlling or measuring devices at points on the stream to be determined by such Board and, if required so to do, on each and every stream or body of water discharging into or from such reservoir, for the purpose of determining the amount of water flowing into or stored in such reservoir or the flow below such reservoir, or both.

(4) If any operator neglects or refuses to commence the construction or fixation of such flumes, weirs, sluice gates, valves or other controlling or measuring devices, within three months after notice to do so by the River Basin Board, or to prosecute the said construction diligently, or to maintain the same satisfactorily, the River Basin Board may -

- (a) construct, fix, maintain or cause to be constructed, fixed and maintained the said flumes, weirs, sluice gates, valves or other controlling or measuring devices;
- (b) open or cause to be opened the sluice gates, valve or outlet of any reservoir, or, failing such outlet demolish or cause to be demolished any works in order to provide an outlet, or close or cause to be closed any canal or pipe or other work for diverting or abstracting water, to permit such quantity of water to flow down the stream for the use of other persons, as the Water Apportionment Board may deem proper, until the said operator constructs, fixes or maintains the said flumes, weirs, sluice gates, valves or other controlling or measuring devices.

(5) All costs and charges in connection with any such operation shall be paid by the operator and, if not so paid, shall, in addition to any other penalty provided under this Act, be recoverable as a debt due to the Government, and, if the operator further refuses or fails to comply with the said requirements, the River Basin Board may cancel his licence, sanction or permit.

Powers of
River
Basin Board
during
drought.

32.(1) During a drought, or at any time in the case of small watercourses, the River Basin Board may, in its absolute discretion by order, require any person, notwithstanding the fact that he may be using water under a licence, sanction or permit, to allow to pass such proportion of the water in the watercourse as appears to the River Basin Board to be equitable, and may prohibit any practice which, in the opinion of the Water Apportionment Board, causes undue reduction of the water in any watercourse.

(2) Any person who fails to obey an order of the River Basin Board given under subsection (1) of this section shall be guilty of an offence.

Questions as to
efficient
utilization to
be determined
by Board.

33.(1) The use of water shall be reasonable as well as beneficial in relation to others who use the same sources of supply or bodies of water.

(2) All questions as to full, efficient, reasonable and beneficial utilization, as to adverse effect of works or as to limitation of supply owing to abnormal conditions shall, from time to time, be decided by the River Basin Board.

(3) Any person aggrieved by a decision of the River Basin Board given under subsection (2) of this section may appeal to the National Water Board, whose decision shall be final.

(4) In deciding any such question, the River Basin Board shall have regard to the particular circumstances of the area concerned, the time at and the

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period during which the water is used and any other circumstances relevant to the question.

Board may
declare matters
pertaining to
bodies of water.

34. The River Basin Board may declare that a particular channel or depression or swamp is not a water-course, and whether a particular body of water or body of surface water is a stream, swamp, natural lake or spring, and whether any particular ground water is tributary to any such stream, swamp, natural lake or spring, ~~and whether any particular ground water is tributary to any such stream, swamp, natural lake or spring.~~ and may also declare, define or delineate the boundaries thereof and all matters pertaining thereto, and may vary any such declaration, and any such declaration, until varied, shall be conclusive of any fact stated therein.

Board may
require
statement
under oath.

35.(1) The River Basin Board may require any application or statement called for under this Part or under any rules made under this Act to be verified by oath, affirmation or declaration.

(2) Any person who, being required so to do under subsection (1) of this section, verifies by oath, affirmation or declaration any application or statement which he knows to be false or does not believe to be true shall be guilty of an offence.

PART IX – STATE SCHEMES

State schemes.

36.(1) The Minister may, from time to time, publish in the Gazette a notice setting out the land required for the development of any state scheme.

(2) When any land is required for a state scheme, such land may be acquired in accordance with the law for the time being in force relating to the acquisition of land for public purposes.

(3) A state scheme shall, due regard being given to the satisfaction of the water rights previously acquired,

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take precedence over all other schemes for the use of water or the drainage of land.

(4) Where any land or portion thereof acquired under subsection (2) of this section is not immediately required for the full development of a state scheme, such land may be leased by the Commissioner of Lands, with the approval of the Minister, to the previous owner of the land or, if not required by him, to any other person in accordance with the law for the time being in force relating to the leasing of such land.

(5) Permits may be issued by the concerned River Basin Board, on such terms and conditions as it may specify, for the use of the water or any portion thereof reserved for state scheme, but such permits shall be valid only until such time as water is required for the state scheme, or, as the case may be for as long as any water is available in excess of the requirements of such state schemes.

Execution of
state schemes
in relation to
other works.

37.(1) The Minister, after consultation with the National Water Board, may direct that state schemes may be executed in augmentation, modification or improvement and, subject to the provisions of this Act, in supersession of any other works for, or comprising the employment of, waters, ~~any other works for, or comprising the employment of, waters,~~ and he may, at any time, order that any works contemplated or under execution or completed shall be aided from public moneys to such extent as may be authorized by Parliament.

PART X - WATER PERMITS

Purposes for
which permit
may be
acquired.

38. The purposes for which a permit may be acquired are as follows -

- (a) a domestic purpose, which expression means the provision of water for household and sanitary purposes and the watering and dipping of stock.

shall

ARE STEAM ENGINES
STILL CATERED FOR
ON KENYA RAILWAYS?

REDUCE 2 ACRES
BY 1 HECTARE?

NEED TO SEPARATE
AGRO-INDUSTRY FROM
OTHER INDUSTRIES?

ACRES?

Add

ANY COMMERCIAL PURPOSE?

When permit
required.

(b) a public purpose, which expression means the provision of water for municipalities, townships, villages and communities, and for all reasonable demands for steam-rising on railways or for other purposes connected with public undertakings, not involving the use of water for the generation of power;

(c) a minor irrigation purpose, which expression means the provision of water for the irrigation of land, not exceeding two acres, used for orchards, gardeners, nurseries or land farming operations;

(d) an industrial purpose, which expression means the essential requirements of any industry, including mining and the washing and treating of coffee, vegetable fibre or other agricultural or mineral produce, or the essential requirements of other industries and mining;

(e) a power purpose, which expression means the provision and employment of water for the development of power;

(f) a general irrigation purpose, which expression means the provision of water for the irrigation of land exceeding two acres in extent;

(g) any other purpose approved by the National Water Board.

39.(1) In all cases of proposed diversion, abstraction, obstruction, storage or use of water from a body of water other than those referred to in section 38 of this Act, application must be made to the relevant District in the manner prescribed by this Act for a permit for such

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diversion, abstraction, obstruction or storage of water from or in such body of water.

(2) All applications made to a District Water Board shall be processed within a reasonable time and thereafter forwarded to the relevant River Basin Board with such recommendations as the District Water Board may deem appropriate to enable the River Basin Board to reach a decision whether to grant or deny the permit applied for.

(3) Any person who executes, constructs, erects or employs works for the diversion, obstruction, abstraction or storage of water, or diverts, obstructs or stores water from a body of water, except as permitted by this Act, without, or before the receipt of, an authorization or permit issued under this Act, shall be guilty of an offence.

Permit
required for
drainage
of swamp.

40.(1) No person shall drain, obstruct or otherwise interfere with any swamp unless such swamp has been declared under section 31 of this Act not to be a watercourse, without first having obtained an authorization or permit under this Act.

(2) Any person who contravenes the provisions of this section shall be guilty of an offence.

When permit
not required.

41. A permit is not required -

(a) for the abstraction or use of water from any body of water for domestic purposes by any person having lawful access thereto, if such abstraction is made without the employment of works.

(b) when the works for the development of ground water are not situated within one hundred yards of any body of surface water:

Provided that this paragraph shall be subject to the provisions of sections 50 and 74 of this Act;

WHY IS A PERMIT
NOT REQUIRED UNDER
THESE CIRCUMSTANCES?
HOW ELSE CAN CONTROL
BE EXERCISED?

- (c) for the storage of water in, or the abstraction of water from, a dam constructed in any channel or depression which has been declared not to be a watercourse under section 32 of this Act.

Classification
of projects.

42. Projects for the use of water, or for the drainage of land, are of four classes, namely –

- (a) private projects;
- (b) community projects;
- (c) public projects;
- (d) urban projects;

Private projects
conducted by
association of
operators.

43.(1) Private projects are those which concern the use of water or drainage of swamps within the limits of the of the land of the operator, whether works are constructed entirely on the land of the operator, or partly on the land of the operator and partly on the land of other persons.

(2) (a) Two or more operators who have a common interest in the employment of water or in the drainage of swamps may unite in an association for the exercise of a permit for a private project.

(b) Any application for a permit in such a case shall be accompanied by a statement of the terms and objects of the association, and the rules under which the association proposes to exercise the permit shall be specified and submitted to the concerned District Water Board for approval, and any variation of such rules subsequently made shall also be submitted for the approval of the concerned District Water Board.

(f) The proportion of participation shall be presumed to be equal between members, unless the contrary is specified by rules made and agreed by the association and approved as provided in paragraph (b) of this subsection.

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(g) The grant of a permit to an association of operators under this section shall be subject to such terms governing action to be taken during operation, or upon withdrawal of members of the association, as the concerned River Basin Board may specify or as may be prescribed.

Community projects.

44. Community projects are such projects, other than public or urban projects, as are conducted in accordance with rules approved by the concerned River Basin and agreed by concerned District Water Board and agreed by a Community Water Committee operating under a permit for one or more of a series of authorized purposes connected with the use of water, or the drainage or reclamation of land situate entirely, or for the greater part, within the area in respect of which such Community Water Committee is appointed.

Public projects.

45. Public projects include projects which involve the supply of water or of electrical energy derived from the energy of moving water, to persons other than the operator, in consideration of payment therefor, or the drainage or reclamation of lands in consideration of payment therefor.

Urban projects.

46. Urban projects mean projects undertaken, operated or maintained by a municipal authority, corporation or other body, for the supply of water to municipalities or townships and include projects, however originated and constructed, which are acquired and operated by a municipal authority, corporation, water undertaker or other water works, authority, for the supply of water to a municipality or township, trading centre or other urban community.

Board to determine class of project.

47. The concerned River Basin Board may determine to which class any proposed project shall be deemed to belong.

Permits, etc. involving

48.(1) In the case of all licences, sanctions or permits involving the irrigation of land, provision shall be

irrigation of land

made by the operator for the efficient drainage of such lands and the delivery of the residue of used or unused water to a watercourse or a body of water or drainage or other works.

(2) Whenever, in the opinion of a River Basin Board, no provision, or insufficient provision, has been made by the operator for the delivery of used or unused water to a watercourse or body of water, or for the drainage of irrigated lands or swamps created by any diversion or abstraction of water, it may order the operator to construct and maintain such works as will, in its opinion, cause such water to be so delivered or as will drain such irrigated lands or swamps.

(3) If any operator fails within a reasonable time to obey any order of the River Basin Board given under this section, his licence, sanction or permit may be cancelled by the River Basin Board, and the licence, sanction or permit shall thereupon become null and void, and he shall be guilty of an offence.

Conversion of
licences and
sanctions.

49.(1) A licensee may at any time apply to the concerned District Water Board for a permit in lieu of his licence [the concerned District Water Board shall process the application and thereafter forward the same to the relevant River Basin Board with such recommendation as it may deem appropriate to enable the River Basin Board to reach a decision whether to grant or deny the permit applied for.

and

(2) Upon the termination of a sanction or before such termination if so desired by the sanction holder, the concerned River Basin Board may issue to the sanction holder a permit in lieu of the sanction.

Issue of
permits without
usual procedure
in exceptional

50.(1) Notwithstanding anything contained in this Act, a River Basin Board may, if in its opinion exceptional circumstances warrant such action, authorize by permit, for a period not exceeding one year, the diversion, abstraction,

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cases.

obstruction or use of water and the works required therefor according to such terms and conditions as the River Basin Board may specify in such permit, regard being had to the extent to which the authorization of such permit would be likely to interfere with the domestic requirements of other users.

FIRST ORDER THE
PERSON CONCERNED
TO DEMOLISH, SAYING
WHICH MAY FORTHWITH
DEMOLISH

(2) In the event of any works not being in conformity with a permit issued under this section, or in the event of such permit having been terminated, the River Basin Board may forthwith demolish any such works and recover the cost of such demolition from the person concerned in any competent court, and the permit holder shall surrender his permit to the River Basin Board, which shall endorse it accordingly.

Permit to be
appurtenant to
land for
which issued.

51.(1) When issuing a permit, the River Basin Board shall specify, as far as practicable, the particular portion of any land, or the particular undertaking to which the permit is to be appurtenant, and such permit shall thereupon, save as herein provided, be appurtenant to such portion of land or such undertaking, and such permit shall pass with any demise, devise, alienation, transfer or other disposition thereof, whether by operation of law or otherwise.

Provided that, if in the opinion of the River Basin Board circumstances, not under the control of the permit holder, have changed since the issue of the permit and the water concerned cannot in such circumstances be reasonably beneficially used by such permit holder on the particular portion of land to which such permit is appurtenant, the River Basin Board may, on application by such permit holder and provided it is in the public interest and the rights of others are not adversely affected thereby, transfer the rights of others are not adversely affected thereby, transfer such permit to another portion of the land owned by such permit holder.

(2) When the land or undertaking to which the permit is appurtenant passes to another landholder or

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owner, the permit shall be surrendered to the River Basin Board for endorsement thereon of the name of the new landholder or owner.

(3) Notwithstanding anything contained in subsection (1) of this section, if the land to which the permit is appurtenant has been, or is about to be, divided in ownership, the permit shall be surrendered to the River Basin Board, and any new permit as may be issued by the River Basin Board shall be dependent upon the acquisition of such easements, if any (to be acquired within a period of two years of the date of the registration of transfer of the subdivision of land, or such longer period as the River Basin Board may decide), as may be required, and may be issued with such modifications of the original permit as, in the opinion of the River Basin Board, may be rendered necessary or desirable by the circumstances.

(4) Any person who contravenes the provisions of subsection (2) of this section shall be guilty of an offence.

Conditions of
permits, etc.,
to be observed.

52. The right of a licensee or the privilege of a sanction or permit holder to divert, abstract, use or store water shall be exercised in accordance with the conditions of his licence, sanction or permit, and shall be limited to the quantity or whether it is normal flow or flood discharge permitted by such licence, sanction or permit.

PART XI - ABSTRACTION OF GROUND WATER AND PERMITS THEREFOR

Permits
required for
certain wells.

53.(1) No person shall construct or begin to construct a well or abstract any water from a well if such well is to be constructed or is situated within one hundred yards of any body of surface of water, unless such person has been duly authorized by a water permit to do so.

(2) No person shall construct or begin to construct a well or abstract any water from a well if such well is to be constructed or is situated within 800 metres of

...../58

CONSTRUCTION OF A WELL OR ABSTRACTION
THEREFROM BY A HOTEL OR RESTAURANT WHERE THERE IS A
WATER UNDERTAKING AS ABLE TO SUPPLY THE
REQUIRED QUANTITY SHOULD BE LIMITED TO USE
FOR GARDEN WATERING, TOILET FLUSHING, & FLOOR CLEANING ETC.
IT SHOULD NOT BE SUPPLIED TO WASH HAND BASINS,
BATHS, SHOWERS OR IN KITCHENS

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another well without first having obtained the written authority of the District Water Board so to do.

(3) Any person applying for the necessary permit in compliance with subsection (1) of this section, or for authority under subsection (2) of this section, shall give such particulars relative to his application as the District Water Board may require, and such Board may, after consideration of the application, grant upon such conditions as it may deem necessary or refuse the application.

(4) Any person aggrieved by a decision of the District Water Board given under subsection (3) of this section may, within thirty days after notification of the decision, appeal to the relevant River Basin Board, whose decision shall be final and binding.

(5) Any person who fails to comply with the provisions of subsection (1) or subsection (2) of this section shall be guilty of an offence, and the District Water Board may,

Add →

Notice of
intention to
construct well.

54.(1) No person shall construct or begin to construct a well without having first given to the District Water Board notice of his intention to do so, and shall notify the District Water Board when construction commences and, unless otherwise exempted, keep a record of the progress of the work, which shall include measurements of the strata passed through, specimens of such strata, the levels at which water was struck, the quantity of water obtained at each level and the quantity finally obtained and the rest level thereof.

(2) Such person shall allow any person authorized by the District Water Board, at all times-

- (a) to have free access to any such well;
- (b) to inspect such well and the material excavated therefrom;

...../59

Add

on the conviction of such a person, order that the well concerned be effectively sealed.

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- (c) to take specimens of such material and of water abstracted from the well; and
- (d) to inspect and take copies of or extracts from the record required to be kept under this section.

(3) Where the person constructing a well or any land is not the occupier of such land, the obligation to allow any person authorized by the District Water Board to exercise his rights under this section shall be the obligation of the occupier of the land as well as of the person constructing the well.

Submission of
records of well.

55. The person constructing such well, if required to keep records under subsection (1) of section 51 of this Act, shall, within one month of the cessation of the construction, send a complete copy of the record, together with the specimens referred to in such record, to the District Water Board, and shall also send to the District Water Board particulars of any test made, before such cessation of the construction, of the yield of water, and shall specify the rate of flow throughout the test and the duration of the test, and also, where practicable, the water levels during the test and thereafter until the water has returned to its natural level and the person constructing the well shall further state, on the record, his opinion as to whether the water, as determined by tasting, is suitable for drinking or is highly mineralized, as the case may be, and shall, if required by the District Water Board, send to such Board such water samples as the Board may deem necessary.

Tests on
neighbouring wells.

56. Where any well is being constructed within ~~half a mile~~ ^{800 metres} of an existing well, the District Water Board may, by notice in writing, require the person constructing the well to apply tests, to be specified in the notice, to the existing well and to supply to the Board the particulars of the results of such tests including the rate of pumping and rest levels of water.

Contractor

57. Where any borehole contractor constructs a

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deemed to be
constructor.

borehole on land belonging to or occupied by any other person, such borehole contractor shall be deemed for the purposes of this Act to be the person constructing the borehole.

Records may
be required to
be treated as
confidential

58. The person constructing such well, if a different person, the owner or occupier of the land of the land on which such construction takes place may give notice to the District Water Board requiring any copy of, or extract from the record required to be kept under section 51 of this Act, or any specimen taken or any other particulars connected with the well, to be treated confidentially, and the District Water Board shall thereupon not allow such copy, extract, specimen or other particulars, except in so far as it contains or affords information as to water resources or supplies, to be published or shown to any person not being a member of the District Water or other Boards established under this Act unless the person giving such notice consents thereto:

IT SHOULD BE AVAILABLE
TO ANY WATER AND
SANITATION SERVICE
PROVIDER WITHIN WHOLE
AREA THE WELL IS
CONSTRUCTED.

Provided that, if at any time the District Water Board gives notice to such person that, in its opinion, his consent is unreasonably withheld, then that person may, within three months after the notice given by the District Water Board, appeal to the Minister, and, if at the expiration of that period no such appeal has been made, ~~or expiration of that period no such appeal has been made~~ or if, after hearing the appeal, the Minister does not make an order restraining it from doing District Water Board may proceed as if such consent had been given.

Non-compliance
with sections
51, 52 and 53
an offence.

59. Any person who fails to comply with any of the obligations imposed upon him by sections 51, 52 and 53 of this Act shall be guilty of an offence.

Waste of
ground water.

60.(1) No person shall, except with the written authority of the District Water Board –

- (a) cause any ground water to run to waste from any well except for the purpose of testing the

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extent or quality of the supply or cleaning, sterilizing, examining or repairing such well:

- (b) abstract from any well water in excess of his reasonable requirements and which he cannot use in a reasonable requirements and which he cannot use in a reasonable and beneficial manner.;
- (c) conduct the water from any well through any channel or conduct so that more than twenty per cent of and the point of beneficial use:

Provided that, where the water from any well is conducted through channels or conduits together with water from other sources, no person shall permit the waste of more than twenty per cent thereof in conducting the water from the point of appropriation of the well water to the point of beneficial use;

- (d) use any water from any well for the purpose of domestic use or the watering of stock, except where such water is carried through pipes fitted with float valves or other satisfactory means of control, to prevent waster therefrom:

Provided that, where ground water interferes or threatens to interfere with the execution or operation of underground works, whether water works or not, the District Water Board may, in any particular case, agree that such water may be allowed to waste upon such conditions regarding quantity and method of disposal as it may specify.

- (2) Any person who contravenes any provision of this section shall be guilty of an offence, and liable, for a first offence, to a fine not exceeding five hundred shillings.

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~~and for a second or subsequent offence to a fine not exceeding one thousand shillings~~, and the District Water Board may, on the conviction of any such person, order that the well concerned be effectively sealed, or may make such other order as appears to it to be necessary to prevent waste of water.

(3) If any person fails to comply with any order given under this section, the District Water Board 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 person upon whom such order is made.

Defective wells.

61.(1) Any well which encounters salt water, hereinafter referred to as a defective well, shall be securely cased, plugged or sealed off by the owner of such well, so that the salt water is confined to the strata in which it was found, and such casing, plugging or sealing shall be done in such a manner as effectively to prevent the salt water from escaping from the strata in which it was found into any other water-bearing strata or on to the surface of the ground.

(2) Subsection (1) of this section shall also apply to all wells constructed before the commencement of this Act.

Interference
with defective
well.

62. Any person who recases or removes the plugs or seals from a defective well, or deposits, or causes or knowingly permits the deposit of, any dirt, rubbish or other material in any such well, except with the written authority of the District Water Board, shall be guilty of an offence.

Application to
carry out work
on defective well.

63.(1) Before any defective well is recased or the plugs or seals removed, the owner of the well, or his duly authorized representative, shall file with the District Water Board an application for authority to carry out such recasing or the removal of the plugs or seals.

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(2) Such application shall contain as complete information as possible in regard to the name and address of the owner of the well, its location, depth and size and the amount and location of casing or sealing in the well, the distance below the surface of the ground to the water level in the well, the strata penetrated, the distance from the surface of the ground to the top of the salt water stratum and the thickness of the salt water stratum, and shall give all other available information regarding the condition of such well, and shall also state the methods proposed for recasing, replugging or resealing off such well.

Instructions to
deal with
defective well.

64. The District Water Board, after consideration of any application under section 60 of this Act, may call for additional data, and may make such investigation as it considers necessary, and, if the well is found to contain salt water, shall issue instructions to the applicant, specifying the work which shall be done by the owner to place it in a satisfactory condition and designating the time that shall be allowed to complete the work, and may inspect such work while it is in progress.

Board may
inspect well.

65. The District Water Board may on its own initiative, or upon information or complaint from any source, make an examination of any well suspected of containing salt water, and may issue instructions for curing any defects in such well, and such instructions shall have the same force and effect as instructions issued under section 61 of this Act.

Sworn
statement to
be submitted.

66. Upon completion of the works in pursuance of any instructions issued under section 61 of this Act, the contractor who carries out the work or, if the work is done without a contractor, the owner of the well shall file with the District Water Board a statement sworn or affirmed specifying in detail the manner in which such work was done; and failure to file such a statement within thirty days after the completion of such work shall be an offence.

Additional

67.(1) Upon receipt of such statement, the District

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work on
defective well.

Board shall determine, either from the statement or from inspection or test whether the work has been satisfactorily performed, and, if it determines that the work has not been satisfactorily performed, it shall issue additional instructions specifying the additional work required to place the well in a satisfactory condition, and specifying the time for the completion of such additional work.

(2) Upon the completion of such additional work, a statement sworn or affirmed shall be filed with the District Water Board as provided for in section 63 of this Act, and failure to file such a statement shall be an offence.

Penalty for
failure to
carry out order.

68.(1) The owner of any defective well shall be guilty of an offence if he fails to carry out any order of the District Water Board within the period specified therefor in the order.

(2) If such owner fails to comply with an order of the District Water Board, the Board may itself take such steps as may be necessary to execute such order, and any expenses incurred in so doing shall be recoverable at the suit of the Board as a civil debt from such owner.

Well not to be
constructed
within limits
of supply of
water provider or
water undertaker
without consent.

69.(1) Notwithstanding anything contained in this Act, no well shall be constructed within the limits of supply of a water undertaker or water provider without the consent of the Minister.

(2) Such application shall contain as complete information as possible in regard to the name and address of the owner of the well, its location, depth and size and the amount and location of casing or sealing in the well, the distance below the surface of the ground to the water level in the well, below the surface of the ground to the water level in the well, the strata penetrated, the distance from the surface of the ground to the top of the salt water stratum and the thickness of the salt water stratum, and shall give all other available information regarding the condition of such well, and shall also state the methods proposed for recasing, replugging or resealing off such well.

Permit for
abstraction of
ground water.

70. Where under this Act a permit is required for the abstraction of ground water, the District Water Board may, on the application of any person, grant such permit with or without conditions, or may refuse to grant such permit.

Contamination
and pollution
of ground water.

71.(1) Every person abstracting ground water by means of a well shall, in order to prevent contamination or pollution of the water –

- (a) effectively seal off to a sufficient depth any contaminated or polluted surface or shallow water in rock openings or soft broken ground;
- (b) effectively seal the top of the well between the surface casing and the internal pump column, and the suction or discharge pipe;
- (c) dispose of all return or waste water by means other than by return to the well;
- (d) extend the well casing to a point not less than eight inches above the elevation of the finished pump house or pump pit floor;
- (e) use either welded or screw type well joints on the casing, if made of metal;
- (f) dispose of effluents or drainage from any household, stable, factory, trade premises or other premises in such a manner as will prevent any such effluent or drainage from reaching such seal or ground water; and
- (g) carry out such other work as the District Water Board may direct, from time to time, for the prevention of contamination or pollution.

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(2) The provisions of paragraphs (f) and (g) of subsection (1) of this section shall also apply to persons other than the person abstracting such ground water, but, where any such work is carried out, the District Water Board may order that it shall be carried out by the person abstracting the ground water and may apportion the expense; and, where an order is made under this subsection for the carrying out of any work, such order shall specify the work which is to be carried out, and no departure from such order shall be made without the prior authority of the District Water Board.

(3) If any person fails to comply with an order of the District Water Board given under this section, the District Water Board may take such steps as may be necessary to execute such order, and any expenses incurred in taking such steps shall be recoverable at the suit of the Board as a debt from the person upon whom such order was made.

(4) For the purposes of this section, the District Water Board, or any person deputed by it, may enter any land or premises for the purposes of ascertaining any information required, after giving twenty-four hours' notice to the occupier of the intention so to enter.

(5) Any person who fails to comply with any of the provisions of this section, or who fails to obey an order given under this section, shall be guilty of an offence.

Board may order
special measures
to safeguard
ground water
resources.

72.(1) if, during the construction of a well, water is encountered in an aquifer and water from a water table or lower aquifer tends to flow from the upper aquifer to the lower aquifer, and if, in the opinion of the District Water Board may order what special measures shall be taken by the owner of the well so that the water from the higher aquifer cannot flow to the lower aquifer.

(2) Any person who contravenes or fails to comply with an order given by the District Water Board under subsection (1) of this section shall be guilty of an

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offence and liable to a fine not exceeding ten thousand shillings.

Artesian wells
to be ceased.

73.(1) Every artesian well and every sub-artesian well shall be efficiently cased, capped or furnished with such appliances as will readily and effectively arrest and prevent the flow therefrom over the surface of the ground or wasting from the well through the strata through which it passes.

(2) Any owner of a well who fails to comply with the provisions of subsection (1) of this section shall be guilty of an offence.

Licensing of
borehole
contractors.

74.(1) No borehole contractor shall carry out any contract to construct a borehole until he has been licensed by the National Water Board.

(2) Every application for a borehole contractor's licence shall be made in the prescribed form.

(3) If, on receipt of an application, the National Water Board is satisfied that the applicant is a fit person to be licensed, it shall issue a borehole contractor's licence for such period and subject to such conditions as are prescribed therein, and shall keep a register containing the particulars of all such licensing licences.

(4) The National Water Board may at any time cancel any borehole contractor's licence if the contractor has -

- (a) conducted any drilling operation improperly;
or
- (b) intentionally made a misstatement of fact in any report required from him under this Act;
on
- (c) failed to submit any report required from him under this Act; or

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- (d) failed to comply with the provisions of this Act.

Penalty for
constructing
borehole
without
being licensed.

75. Any person not licensed as borehole contractor who carries out any contract or construct a borehole, or any drilling operation, shall be guilty of an offence.

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Provided that landholders who drill on their own holdings shall be exempt from the provisions of this section.

Conditions of
permit to
abstract
ground water.

76.(1) The following shall be the conditions of a permit for the abstraction of ground water -

- (a) that the right of the permit holder shall relate to a specific quantity of water which may be obtained with a maximum pumping lift found by the District Water Board to be reasonable or feasible at the time of granting the permit;
- (b) that the permit does not include the right to have the rest level in the well of the permit holder maintain^{ed} at any level higher than the level necessary to make effective such reasonable or feasible pumping lift;
- (j) that the District Water Board may revise both the quantity of water and the maximum pumping lift in the light of changed conditions as provided in section 98 of this Act.

x

(2) Nothing in paragraph (b) of subsection (1) of this section shall be so construed as to prevent the granting of permits to other applicants later in time, on the grounds that abstractions under such later appropriations may cause the rest level at the point of abstraction of a prior

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appropriator to be lowered, so long as the right of existing holders of permits can be satisfied.

Conservation
areas.

77.(1) Where the Minister, after consultation with the National Water Board, is satisfied that, in any area, special measures for the conservation of ground water are necessary in the public interest, whether for the protection of public water supplies or for the protection of water supplies used for industrial or other purposes, he may make an order (in this Act called a conservation area order) declaring that such area is a conservation area, and thereupon the provisions of sections 75 and 76 of this Act shall apply to such area either until further order or for such period as may be specified in the order.

×

(2) Before such order is made, the Minister shall publish in the Gazette and in a newspaper circulating in the district a notice of his intention to make such order, and any person who may be aggrieved by making of such order may, within thirty days of the date of publication of the notice, appeal to the National Water Board.

User of ground
Water before
making of
conservation
area order to
apply for permit.

78.(1) Every person who has been, before the making of a conservation area order, diverting or abstracting water or allowing water to be diverted or abstracted from ground water, by mechanical means within any conservation area, and who desires to continue to do so, shall, within six months of the date of the order, or within such further period as may be determined by the Minister by notice in the Gazette, apply to the relevant District Water Board for a permit.

×

(2) Any person who fails to apply for a permit in accordance with subsection (1) of this section shall be guilty of an offence.

Construction
and use of wells
in conservation
area for
abstraction of

79.(1) In a conservation area no person shall -

- (a) construct or commence to construct any well for the purpose of abstracting ground water

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water by
mechanical
means.

therefrom; or

- (b) extend any existing well for the purposes of abstracting additional ground water therefrom, x

unless he has obtained a permit from the District Water Board so to do.

(2) The provisions of this section shall not apply to any well from which the water is abstracted otherwise than by mechanical means;

(3) No person shall abstract ground water by mechanical means from any well within a conservation area unless he has obtained the necessary permit.

(4) Any person who contravenes any of the provisions of subsections (1) and (3) of this section shall be guilty of an offence.

Priorities for
use of
ground water.

80. Priorities for the use of ground water may be established separately in each area which constitutes, in the opinion of the District Water Board, a separate source of supply.

PART XII – PROCEDURE ON ISSUE OF PERMITS

Application
for permit.

81. Except where otherwise expressly provided in this Act, every applicant for a permit shall complete and file with the concerned District Water Board the following document in triplicate, accompanied by the prescribed fee-

- (a) an application in the prescribed form together with such plan or plans, drawn in such a manner and to such scale as will allow all requisite details to be legibly recorded, as may be required under this Act or by the District Water Board;

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- (b) an application, where necessary, for the right to construct work across a road, railway, road reserve or railway reserve.

Application for
permit involving
reclamation
or drainage

82. In any application for permits involving reclamation or drainage of land, an applicant shall furnish such particulars as the District Water Board may specify.

Amendment of
application.

83.(1) Upon receipt of an application, map or plan (if any) by the District Water Board, or at any time after such receipt, and whether objections have been received or not, the District Water Board may amend or vary the application, map or plan in any respect.

(2) Such application, map or plan (if any), or true copies thereof, shall be open for inspection by the public at all times during office hours at the office of the chairman, and at any other place deemed desirable by the District Water Board or the chairman.

Approval
of application.

84.(1) After receipt by the District Water Board of the application, together with all particulars, map and plan (if any) which it may have required the applicant to furnish so as to enable a full understanding to be obtained of the applicant's proposals, either as originally submitted or as varied, the District Water Board, if in its opinion the permit applied for would be likely to be in the public interest or not adverse to it, shall endorse its conditional approval on the original and all copies of the application, map and plan (if any) connected therewith.

(2) In the case of permits to be issued by a River Basin Board, the District Water Board shall forward the relevant processed applications to the River Basin Board with such recommendations as the District Water Board may deem appropriate to enable the River Basin Board reach a decision to grant or deny the permit applied for.

Consideration of
applications and

85.(1) Applications for permits for the same purpose or for different purposes shall receive consideration in

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procedure of
use of water.

accordance with the circumstances of each case.

(2) The use of water for domestic purpose shall take precedence over the use of water for any other purpose and the River Basin Board or the District Water Board may reserve such part of the flow of a body of water as in its opinion is required for domestic purpose.

(3) The applicant and any person who may have objected to the application shall be notified of the decision of the River Basin Board or the District Water Board as the case may be and, in the event of the rejection of an application or objection, as the case may be, of the reasons therefor, and may, if aggrieved by such decision, within thirty days after the date of such notification, lodge with the chairman of the District Water Board a notice of appeal to the River Basin Board against the decision of the District Water Board or lodge with the chairman of the River Basin Board a notice of appeal to the National Water Board against the decision of the River Basin Board, as the case may be.

(4) The decision of the River Basin Board shall be appealable to the National Water Board whose decision on any such appeal shall be final and binding on all parties concerned.

Cancellation
of application.

86. If an applicant fails to complete his application to the satisfaction of the District Water Board within a period of one year, or such other period as the Water Apportionment Board may in any particular case specify, from the date of its first receipt at the office of the Water Apportionment Board, the application shall be deemed to be abandoned and shall be cancelled.

Advertising
application.

87.(1) If the application and map or plan (if any) have been conditionally approved under section 81 of this Act, or before such conditional approval the chairman considers it desirable so to do, the chairman shall prepare a notice setting forth -

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- (a) the name and address of the applicant;
- (b) the body of water from which it is proposed to abstract or divert water or on which it is proposed to impound water;
- (c) the place at which the water is proposed to be used;
- (d) the purpose for which the water is proposed to be used;
- (e) a statement that any objection must be filed with the District Water Board within thirty days from the date of the first publication of such notice and that a copy of any objection shall be served on the applicant; and
- (f) any further information considered by the District Water Board to be necessary.

(2) Such notice shall be transmitted to the applicant, who shall, if he still desires to acquire a permit, within twenty-one days from the date of the receipt of such notice, unless such time is extended by the District Water Board, cause it to be published in some newspaper, which may be specified by the District Water Board, published in the Kenya, and having circulation in the locality in which the proposed works would be situated, and in addition in one issue of the Gazette.

(3) If it appears to the District Water Board to be in the public interest so to do, it may require the applicant to publish such notice in such newspaper and in a second newspaper having circulation in the locality of the proposed works, on more than four occasions within thirty days, or may require such notice to be published in a modified or altered form.

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(4) The District Water Board may, in any particular case, exempt any application from compliance with the requirements of this section.

Procedure if
objection
received.

88.(1) Any objection to an application shall be filed with the District Water Board in duplicate within thirty days ~~thirty days~~ from the date of the first publication of such notice or of such altered or modified notice, and shall contain the name and address of the objector and the specific grounds of objection, and a copy of such objection shall forthwith be served, by the objector, on the applicant.

(2) The District Water Board shall consider such objection, and if, in its opinion, the grounds of objection are not *pima facie* sufficient to warrant an inquiry, it shall so decide, and shall notify the objector of such decision, but if it considers the grounds sufficient to warrant public inquiry it shall fix a day for the holding of such inquiry.

(3) The District Water Board may, for the purpose of such inquiry, summon and examine witnesses upon oath or affirmation, adjourn the hearing to obtain further evidence or until the applicant has submitted plans, or altered plans, or other documents, dismiss the objection, direct the applicant to amend his application or dismiss the application.

(4) If the powers of the District Water Board under subsection (3) of this section are delegated to any person, such person shall report in writing to the District Water Board, and the Board may decide the application upon such report.

Final approval
of refusal of
application.

89. The District Water Board may, after consideration of any objection which may have been made to an application forward the same to the River Basin Board in the case of applications for permits to be granted by the River Basin Board which may –

- (a) finally approve the application;
- (b) refuse the application; or

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- (c) approve the application in part only.

Authorization
of works.

90.(1) If the application, as filed or as amended by the District Water Board, is finally approved by the River Basin Board, the River Basin Board shall authorize the construction of the works by an authorization, and may specify in such authorization the time within which the construction of such works is to be commenced and to be complete.

(2) The authorization for the construction of such works shall be in the form prescribed by the River Basin Board, or by rules made under this Act, and shall be numbered.

(3) The permit issued on completion of the works, in accordance with the authorization and any modification thereof to the satisfaction of the River Basin Board, shall bear the same number as was endorsed upon the authorization.

(4) A copy of the application, map or plan (if any) as approved shall be returned to the applicant with the authorization.

(5) No material deviation from the application, map or plan as filed, or amended by the District Water Board shall be made without the consent of such Board, and any question arising as to whether any deviation is material shall be determined by the District Water Board.

Procedure if
application for
permit is not
approved.

91. If, after receipt by the District Water Board of such application and any map and plan, together with such particulars of the applicant's proposals as it may have required, the District Water Board considers that the proposed permit would not be in the public interest, or would unduly interfere either with the undertakings of other operators or with other users, it shall endorse its disapproval upon each copy of the application and any other necessary documents relating thereto, and shall state its reasons for

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such disapproval, and shall return one copy of each such document to the applicant.

PART XIII - DAMS

Licensing of
dam contractors.

92.(1) No person shall construct, for another person, any dam required by rules made under this Act to be constructed only by a licensed dam contractor, unless he is the holder of a valid dam contractor's licence.

(2) Every application for a dam contractor's licence shall be made to the National Water Board in the prescribed form.

(3) If, on receipt of an application for a dam contractor's licence, the National Water Board is satisfied that the applicant is a fit person to be licensed, it shall issue to him a dam contractor's licence for such period and subject to such conditions as are specified thereon, and shall keep a register containing the particulars of all such licences.

(4) The National Water Board may at any time cancel a dam contractor's licence if the holder thereof has –

- (a) constructed any dam in an improper, unsafe or dangerous manner;
- (b) failed to submit any report required to be submitted by him under this Act;
- (c) intentionally made a misstatement of fact in any report submitted by him;
- (d) failed to comply with any provision of this Act; or
- (e) knowingly been a party to any other person's failure to comply with any provision of this Act.

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(5) Any person who, not being the holder of a dam contractor's licence, constructs any dam for another person which is required by rules to be constructed only by a licensed dam contractor shall be guilty of an offence.

(6) For the purposes of this section, "construct", when used in relation to a dam, includes the extension or improvement of an existing dam.

Failure of or
damage to
dam to
be reported.

convert to
metric units

93.(1) An operator or the owner or the person having the control of any dam which exceeds fifteen feet in height which holds more than thirty acre feet of water shall, in the event of the failure of or serious damage to such dam, immediately report the same to the Director of Water Affairs Nairobi, by telegram or other urgent means of communication.

(2) Any person who contravenes the provisions of subsection (1) of this section shall be guilty of an offence.

PART XIV- EXECUTION AND MAINTENANCE OF WORKS

Inspection of
works during
construction.

94.(1) Any works authorized under this Act may, if the Director of Water Affairs so determines, be inspected, during construction, by officers of the Ministry for the time being responsible for water or of the concerned Board.

x

(2) No such inspection shall be deemed to imply a Government guarantee of the works constructed, or to support or justify any claim whatsoever against the Government in connexion with such works.

x

Works to be
made secure.

95. Upon any inspection made under section 94 of this Act, the Director of Water Affairs or the concerned Board may order the operator to make any addition or alteration which it considers necessary for the security of any works, whether completed or in the course of construction, and, if such order is not complied with to the

x

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satisfaction of the Director of ^{Water} Affairs or the concerned Board within such period as may be specified by Director or such Board, the authorization for such works may be cancelled or modified by the concerned Board.

Road crossings

96.(1) Any operator constructing any works under this Act, shall during such construction, keep open for safe and convenient travel all public roads and rights of way therefor, publicly used as such, when they are crossed or interfered with by such works, and shall, before water is admitted to such works, construct to the satisfaction of the local authority concerned, or at the option of such local authority refund to it the costs of construction by it of, a substantial bridge with proper and sufficient approaches thereto over such works, and such railings, fences, guard posts, culverts, face-walls and other structures and appurtenances ^{of the} such local authority, with the approval concerned Board, may declare to be necessary in the public interest, and all such bridges, approaches and appurtenances shall thereafter be maintained by the operator, while his permit is valid, or alternatively, at the option of the authority, at the expense of the operator.

(2) The local authority concerned may at any time, at its own cost, renew or alter such bridge or any structure or works in connexion therewith.

(3) Any operator who fails to comply with subsection (1) of this section shall be guilty of an offence.

Completion
certificate and
inspection.

97.(1) Upon the expiration of the time mentioned in an authorization for the construction of works, or at any time before such date, if such construction is sooner completed, the operator shall submit a completion certificate in the prescribed form.

(2) Thereupon an inspection may be made, by an officer appointed for the purpose by the concerned Board, to ascertain that the works have been completed in accordance with the authorization, that the easements, if

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any, for the works have been obtained, that agreements, if any are necessary, have been entered into for the supply of water for utilization on lands which are not the property of the operator or for the drainage of lands, and that the works as constructed are of the required capacity.

(3) If the work is not completed within the time mentioned in the authorization, a progress report shall be submitted in lieu of completion report, and the operator may apply for an extension of the time limit of the authorization.

(4) Such extension may be refused or may be sanctioned upon such terms as the concerned Board may specify; and the operator, if he is aggrieved by the decision of the concerned Board, may, within thirty days of notification of such decision, appeal to the National Water Board, whose decision shall be final and binding.

Issue of
water permits.

98.(1) Upon completion of the works to the satisfaction of the concerned Board and in accordance with the terms of the authorization or amended authorization, the concerned Board shall issue to the operator on such terms and conditions as it may deem necessary a permit to divert, abstract, obstruct, use or store the quantity of water for which the application was finally approved.

(2) Every permit issued under subsection (1) of this section shall be issued for a period of twenty-five years:

Provided that the concerned Board may, in any particular case in its discretion, issue a permit for a lesser period, and may, where permanent works of considerable magnitude are involved, issue a permit for a longer period.

Forfeiture of
rights if works
not completed
within time
allowed.

99. Upon the expiration of the time allowed in an authorization, or of any extension of such time, for the completion of works under this Act, the rights therein granted to the operator shall cease and determine, and any works at the Date of such determination constructed, erected, fixed or acquired may be taken over and operated,

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or disposed of, as ordered by the Minister, if not completed within the time allowed.

Works to be
kept in repair

100.(1) Every operator shall maintain and retain his works in a good, proper and workmanlike manner to the satisfaction of the concerned Board, so that the same shall, at all times, be of sufficient strength and capacity for the fulfilment of the purposes for which they were constructed, and so that no damage shall occur to any road, property or work in the vicinity thereof.

(2) If any operator fails or neglects to comply with subsection (1) of this section, the concerned Board shall, within a reasonable time after such failure or neglect has been discovered, serve such operator with notice thereof, and if such operator declines or fails to remedy such failure or neglect he shall be guilty of an offence ~~an~~ ~~offence~~ and liable to a fine not exceeding ten thousand shillings.

(3) Any fine imposed under subsection (2) of this section shall be without prejudice to any remedy for the recovery of damages for any loss, damage or injury sustained by any person by reason of such failure or neglect.

**PART XV – VARIATION AND
CANCELLATION OF PERMITS ETC.**

Revision or
Variation
of permits.

101.(1) (a) Whenever it is shown to the satisfaction of the concerned Board that, owing to drought, natural changes, increased demand or other cause, the diversion, abstraction, storage or use of the water authorized to be diverted, abstracted, stored or used by an operator, or the method or point of diversion or abstraction of water, causes inequity or a shortage of water for domestic purposes or any other purpose which in the opinion of the concerned Board should have priority, it may revise or vary any authorization, licence, sanction or permit, and alter the discharge or quantity of water which the operator is

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authorized to divert, abstract, store or use, or alter the method or point of diversion or abstraction of water.

(b) Before any such revision, variation or alteration is made under this subsection, written notice shall be given by the concerned Board to every operator who may be adversely affected thereby, and every such operator may, within thirty days thereafter, appeal to the National Water Board against such intended revision, variation or alteration:

Provided that the provisions of this paragraph shall not apply to any revision, variation or alteration made or intended to be made owing to drought or other emergency specified by the National Water Board.

(2) (a) Any community, and any association of operators other than an appointed water undertaker, may submit to the concerned Board for its approval a scheme for the better storage, distribution and utilization of water resources in any particular area, and, where the Water concerned Board approves such scheme, the Minister may-

- (i) for the purposes of giving effect to the scheme, cancel, amend, revise or vary any authorization, licence, sanction or permit issued to any operator in that area; and
- (ii) impose, by order published in the Gazette, a water rate on all persons owning or occupying land in that area.

(b) Notwithstanding the provisions of section 11 of this Act, the concerned Board shall not approve any scheme submitted to it under this subsection unless -

- (i) the scheme is approved by the person owning or occupying at least two-thirds of the particular area concerned in the scheme; and

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- (ii) provision is ~~to be~~ made for an adequate alternative supply of water to be supplied to operators likely to be adversely affected and unable to benefit from the scheme. x

(c) No authorization, licence, sanction or permit shall be cancelled, amended, revised or varied under this subsection unless the concerned Board has served upon the operator who may be adversely affected thereby, at least thirty days before such revision or variation, a written notice of the intention so to do.

(d) An operator upon whom a written notice has been served in accordance with paragraph (c) of this subsection may, within thirty days after receipt by him of such notice, appeal to the National Water Board against the intended cancellation, amendment, revision or alteration notified by such notice, and the decision of the National Water Board upon any such appeal shall be final.

(3)(a) Where the concerned Board or the Minister cancels, amends, revises, alters or varies any authorization, licence, sanction or permit under this section, whether permanently or temporality, the Board or the Minister, as the case may be, may decide what compensation, if any, shall be paid by any operator benefiting thereby to any operator adversely affected, and if any operator is not satisfied with any such decision the matter shall be determined by arbitration. x

(b) Any compensation payable by an operator by reason of this subsection shall be recoverable as a civil debt.

Cancellation
of permits, etc.

102. Any licence, sanction or permit may be cancelled or the conditions thereof varied by the concerned Board if the licensee, sanction or permit holder: — x

- (a) contravenes any condition of the licence, sanction or permit: or

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- (b) fails to make beneficial use of the water or any part thereof.

and any such licence, sanction or permit to be so cancelled and ~~any~~ shall be surrendered to the concerned Board for cancellation or variation, as the case may be:

x

Provided that -

- (i) the concerned Board may after due inquiry allow the partial use of water without modification of the licence, sanction or permit, if the Board is satisfied that such partial use is reasonable;
- (ii) no licence or permit for a public or urban project shall be cancelled or varied except by the Minister with the consent of the National Water Board, but the concerned Board may, if any water the subject of a licence or permit for such a project is not required by the permit holder, grant a permit for the use of such water by some other person for such period as may be specified in such permit, not being greater than the period during which the water will not be so required for the original project.

x

WHY A HYDROGRAPHIC
SURVEY? SURVEY A
HYDROLOGICAL SURVEY?

Variation of
permits, etc,
after hydrographic
survey.

103. Every licence, sanction or permit shall be subject to subsequent variation by the concerned Board after a hydrographic survey of the body of water body of of water has been made, and after reasonable notice has been given to all parties affected.

Change of
point of
diversion.

104. Any operator who desires to change the point of diversion or abstraction of the water used or to be used by him shall apply to the concerned Board for permission so to do, and the concerned Board may grant such application if it is of the opinion that it is in the public

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interest so to do and that the rights of others will not be adversely affected thereby. x

Change of
use of a water.

105.(1) The quantity of water granted or specified under a licence, sanction or permit shall be used only for the specific purpose and during or within the time stipulated in the licence, sanction or permit relating thereto, and, if the licensee or sanction or permit holder desires to use such water for any other purpose, he shall make application to the concerned Board and supply such particulars as the concerned Board may require.

(2) If the concerned Board considers that an application under subsection (1) of this section is in the public interest and that the rights of others are not adversely affected thereby, it may grant the application, and the licensee, sanction or permit holder shall then surrender his licence, sanction or permit to the concerned Board, which shall issue a new permit with such modifications as it considers necessary. x

Correction of
errors in
permit, etc.

106. Any permit, authorization or other document issued under this Act which has been issued imperfectly or without compliance with all or any of the terms governing the issue thereof, or which contains some inaccuracy, which can be corrected without affecting the right of other parties, or which is incomplete or indefinite in its terms and conditions, shall be returned to the concerned Board upon an order of the chairman to the person to whom it is issued, and such permit, authorization or other document may be reissued with such amendments as may be considered by the chairman to be necessary. x

Apportionment
of water.

107.(1) Whenever the holder of land to whom a licence, sanction or permit has been granted desires to have the water concerned apportioned between two or more parts of the land in respect whereof the licence, sanction or permit was originally obtained, he shall apply to the concerned Board for an apportionment, and the concerned Board, on being satisfied that the rights of others will not be adversely affected thereby, may, after notice to all persons

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believed by it to be concerned, amend the licence, sanction or permit originally granted, or may issue two or more new permits to conform with the apportionment authorized.

(2) Such new permits shall, after providing for the authorized uses of the water and the periods of use provided for in the original licence, sanction or permit, not authorize in the aggregate the diversion, abstraction, storage or use of more water than the discharge or quantity authorized to be diverted, abstracted, stored or used by the original licence, sanction or permit.

Mingling waters.

108. Any two or more licences or sanction or permit holders may mingle the waters authorized by their licences, sanctions or permits and may construct works to carry or use such mingled water:

Provided that the plans of any such works shall be subject to the approval of the concerned Board in all respects as new works, and, except as to the mingling of such waters and the construction and maintenance of such works, the licence, sanction or permit of such licensee, sanction or permit holder shall in no way be enlarged or varied.

Operator may
abandon.

109. When any operator ceases to utilize the water in accordance with the terms of his licence, sanction or permit he shall, by notice to the concerned Board, abandon the whole, or any part capable of separation, of the licence, sanction or permit acquired, and, upon such abandonment, the concerned Board may direct such operator to remove all or any works erected in connexion with such licence, sanction or permit within such time as it shall specify and, in the event of the refusal or failure of such operator to remove such works, such operator shall be guilty of an offence, and the concerned Board may remove all or any portion of such works, and may recover the cost of such removal from such operator:

Provided that, where any land or undertaking to which a licence, sanction or permit is appurtenant is

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mortgaged or charged, no abandonment of such licence, sanction or permit shall be effective without the consent in writing of the mortgagee or chargee.

Permits, etc
limited by
capacity of
works.

110. When any works for carrying, storing or using water ^a are not of sufficient capacity to carry, store or use the quantity or discharge to which a licence, sanction or permit has been acquired by an operator in connexion with such works, his licence, sanction or permit may be limited to the quantity or discharge which such works are capable of carrying, storing or using, and, in case of dispute as to such quantity or discharge, the concerned Board may order an inspection of the works, and the licence, sanction or permit may be varied by the concerned Board so as to authorize only the quantity or discharge of water which the works are capable of carrying, storing or using in a reasonable and beneficial manner.

Operator may
acquire easement.

111. Any operator who has revive an authorization under this Act to construct works for the purpose of a permit, where the works authorized, or a portion of them would, when constructed, be situated upon lands not held by the operator, shall acquire an easement on, over or through the land on which the works would be situated, and, unless the works have previously been constructed under any lawful authority of a sanction, shall not exercise the authorization unless and until he has acquired such easement.

Encumbrances.

112. The acquisition of an easement under section 108 of this Act shall not affect the burden or benefit of any encumbrance on the land existing at the date of such acquisition or the liability or right of any person in respect thereof.

Easement
includes right
of access.

113. An easement shall include the right of access, along a route to be approved by the concerned Board after the Board after consultation with the owner, to any piece of land contiguous to the water of the operator in so far as may be necessary for the purpose of constructing, inspecting, maintaining, operating or repairing the works of the

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operator and for any purpose necessary for the effective enjoyment of the easement:

Operator must
avoid flooding
lands and
maintain canal
satisfactorily.

114. Any operator who has acquired an easement which includes the construction of a canal shall take and maintain adequate measures for preventing the introduction into the canal of a greater quantity of water than that which the canal is capable of carrying, and shall not cause damage to any land in respect of which the easement is held by permitting the accumulation of weeds, silt or any other obstruction or nuisance which might cause flooding, or any other damage whatsoever, and compensation for any damage so caused may be recovered from the operator in any competent court.

Damage caused
by works
of operator.

115.(1) If damage is caused to the land over which the easement is held, as the result of the works of an operator, the holder of the land over which the easement is held may require such operator to construct such additional works as are necessary, in the opinion of the concerned Board, to prevent such damage or any recurrence thereof, and the concerned Board may, by order require the operator to construct such additional works at his sole expense.

x x

(2) If the operator fails to comply with an order of the concerned Board given under this section, the concerned Board may cancel his licence, sanction or permit, and thereupon such licence, sanction or permit shall be returned to the Board.

Operator to
construct works
enable
landholder to
enjoy his existing
works if
interfered with.

112.(1) An operator who has acquired an easement for the construction of works on another landholder's land which -

- (a) prevents the landholder passing freely over or on his land as theretofore; or
- (b) interferes with his existing works, structures or devices upon his land,

x

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shall, at his own expense, construct and maintain in repair, to the satisfaction of the concerned Board and under such conditions as it may prescribe-

- (i) such bridges and other structures and devices as will make communication safe and convenient; or
- (ii) such works, structures or devices as such Board considers necessary to enable the landholder effectually to enjoy the use of any work, structure or device interfered with.

(2) Any operator who fails to comply with the provisions of subsection (1) of this section shall be guilty of an offence.

Operator desiring
easement to serve
notice on landholder.

113. An operator claiming an easement under this Act shall serve a notice in writing on the holder of the land on, over or through which he desires to acquire the easement, and shall in such notice state the following particulars, and such further particulars as may be required by rules made under this Act -

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

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works, or for the deposit of soil or material derived from the works, or for a road or roads to obtain access to the works, or for the control or prevention of pollution of the water to be used; and

- (c) a statement of the compensation which is offered and the period of time during which the operator wishes to enjoy the easement,

and a copy of such notice shall be sent by the operator to the concerned Board.

If landholder agrees, particulars to be embodied in deed.

114. If the landholder agrees to the claim for an easement, either as originally proposed or as modified by agreement, the operator shall embody the particulars and other matters pertaining thereto in a deed or other instrument suitable for registration as hereinafter required, and, after its execution by the parties concerned, shall send two copies of such deed or other instrument, certified by the Registrar of Titles, to the concerned Board.

If landholder does not agree, application for easement may be made

115. If the landholder does not, within two months after the service of a notice under section 114 of this Act, agree to the claim for an easement or to any other matter necessary for an easement, the operator may apply to the concerned Board, in the prescribed manner, for an easement, and shall serve notice of such application upon the landholder.

Claim for easement may be dismissed or granted

116.(1) The concerned Board may either dismiss the claim for an easement or grant the claim with or without modification and subject to such conditions and to the payment of such ~~conditions and to the payment of such~~ compensation as to the Board ~~deems~~ just.

(2) The concerned Board shall notify the operator and the landholder of its decision, and if such operator or landholder is aggrieved thereby he may, within thirty days of such notification, appeal to the National Water Board, and if aggrieved by the decision of the

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National Water Board, may within thirty days of notification of such decision, appeal to the Minister, [?] whose decision shall be bind

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

(4) If the landholder fails within such time as may be specified by the concerned Board to execute and deliver such deed or instrument to the operator, the concerned Board may do so on his behalf, and thereupon the deed or instrument shall have the same effect as if it had been executed by the landholder.

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

(6) Where an appeal has been lodged under subsection (2) of this section, no action shall be taken under subsections (3), (4) and (5) of this section until the appeal has been decided.

Easement to
lapse if works
not completed
within specified
period

11 (1) An easement acquired under this Act shall lapse if the works authorized are not completed and the water is not utilized within one year from the date of acquiring such easement or within such further period as the concerned Board may determine, or if, at any time, substantial use is not made of the permit in accordance with the terms of the permit for a continuous period of two years, or such longer period as the concerned Board may, from time to time, in any particular case, determine.

(2) Upon the lapse of an easement, the concerned Board shall notify the Registrar of Titles, who

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shall, without charge, cancel the registration of the easement against the title affected.

Operator to
keep works
in state of repair.

119.(1) If any work constructed on the land of a person other than the operator is out of repair or requiring cleaning, the operator or his agent shall, if required in writing by the landholder to repair or clean such work, carry out such requirements within a reasonable time, and, if he fails so to do, the landholder may cause to be done all things necessary for carrying out such repairs or cleaning, and may recover the cost thereof from the operator in any competent court.

(2) Such repairs or cleaning shall not be unreasonably demanded, and, in the event of a dispute between the parties, the concerned Board shall decide what are reasonable repairs or cleaning.

(3) An operator who allows or suffers any such works to fall into disrepair or, in the opinion of the concerned Board, to be in such a state as to require cleaning shall be liable for all damage which may arise in consequence thereof.

Landholder
may demand
and obtain use
of works
of operator.

119.(1) Any landholder on, over or through whose lands an easement has been applied for or been granted may, by application to the concerned Board either before or after the construction of any works, apply for a permit to make use of such works or the proposed works for the diversion, abstraction, storage or use of whatever water he may become entitled to divert, store or use under this Act:

Provided that, before such permit or authorization is issued by the concerned Board, the landholder shall prove, to the satisfaction of the Water Apportionment Board, that the works of the operator can be satisfactorily used for the purpose of the landholder and without material detriment to the operator, and such proportionate cost of such works shall be paid by the landholder to the operator who constructed or is constructing the works as may be agreed

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on between the parties or, failing agreement, as may be determined by arbitration.

(2) Such operator may require the landholder to enter into an agreement to continue to pay the proportionate cost of maintaining the portion of such works made use of, until in the event of disagreement, the matter shall be decided by arbitration. x

(3) If such works require modification to enable the landholder to enjoy their use, he shall, unless the matter is otherwise agreed, pay to the operator –

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

(4) When it is proved to the satisfaction of the concerned Board that altered conditions have rendered revision of such rate of payment just and equitable, the concerned Board shall inform the parties concerned, and, failing agreement between such parties on such revision of rate of payment, the matter shall be referred to arbitration.

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

120. When works have been excavated by an operator on another person's land, any land occupied solely for the deposit of excavated material from the works executed shall, notwithstanding the payment of Compensation and except in the case of an easement for drainage or reclamation, remain available to such person for his own purposes, and such person may remove such excavated material, but no damage shall be done to the works be obstructed or interfered with by such removal.

executed
?

Easements to

121. The deed or other instrument creating an

The Water Act

be registered. easement acquired under this Act shall be registered against the title affected, and a plan, which shall be approved and signed by, or by the authority of, the Director of Surveys, shall be attached to each document granting such easement.

Determination of easement. **122.**(1) An easement acquired under this Act shall determine if and when the permit or authorization for the exercise of which such easement has been acquired is cancelled as provided for in this Act, and on the date of such cancellation.

(2) On the determination of any permit or authorization, any works constructed by the operator on the lands of another person shall, where such operator is the sole permit holder, if not removed by such operator within two years from the date of such determination, become the property of such other person, unless ordered to be removed by the concerned Board at the request of such other person.

(3) On the determination or alteration of an easement, the concerned Board shall notify the landholder over whose land the easement was granted and the Registrar of Titles, and the landholder concerned may take such action at the expense of the person in whose name the easement is registered.

PART XVI – WATER QUALITY AND POLLUTION CONTROL

Management of quality of raw water.

123. The management of the quality of raw water sources shall be vested on the Minister in charge of the water affairs and for the purpose of protecting of all water sources from pollution, the Minister shall give orders and levy charges pertaining to the disposal of effluents.

Water Quality Standards.

124. The Director of Water Affairs in collaboration with other institutions shall formulate:-

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The Water Act

- (1) The Water Quality Standards for natural water for human consumption and irrigation and other uses.
- (2) Containerised/bottled natural mineral water for human consumption.
- (3) Guidelines and effluent discharge standards for the purpose of protecting water resources from pollution.
- (4) In consultation with water-undertakers, effluent discharge standards into sewers and other receiving systems. Any water -undertaker/operator who fails to comply with the formulated guidelines/standards shall be of an offence ~~and shall be liable to a fine or imprisonment or both.~~

guilty

National Water Board to Gazette Guideline/Standards

125. The ^{National} Water Board shall gazette the formulated allowable Effluent Discharge Standards under ~~section (2)~~ ^{clause 124} and shall recommend the graduated tariff payable for such discharges based on quality, strength, type of effluent and recipient.

Prevention of Pollution of Water Bodies

126. (1) Any person who has control over land on which activities are carried out or involved in activities capable of causing water pollution whether solid, liquid, vapour or in combination shall take steps to prevent water pollution.

(2) Any person who fails to prevent water pollution under subsection (1) shall be guilty of an offence.

Solid, liquid and Gaseous Waste Disposal

127. Any waste ~~disposal~~ should be disposed ^{as} per the requirement shown on the water permit.

Any person who causes a water body to be polluted directly or indirectly by either solid, gaseous or liquid discharges shall be liable to a penalty and ^{the} polluter pay's principle shall be used, which shall be commensurate with the quantity and quality of the waste disposed, and the damage done.

amount

The Water Act

Licences for Waste Water Treatment Works

127. All operators/occupiers that generate effluents likely to cause pollution, must apply to the Water Board for approval and licensing of their activities. They must have approval for the setting up of the functional Waste Water Treatment Facilities.

x

Management of Sewage Works

128. Industries/ Factories shall employ competent and qualified persons to man their Waste Water Treatment Facilities, general waste handling and other environmental matters.

x

x

Tax Rebates on Pollution Control Equipment

129. The Industries/ Factories using environmentally friendly "raw" materials shall get a tax rebate on pollution control equipment as an incentive for the control and reduction of pollution on the water bodies and environment.

Power to close polluting industry/factory

130 The Minister shall close down any factory/industry that persistently pollutes a water body and fails to comply with the rules/regulations even after being taken to court several times. The factory/industry shall be closed down until sufficient anti-pollution remedial measures are undertaken. Such closure shall be gazetted.

LEGAL DEFINITION
OF 'SEVERAL' ?

Power of water Protection Officers

131. (1) The Minister through the Director in charge of Water Affairs shall give the Water Protection Officers powers to enter the industry/factory at any time and without notice to inspect and take samples and take measures as

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The Water Act

may be thought fit for the protection of water bodies from pollution.

(2) The Water Board shall gazette the Water Protection Officers under subsection (1) above.

(3) Any person who prohibits entry and inspection of industry/factory under subsection (1) above shall be guilty of an offence and shall be punished according to the Law.

PUNISHMENT to be SPECIFIED

Approval of Waste Water Treatment

132. (1) The Waste Water Treatment Drawings "designs" shall be undertaken by a consultant registered by Water Board.

(2) The drawings/designs shall be submitted and scrutinised for approval/disapproval by the Water Board before any authorisations ^{are} given for construction work to commence.

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Management of Water Works by the Water Undertakers

133. The Water Board shall register, classify and authorise professionally qualified persons to manage the Water Works.

x

Water Treatment Chemicals

134. Any water treatment chemical used in ^{any} the water works shall conform with the specified requirements formulated by the Kenya Bureau of Standards and approved by the Director of Water Development. Any water undertaker found using sub-standard ^{and} expired water treatment chemicals shall be guilty of an offence, and punished by Law. ^{or life}

x

? ARE WATER DEVELOPMENT & WATER AFFAIRS to be DIFFERENT DEPARTMENTS

Responsibility of Waterworks Employees

PUNISHMENT to be SPECIFIED

The Water Act

135. Any employee working in the water works shall be familiar with safety rules, wear protective clothing, be aware of consequences of mishandling and/ misuse of water treatment chemicals so as not to affect / injure their own health as well as the health of other water consumers

Water Treatment
Equipment

136. All water treatment equipment for small or large water supplies must be inspected and approved by the Director of Water Development before use.

on behalf
of

Handling, Storage
and Use of Water
Treatment Chemicals

137. All water undertakers must ensure that all water treatment chemicals, shall be handled by qualified persons, and where appropriate, well stored in different rooms and only the right qualities and quantities shall be used in water treatment.

different

Water Disinfection

138. All water undertakers must ensure that any water for human consumption shall be disinfected using approved disinfectants and the required residual levels maintained at the reservoirs, distribution lines and end points. The level shall be checked from time to time by the Water Protection Officers in the Ministry in charge of water affairs.

xx
x

Quality of water in
reservoirs and
distribution lines.

139. (1) The Director of Water Development shall ensure that the quality of any treated water for human consumption is maintained in the reservoirs and throughout the distribution lines by the water undertakers.

(2) Water sampling and testing for the water quality both at the reservoirs and the distribution lines shall be carried out by competent persons

The Water Act

such as "water protection officers" at any time and without prior warning.

(3) Any water undertaker who fails to maintain the quality of water under subsection (1) of this section shall be guilty of an offence.

Registration of reservoir
cleaners and other
water works ~~experts~~

personnel

NOT UNDERSTOOD!
SINCE WHEN HAS A
RESERVOIR CLEANER
BEEN AN EXPERT?

140. (1) The Water Board shall register and ^{personnel}gazette any reservoir cleaner and any other water works ~~experts~~ only after he/she satisfies the board of his/her professional competence and experience.

(2) No person shall carry out the work of a reservoir cleaner and any other water works unless he/her has been licensed by the Water Board.

(3) If a complaint is made to the Water Board of the failure to comply with the conditions of the licence under subsection (b), the Water Board shall hold an inquiry after which it shall cancel the licence and deregister the person if satisfied that the complaint has been justified.

SUBSECTION
(b) OF
WHICH
SECTION

Powers to Order for
water re-use and
recycling

141. The Director of Water Development shall have powers to order for water re-use and or recycling in order to avoid wastage and minimise pollution.

Pollution due to disposal
of sludge from Water
Treatment and Waste
Water Treatment Plants

and
142. Waterworks operators, ^{and} industrialists that operate works that generate sludge ~~will be required to declare~~ to the Director of Water Development, the quantities of sludge generated, the nature of the sludge and the mode and site of

shall
declare in
writing

The Water Act

disposal in order to obtain authorisation, to avoid polluting water bodies.

Accreditation of Water Testing Facilities

143. The Director of Water Development in consultation with the Director of Kenya Bureau of Standards shall approve and accredit all water testing laboratories ~~in order to eliminate brief case analysts.~~ who may undertake

Responsibility of the Consumers

the chemical and bacteriological testing of water.

144. It shall be the responsibility of ^{every} ~~the~~ consumers to ensure the proper handling and storage of drinking water to ensure non-contamination.

Health of Waterworks workers

(within his plot or after obtaining from KWS or Council water point)

145. All workers employed as operators in waterworks must be medically fit and particularly free from water-borne diseases.

Disposal of expired water-treatment chemicals

DISPOSAL OF HAZARDOUS CHEMICAL SUCH AS CHLORINE GAS RESIDUALS ?

146. All water undertakers must get a written authority from the Director of Water Development authorising ~~to the~~ disposal of any expired water treatment chemicals.

Management of water-borne epidemics

147. The Director of Water Development, in consultation with other relevant institutions shall be involved in the management of water-borne epidemics.

Environmental Sanitation

148. (1) The Director of Water Development, in consultation with relevant institutions shall ensure that improper disposal of human waste and sewage into a body

of water by any person which may lead to an outbreak of water-borne diseases is forestalled by use of proper sanitation methods.

(2) Any person who carelessly disposes of human or household waste so as to pose threat to a water body will be liable for prosecution.

PART XVII - WATER UNDERTAKINGS

Appointment of water undertakers. 150.(1) (a) For the purposes of the distribution of water supplies in any area, the Minister, after consultation with the National Water Board, may appoint water undertakers who shall be responsible for the provision for an adequate supply of water for the area within their limits of supply, and who shall comply with the provisions of this Act.

(b) "The Minister may order a provider so appointed to provide water and sanitation services for the area in which the provider has been appointed a provider".

(2) The Minister may, on the advice of the National Water Board, require any water undertaker, not being a local authority, to deposit with the Minister a guarantee or other security acceptable to the Minister, for the purpose of securing payment by such water undertaker of any expenses recoverable by the Minister from such water undertaker under section 138 of this Act.

(3) The area of the limits of supply of a water undertaker shall be determined by the Minister, after consultation with the National Water Board, and water shall not be supplied by the water undertaker to any person outside such limits of supply without the prior consent of the Minister.

(4) No person shall construct any works for the supply of water to any premises within the area of supply of a water undertaker without first obtaining permission in writing from the water undertaker to construct such works:

REFERENCE TO
SECTION 138
NOT UNDERSTOOD

Provided that such permission shall be granted by the water undertaker in all cases where the water undertaker is not willing or able to give proper and sufficient water supply at the price embodied in the regulations of the water undertaker.

METRIC
UNITS

(5)(a) No local authority shall supply more than two households, and no local authority shall supply more than one thousand gallons of water a day, unless it is a water undertaker, and no person who is not a local authority shall supply more than twenty households, and no person who is not a local authority shall supply more than five thousand gallons of water a day for domestic purposes or more than twenty thousand gallons of water a day for any purpose, or purposes, unless he is a water undertaker.

(b) Any local authority or other person who supplies water in contravention of paragraph (a) of this subsection shall be guilty of an offence and liable, in the case of a first offence, to a fine not exceeding five thousand shillings or, in default of payment thereof, to imprisonment for a term not exceeding six months, and in the case of a second or subsequent offence to a fine not exceeding ten thousand shillings or, in default of payment thereof, to imprisonment for a term not exceeding twelve months.

(c) This subsection shall not apply in respect of the supply of water by any local authority or other person to its or his employees, or in respect of the supply of water on the premises of any hospital, factory, school, hotel, brewery, research station or institution to the occupants thereof, in cases where the source of supply is under the control of such local authority, person, hospital, factory, school, hotel, brewery, research station or institution, or where the water is supplied in bulk to such local authority, person, hospital, factory, school, hotel, brewery, research station or institution by a water undertaker.

Hotel?

METRIC
EQUIVALENT

(6) Any person, being a person who is not required under subsection (5) of this section to be a water undertaker, who supplies water to more than two consumers or who supplies more than two consumers or who supplies more than one thousand gallons of water a day may apply to be appointed a water undertaker.

(7) Any consumer taking a supply of water from a person who could himself apply under subsection (6) of this section to be appointed a water undertaker may submit to the Minister a request that such person be appointed a water undertaker, stating therein his reasons for such request.

(8) Every application for the appointment of a water undertaker shall be made in writing and sent to the Chairman of the National Water Board.

Combination of
undertakings and
transfer of
undertakings.

151.(1) The Minister, after consultation with the National Water Board Authority, may, on the application of the water undertakers concerned -

- (a) permit the joint furnishing by two or more water undertakers of a supply of water;
- (b) permit the transfer of the undertaking, or part thereof, of one water undertaker to another water undertaker.

(2) Where it appears to the Minister, after consultation with the National Water Board, to be expedient for the purpose of securing a more efficient supply of water, he may order such joint furnishing or such transfer.

(3) Any order made under this section may contain such incidental, consequential and supplementary provisions as the Minister deems necessary or expedient for the purpose of carrying out such order.

Limits of supply
may be varied.

152. The Minister, after consultation with the National Water Board, may -

- (a) on the application of any water undertaker, by order, vary his limits of supply, but not so as to include any area which is within the limits of supply of any other water undertaker unless such other water undertaker is unable to meet the demands for water in his area;
- (b) on the application of two or more water undertakers, by order, vary by agreement any common boundary between their limits of supply.

Compulsory
variation of
limits of
supply.

153.(1) Where it appears to the Minister, after consultation with the National Water Board, that it is expedient to vary the limits of supply of any water undertaker and he is satisfied that such a variation cannot be secured under section 126 of this Act, he may make an order providing compulsorily for such variation

SECTION
126
?

(2) Any order made under this section may contain such incidental, consequential and supplementary provisions as the Minister may deem necessary or expedient.

Minister may
authorize water
undertaker to
supply premises
outside limits
of supply.

154. If the Minister after consultation with the National Water Board, is satisfied that the owner or occupier of premises in an area outside the limits of supply of any water undertaker and that the giving of such supply is not likely to interfere with the supply of water for any purpose within such limits of supply, he may, on the application of such water undertaker and with the consent of any water undertaker within whose limits of supply the area is situated, by order, authorize the applicants, hereinafter referred to as the supplying water undertaker, to supply water in such area or such part thereof as may be determined by the Minister on such conditions as may be specified:

person a

Provided that an authorization under this section shall not be unreasonably withheld, and any question

whether or not it is unreasonably withheld shall be decided by the Minister, whose decision shall be final.

Water undertaker
may notify
ability to supply

155. Where a supplying water undertaker is, by virtue of an order made under section (128) of this Act, supplying water to premises outside his limits of supply, any water undertaker within whose limits of supply such premises are situated may, in the absence of any agreement to the contrary, at any time give not less than three months' notice to such supplying water undertaker that he is able and intends to give a supply of water to such premises:

REF ?

Provided that a notice given under this section shall not be valid unless it includes all the premises to which water is being supplied by virtue of such order.

Cessation of
rights of
supplying water
undertaker.

156. When, after the expiration of a notice given section (129) of this Act, the water undertaker giving the notice the supplying water undertaker shall, except for the purpose of (recoverable) by him, cease to have any rights or duties in respect of a supply to such premises:

REF ?

? NOT
CLEAR

Provided that such supplying water undertaker shall not remove any pipes, plant or apparatus which he is required by the water undertaker giving notice to leave in position, and any such pipes, plant or apparatus shall vest in the water undertaker giving such notice.

Reimbursement
of expenses.

157. The water undertaker giving notice shall pay to the supplying water undertaker such portion of any expenses reasonably incurred by him for the purpose of giving a supply to the premises referred to in such notice, and such sum in respect of any pipes, plant or apparatus vested in the water undertaker giving the notice under section (129) of this Act, as may be agreed, or, in default of agreement, determined by the Minister or by arbitration.

X

REF ?

Effect of
regulations on
supplying water

158. While a supplying undertaker is, by virtue of an order made under section (128) of this Act, authorized to supply water outside his limits of supply,

REF ?

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undertaker: any regulations relating to his undertaking shall have effect as if the area specified in such order were within those limits.

Supply of water
in bulk by
agreement.

159. Any water undertaker may enter into an agreement with any other person, whether a water undertaker or not, for the giving by that person, and the taking by the water undertaker, of a supply of water in bulk for any period and on any terms and conditions and, where the supply is to be given by a person who is himself a water undertaker, either within or outside the limits of supply of that water undertaker:

Provided that, subject to the provisions of the foregoing Parts of this Act, an agreement made under this section shall require the approval of the Minister, and, where a supply is to be given by a water undertaker, he shall withhold his approval if it appears to him that the giving of such supply would be likely to interfere with the supply of water for any purpose within the limits of supply of the water undertaker giving the water.

Compulsory
supply of water
in bulk.

160. Where it appears to the Minister that it is expedient that any water undertaker should give to another Water undertaker, and that the other water undertaker should take, a supply of water in bulk, either within or outside the limits of supply of water undertaker by whom the supply is to be given, and the Minister, after consultation with the National Water Board, is satisfied that the giving and taking of such a supply for such period and on such terms as he may specify.....

X

the

? seems
INCOMPLETE

Default powers
of Minister.

161. (1) If any complaint is made to the Minister that any water undertaker -

- (a) has failed to discharge any duty imposed upon him under this Act: or
- (b) has failed to give an adequate supply of water, as respects either quantity or quality, to any area which such water undertaker is

to

supplying, or has failed to give any supply which he is lawfully required to give; or

- (c) has failed to take such steps as are reasonably practicable, in order to remedy any such failure as is mentioned in paragraphs (a) and (b) of this subsection; or
- (d) has failed to do anything which he is required to do under this Act,

or the Minister is of the opinion that an investigation should be made as to whether any of such matters, he may, except where the water undertaker is a local authority, cause such matter to be inquired into in such manner as he shall determine.

the validity
of the
complaint

(2) If, after an inquiry has been held under subsection (1) of this section and after taking natural conditions into consideration, the Minister is satisfied that there has been any such failure on the part of the water undertaker in question, he may, by order, declare him to be in default and direct him, for the purpose of remedying such default, to take such steps as the Minister may, in such order, specify.

Minister may
transfer water
undertaking.

IN TERMS OF A
PRISON SENTENCE,
WHO IS THE WATER
UNDERTAKER ??

LINE
PRESUMABLY
MISSING!

162.(1) if the water undertaker declared to be in default, by an order made under subsection (2) of section 161 ~~section~~ of this Act, fails to comply with any requirement thereof within the time specified for compliance with such requirement, he shall be guilty of an offence and liable, in the case of a first offence, to a fine not exceeding five thousand shillings or, in default of payment thereof, to imprisonment for a term not exceeding nine months, and in the case of a second or subsequent offence to a fine not exceeding twelve months; and the Minister may make an order transferring to himself, or to any local or other authority, such functions of the water undertaker in default as he may think fit, and such order shall be effectual to the transfer of such functions accordingly.

The Water Act

(2) Where any offence under this section is committed by any company or other body corporate or by any society, association or body of persons, every person charged with or concerned or acting in the control or management of the affairs or activities of such company, body corporate, society, association or body of person that, through no act or omission on his part, he was not aware that such offence was being or was intended or was about to be committed, or that he took all reasonable steps to prevent its commission.

MEANING
NOT
CLEAR

Minister may
Grant new
Authority.

163. Where any functions transferred to the Minister under section (16) of this Act include the function of applying to the Minister for any new authority or an extension of any existing authority, the Minister may grant such authority [shall have effect with such necessary adaptations and modifications as the Minister may determine.

? REF?

[which

Expenses incurred
by Minister in
Discharging
function.

164. Where the Minister has transferred any to himself under section (136) of this Act, any expenses incurred by him in discharging such function, ~~shall, the first of~~ such expenses as certified by the Minister shall be paid to him by the water undertaker in default, and shall be recoverable by the Minister from the water undertaker in default as a debt.

?
TRANSFER
WHAT?
REF?

Expenses incurred
by authority in
discharging
functions.

165. Where any function is transferred under section (136) of this Act to a local or other authority, the expenses incurred by such authority in discharging such function shall be a debt due from the water undertaker to such authority, and shall be defrayed as part of the expenses of the undertaking of the water undertaker in default.

REF?

Transfer of
property and
liabilities of
water undertaker.

166. An order made under section (136) of this Act may provide for the transfer to the Minister, or local or other authority, of such property and liabilities of the water undertaker in default, as, in the opinion of the Minister, may be necessary or expedient, and when any such order is revoked the Minister may, either by the

REF?

x

The Water Act

revoking order or by a subsequent order, make such provision as appears to him to be desirable with respect to any property or liabilities held by him or by the water undertaker for the purposes of the function transferred.

Agreements as to
draining, etc., of
lands.

WHAT HAS THIS
TO DO WITH A
WATER
UNDERTAKER?

167.(1) The Minister, either directly or through a water undertaker, may, subject to the provisions of the foregoing Parts of this Act, enter into an agreement with any person with respect to the execution and maintenance by any party to the agreement of such works as the Minister, after consultation with the National Water Board, considers necessary for the purpose of draining land, for carrying out soil conservation measures and for the control of vegetation or for more effectively collecting, conveying or preserving is for the time being authorized to take.

words missing?

(2) Any agreement made under subsection (1) of this section may be registered against any land of the person with whom such agreement is made, and shall be binding upon and enforceable against such land or such person or his successor in title.

Power of water
Undertaker to
Prohibit or
Restrict use of
water.

168.(1) If a water undertaker is of the opinion that a serious deficiency of water available for distribution exists or is threatened, such water undertaker may, for such period as he thinks necessary, prohibit or restrict, as respects the whole or any part of his limits of supply, the use of water supplied by him for any purpose which such water undertaker may, from time to time, deem necessary.

(2) Before any such prohibition or restriction comes into force, public notice in that behalf shall be given by such water undertaker in one or more newspaper, or by such other means, within the area affected by such prohibition or restriction, and of the date when it will come into force.

(3) Any person who, while such prohibition or restriction, is in force, contravenes its provisions shall be guilty of an offence.

Power of water
undertaker to
make regulations.

169.(1) A water undertaker who is not a local authority shall, with the approval of the Minister, make regulations providing for tariffs and the management of his supply, and, if the Minister so directs, such regulations shall be published in the Gazette or in such newspaper as the Minister may specify.

(2) Regulations made under this section may include provision for -

- (a) prescribing the size, nature, materials, strength and workmanship and the mode of arrangement, connexion, disconnexion, alteration and repair of the water fittings to be used;
- (b) forbidding the use of any water fittings which are of such a nature or are so arranged or connected as to cause or permit waste, undue consumption, misuse, erroneous measurement or contamination of water or reverberation in pipes; and
- (c) the alteration, repair or replacement of any installation or fitting which contravenes the regulations.

(3) Every local authority which is a water undertaker may with the approval of the Minister, and shall if so required by the Minister, make by-laws for any purpose or matter for which regulations may be made under subsections (1) and (2) of this section.

(3A) The procedure for the making, approval and publication of by-laws under subsection (3) of this section shall be that prescribed by the Local Government Act, 1963, and, for the purposes of their enforcement and the disposal of fines imposed for their contravention, such by-laws shall be deemed to be by-laws made by the same local authority under that Act.

Cap 265.

IS THIS ACT
STILL CURRENT?

(4) If any person contravenes any of the provisions of any regulations or by-laws made under this section, the water undertaker may, without prejudice to his right to take any proceedings in respect of such contravention, cause such person's supply of water to be cut off until the provisions of the regulations or by-laws, including the provisions as to payment of charges due, have been ~~complied~~ ^{complied} with.

Cap.2.

? WHAT DOES
THIS
STATE?

(5) Section 34 of the Interpretation and General Provisions Act shall not apply to any regulations made under this section.

(6) Any reference in this or any other written law to regulations made by a water undertaker under this section shall, except where the context otherwise requires, be construed as including a reference to any by-laws made under this section.

Power of
association of
operators to make
regulations.

170.(1) A community or association of operators operating a scheme approved ^{by} this Act may, with the ~~with the~~ approval of the Minister, or, if the Minister so directs shall, make regulations providing for any of the matters in respect of which a water undertaker shall under subsection (1) or may under subsection (2) of section ^{REF} 143 of this Act make regulations, and any such regulations shall, if the Minister so requires, be published in the Gazette or in such newspaper as the Minister may specify.

Cap.2.

(2) Section 34 of the Interpretation and General Provisions Act shall not apply to any regulations made under this section.

(3) If any person commits a breach of any of the provisions of any regulations made under this section, the community or association of operators may, without prejudice to any other remedy in respect thereof, cause such person's supply of water to be cut off until the provisions of the regulations, including the provisions as to payment of charges due, have been complied with.

Regulations for
preventing
pollution of water
water undertakers.

171.(1) If it appears to a water undertaker to be necessary for the purpose of protecting against pollution any water, whether on the surface or underground, which belongs to him or which he is for the time being authorized to take, he may, with the approval of the Minister, make regulations -

- (a) defining the area within which he deems it necessary to excise control; and
- (b) prohibiting or regulating the doing within that area of any act specified in such regulations.

(2) Where an area has been defined by regulations under subsection (1) of this section, the water undertaker may, by notice, require either the owner or the occupier of any land or premises within that area to execute and keep in good repair such works as the water undertaker considers necessary for preventing pollution of such water, and if such owner or occupier fails to comply with any such requirements he shall be guilty of an offence and liable to the same penalties as if he had committed an offence against such regulations:

Provided that any owner or occupier who considers that any such requirement is unreasonable may, within thirty days after service on him of notice of such requirement, appeal to the Minister, who may determine such appeal or, if he thinks fit, may refer it to arbitration.

(3) (a) Such water undertaker shall pay compensation to the owner or occupier, as the case may be, of any premise within the area defined by regulations made under this section in respect of -

- (i) any curtailment of or injury to his legal rights by restrictions imposed by such regulations; and

Attn: Mr. Muteku 23/3 WM
from Simon Thuo, Maji Hse.

The Water Act

- (ii) any expenses incurred by him in complying with a requirement to construct and maintain any works which would not, but for the provisions of this section, lawfully have been required, otherwise than upon, shall be decided by arbitration.
- (b) In this subsection, "legal rights" includes a user of land in respect of which a concerned Board might have taken proceedings under this Act or a local authority might have taken proceedings under any law relating to public health or by-laws of such local authority, but has refrained from so doing.
- (4) Where any person has failed to comply with a requirement notified to him under subsection (2) of this section and either -
 - (a) he has not appealed to the Minister against such requirement and the time for appeal has expired; or
 - (b) his appeal has been dismissed or the requirement has been modified in consequence of his appeal and he has failed to comply with the requirement as so modified,

the water undertaker may, without prejudice to his right to take proceedings in respect of such failure, execute and keep in good repair the works specified in the requirement as originally made or as modified on appeal, and may recover expenses reasonably incurred by him in so doing from the person in default, as a debt, except expenses incurred in respect of works the construction of which could not, but for the provisions of this section, lawfully have been required, otherwise than upon payment of compensation, by the local authority.

(5) Two or more water undertakers may combine for the purpose of making and enforcing regulations under subsection (1) of this section, and this section and subsection (2) of section (147) of this Act shall in any case have effect as if the references to a water undertaker were construed as references to those two or more water undertakers acting jointly.

REF ?

Cap.2

(6) Section 34 of the Interpretation and General Provisions Act shall not apply to any regulations made under this section.

(7) A water undertaker which is a local authority may, with the approval of the Minister, make by-laws for all or any of the purposes for which regulations may be made under subsection (1) of this section.

8

(8) Section (143) (3A) of this Act shall apply in respect of by-laws made under this section.

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REF

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L.N.256/1963.

(9) Any by-laws made by a local authority which was undertaker on the commencement of the Local Government Regulations, 1963, and which are in force on such commencement shall, to the extent that such by-laws may by virtue of subsection (7) of this section be made under that subsection by that local authority, remain in force and be deemed to have been made under this section.

X

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(10) References in this section to regulations and references in any other provision of this Act and in any other written law to regulations made under this section shall except where the context otherwise requires, be construed as including references to by-laws made under this section.

X

Enforcement of
Regulations

172.(1) It shall be the duty of any water undertaker by whom any regulations are made under section (143) or section (145) of this Act to enforce such regulations, and any water undertaker who fails so to do may be ordered by the Minister to take such action to enforce such regulations as shall be specified in such order.

REFS

X

- (2) ~~Any such regulations may contain provisions for imposing on any person contravening such regulations a fine not exceeding five hundred shillings in respect of each offence and in the case of a continuing offence, a further fine not exceeding two hundred shillings for each day during which the offence continues after the first conviction of the offender therefor.~~

- (3) Where any water undertaker considers that the operation of any such regulation would be unreasonable in relation to any particular case, he may in such case and with the consent of the Minister relax the requirements of such regulation, or dispense with compliance therewith.

Provided that the water undertaker shall give notice of any such proposed relaxation or dispensation in such manner and to such person, if any, as the Minister may direct, and the Minister shall, before giving his consent, take into consideration any objection which may have been received by him.

- (4) Where any such regulations are made by a water undertaker, any person employed by such water undertaker and authorized by him for the purpose shall, on producing, if required, his authority, have a right at all reasonable hours to enter any land or premises in the area to which such regulations apply, for the purpose of:-

- (a) ascertaining whether there is or has been any contravention of any regulations;
- (b) in the case of any regulations made under section 143 of this Act, exercising any right conferred on the water undertaker by subsection (4) of that section; or
- (c) in the case of any regulation made under section 145 of this Act-

The contravention of such regulations by any person or organisation shall be an offence, and should the contravention include the obtaining of water other than in the prescribed manner, clause 185 of this Act shall apply.

Ref

Ref

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- (i) ascertaining whether or not circumstances exist which would justify the water undertaker making a requirement under subsection (2) of that section:
- (ii) exercising any right conferred on the water undertaker by subsection (4) of that section to execute and maintain works,

and the provisions of section (164) of this Act shall apply to any such right of entry.

REF

Minister may
require water
undertakers to
make or revoke
revocations.

173.(1) The Minister may, by order, require any water undertaker to make regulations under section (145) of this Act in relation to such matters as he may specify, and in the case of regulations made under the said section (145) he shall specify the area for which such regulations are to be made, and if the water undertaker does not, within three months after such order made, in relation to the matters specified, regulations satisfactory to the Minister he may himself make regulations with respect to such matters.

REF?

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2(a) If the Minister considers that, owing to changing circumstances, any regulation made by a water undertaker under section (143) or section (145) of this Act has become unsatisfactory, he may, from time to time, order the water undertaker to revoke such regulations, and to make any such new regulations, as the Minister considers necessary, and if the water undertaker does not, within three months after such order, comply therewith the Minister may himself revoke such regulation, and make any such regulation, as he considers necessary.

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(b) Within twelve months, or such longer period as the Minister may in any particular case specify, after the commencement of this Act, every water undertaker

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shall submit to the Minister for approval under this Act any regulation made by him, and if the Minister considers that any such regulation be revoked, and that such new regulation, as considered desirable by him, be made, and if the water undertaker does not, within three months after such order, comply therewith the Minister may himself revoke such regulation and made such new regulation, as he considers necessary.

(3) Regulations made by the Minister under this section shall have effect as if they had been made by the water undertaker concerned and approved by the Minister.

Compulsory
acquisition of
land for purpose
of water
undertaking.

174. A water undertaker or proposed water undertaker who requires the compulsory acquisition of land for any of the purposes of a water undertaking may make application to the Minister, who may, on the advice of the National Board, and upon being satisfied that such compulsory acquisition is desirable, take any steps necessary to secure the acquisition of the land in accordance with the law for the time being in force relating to the compulsory acquisition of land for public purposes.

Execution of
works for
protection
of water.

176.(1) For the purposes of acquiring land under section 148 of this Act, there shall be deemed to be included amongst the purposes of a water undertaker the purpose of protecting against pollution any water, whether on the surface or underground, which belongs to the water undertaker or which he is for the time being authorized to take.

REF 7

(2) A water undertaker may, on any land belonging to him, or over or in which he has acquired any necessary easement or right, construct and maintain drains, sewers and other works for intercepting, treating or disposing of any foul water arising or flowing upon such water undertaker, or which he is for the time being authorized to take, from being polluted:

NOT
CLEAR

Provided that, before constructing any such ^{works the} water undertaker shall, if the proposed works will affect or be

likely to affect any body of water in the catchment area in which such works are situated, obtain the consent of the concerned Board.

(3) Any water undertaker proposing to construct any drain, sewer or other works for any purpose mentioned in subsection (2) of this section may, with the consent of the authority concerned, which may be given subject to such conditions as such authority thinks fit, carry the drain, sewer or other work under, across or along any road or road reserve or public place, whether within or outside the limits of supply of such water undertaker.

(4) Any consent required under subsection (3) of this section shall not be unreasonably withheld, nor shall any unreasonable condition be attached to such consent, and any question whether or not such consent is unreasonably withheld or whether any condition which such authority seeks to impose is unreasonable shall be decided by the Minister, whose decision thereon shall be final.

Minister may
declare catchment
area a
protected area.

176.(1) Where the Minister, after consultation with the concerned River Basin Board, is satisfied that special measures are necessary for the protection of a catchment area from which the water supply of a water undertaker is obtained, he may, by order, require, regulate or prohibit the doing within such area of any act, as he deems necessary for the protection of such area or for the protection of the water supply obtained therefrom.

(2) Before an order is made under this section, the Minister shall publish in the Gazette and in a newspaper circulating in the district a notice of his intention to make such order, and any person who is aggrieved by such order may, within thirty days of the publication of the notice, appeal to the concerned River Basin Board.

(3) The Minister, after consultation with the concerned River Basin Board, shall decide whether or not compensation shall be payable by the water undertaker

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concerned and to whom it shall be paid, as result of an order made under this section:

Arbitration.

177. Where under this Part the Minister makes an order upon, or imposes terms and conditions upon, a water undertaker, and such water undertaker, ~~and such water undertaker~~ is aggrieved by such order, terms or conditions, the matter shall be referred to arbitration.

Power to exempt
Water undertaker
From provisions of
Act.

178. The Minister may, with the approval of the National Water Board, by order, exempt any water undertaker from any of the provisions of this Act.

PART XVIII – MISCELLANEOUS

Damages to public
works to be
made good.

179. Every operator shall be liable for and shall make good, in such manner as the National Water Board or any officer delegated by it may determine, all damage to any public works which may be occasioned by reason of the works of the operator breaking, or being defective in construction, or out of repair, or of insufficient capacity, and, in the event of such works not being made good after notice so to do has been served on such operator by the National Water Board, the National Water Board may cause such works to be made good and recover the cost thereof in any competent court.

Authority to
interfere with
works of
operator.

180. Any person engaged in the construction of any road, railway or public works may, with the approval of the concerned Board and upon giving reasonable notice to the operator concerned, cross for such reasonable period as may be necessary;

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NOT
UNDERSTOOD

Provided that such person shall do as little damage as possible, and shall, at his cost and as ~~speedily~~ as possible, restore such work to a condition in which it will fulfil its required purpose and, where justified, pay compensation to the operator for any loss sustained by interference, interruption or damage to his works.

Striking of

181.(1) Where any person constructs any new

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aquifer in course
of mining operations
to be reported.

work, not being works as defined in section 2 of this Act, for the purpose of searching for or extracting minerals or for any other purpose, and an aquifer is struck, he shall give notice to the concerned Board, and shall take such measures and comply with such conditions as the concerned Board may from time to time require for the conservation of water which may be encountered during any construction:

Provided that if such person is aggrieved by any such requirement he may, within thirty days of the date of notification thereof, appeal to the Minister, whose decision shall be final.

(2) Any person who fails to comply with this section shall be guilty of an offence.

Water not to be
released without
notice.

182. Any operator who releases water which has been stored or penned back by him shall be guilty of an offence unless he has first given reasonable notice to all persons whose property may be liable to injury as a result of the release of such water, and such operator shall not, by reason of anything in this Act contained, be relieved from liability for any loss, damage or injury sustained by any person as a result of the release of such water.

Penalty for waste
enquiry →

183.(1) Where the concerned Board is, after due enquiry, satisfied that any licensee or sanction or permit holder has wasted any water to which his licence, sanction or permit entitles him, the concerned Board shall order him, in writing, to stop such wastage within forty-eight hours of the receipt by him of such order, and any person so ordered who fails to comply with such order within the time aforesaid shall be guilty of an offence ~~and liable to a fine not exceeding ten thousand shillings.~~

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(2) A licensee or sanction or permit holder who wastes water within twelve months after having been convicted of an offence under subsection, whether or not the concerned Board has ordered him to stop such wastage, shall be guilty of an offence ~~and liable to a fine not exceeding ten thousand shillings,~~ and in addition the

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concerned Board may cancel or vary the conditions of his licence, sanction or permit.

Penalty for
polluting water
used for human
consumption.

184.(1) Any person who, by any act or neglect, causes any source of water supply, the water from which is used or is likely to be used for human consumption or domestic purposes, or for manufacturing food or drink for human consumption, to become polluted, or to be likely to be polluted, shall be guilty of an offence:

Provided that nothing in this section shall be construed as prohibiting or restricting -

- (i) any lawful method of cultivation of land or the watering of stock which, in the opinion of the Minister, does not conflict with the principles of good husbandry;
- (ii) the reasonable use of oil, tar or other substances on any highway or road so long as the authority or person concerned takes all reasonable steps for preventing such oil, tar or other substances, or any liquid or matter resulting from the use thereof, from polluting any source of water supply; and any question as to what is reasonable use under the provisions of this paragraph shall be determined by the Minister; or
- (iii) the disposal of effluents or waste in any area which the Minister may, by order, from time to time specify.

(2) Any person duly authorized under this Act for the purpose may, on producing his authority, if so requested by the owner or occupier thereof, at all reasonable hours enter any land or premise for the purpose of ascertaining whether there is or has been any contravention of the

*INSERT NEW
CLAUSE 185*

Penalty for and 185
recovery of
value of illegally
obtained water

Any person or organisation who obtains water from a water undertaker except in the prescribed manner shall be guilty of an offence.

Any person or organisation found guilty of such an offence shall in addition to paying the prescribed penalty pay to the water undertaker the computed value of the water that was illegally obtained, failing which goods to an equal value may be seized and auctioned to enable the water undertaker to both recover his lost revenue and pay all his costs in so doing.

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provisions of this section in relation to such source of water supply, and section (164) of this Act shall apply to such right of entry.

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185

Penalty for
illegally
obtaining
water

Penalty for
Failing to comply
With order of
Minister

Miscellaneous
offences

185. Any person who fails to comply with an order given by the Minister under this Act shall be guilty of an offence.

186.(1) Any person who performs any of the following Acts shall be guilty of an offence, that is to say, any person who-

- (a) wilfully obstructs, molests or hinders an inspecting officer, engineer or surveyor of the Ministry or of the Ministry for the time being responsible for water, a qualified engineer, a Government surveyor or land surveyor, a water bailiff or other person duly authorized by the concerned in the exercise of his duties under this Act; or
- (b) without the written authority of the concerned Board, knowingly or wilfully defaces, alters or removes, or causes to be defaced, altered or removed, any survey mark, water gauge, weir or measuring device, or other work, structure or appliance installed for the purposes of water control or investigation; or
- (c) witnesses any such act as is mentioned in paragraph (b) of this subsection and who does not attempt to prevent such act or who does not report such act to the nearest police officer or administrative officer as soon as possible, or who deliberately conceals knowledge when called upon to do so by a police officer or administrative officer; or
- (d) wilfully hinders or interrupts, or causes or procures to be hindered or interrupted, any

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The Water Act

operator, or his manager, contractor, servant or workman, in the lawful exercise of any of the powers and authorities conferred by this Act; or

- (e) without lawful authority wilfully lets off or discharges water from the works of any operator so that such operator loses the use of such water; or
- (f) without lawful authority lays, erects or constructs, or causes to be laid, erected or constructed, any work to connect with the work of any operator, and which is capable of drawing water from such work; or
- (g) unlawfully interferes with the works or water supply of any operator,

and such person shall be ^{guilty of an offence.} ~~liable to a fine not exceeding two thousand shillings or, in default of payment, to imprisonment for a term not exceeding six months.~~

(2) Any person who, wilfully without authority given under this Act -

- (a) obstructs, interferes with, diverts or obstructs water from any watercourse or any body of water, or negligently allows any such obstruction, interference, diversion or abstraction; or
- (b) throws or conveys, or causes or premises to be thrown or conveyed, any rubbish, dirt, refuse, effluent, trade waste or other offensive or unwholesome matter or thing into or near to any body of water in such manner as to cause, or be likely to cause, pollution thereof.

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shall be guilty of an offence and liable, in the case of a first offence, to a fine not exceeding five thousand shillings or, in default of payment, to imprisonment for a term not exceeding nine months and in the case of a second or subsequent offence to a fine not exceeding ten thousand shillings or, in default of payment, to imprisonment for term not exceeding twelve months, and, in addition to any other penalty, any works executed may be destroyed and any plant or machinery used in connexion therewith may be confiscated, and the costs of destruction of such works may be recovered by the chairman from such person in any competent court.

who is
this?

(3) Any person who, being entitled to construct, erect or maintain works or to divert, abstract or obstruct water under this Act -

- (a) constructs, erects or maintains works without authority or in any manner contrary to any authority obtained under this Act; or
- (b) diverts or abstracts water in excess of the quantity authorized to be diverted or abstracted; or
- (c) fails to erect, construct or maintain a measuring device, if so required under this Act; or
- (d) fails to obey any order of the Water Apportionment Board or other authority, lawfully given under this Act,

shall be guilty of an offence and liable, in the case of a first offence, to a fine not exceeding five thousand shillings or, in default of payment, to imprisonment for a term not exceeding nine months, and in the case of a second or subsequent offence to a fine not exceeding ten thousand shillings or, in default of payment, to imprisonment for a term not exceeding twelve months.

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(4) (a) Any person who has committed, or has been accused of committing, an offence under this Act or under any rules or regulations made thereunder, and who refuses, on demand of any water bailiff, to give his name and residence and other particulars which such water bailiff may reasonably require, or gives a name and residence or other particulars which the water bailiff has good reason to believe to be false, may be arrested by such water bailiff without a warrant, and handed over to the nearest police officer.

(b) When his true name and residence or other particulars have been ascertained, such person shall be released on his executing a bond, if so required, with or without sureties, to appear before a magistrate.

(c) Should the true name and residence or other particulars of such person not be ascertained with twenty-four hours from the time of his arrest or should he fail to execute such bond or, if so required, to furnish sufficient sureties, he shall forthwith be brought before a magistrate having jurisdiction in the area:

Provided that, if there is no magistrate then in the area before whom such person can conveniently be brought, such person may be detained in custody until a magistrate is available.

(4) The conviction of any person under this section shall not relieve him from any legal liability to any other person.

PART XIX - GENERAL

Application of
Act to Trust
land.

187. Notwithstanding anything in this Act, the powers conferred, and the duties and obligations imposed, by this Act shall in respect of Trust land be exercised subject to any written law relating to that land.

Notice of entry

187.(1) Where any person is authorized under or in

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upon land.

in accordance with section (156) of this Act to enter upon land for the purposes specified in such section, he shall not enter upon the land without first giving reasonable notice, whether written, verbal or otherwise, to the owner, occupier or other responsible person manning or in charge of that land:

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Provided that he may enter upon such land without giving notice if -

- (i) he has reason to believe that a provision of this Act or of any rule or regulation made thereunder has been or is about to be contravened;
- (ii) he is unable to give notice within a reasonable time having regard to all the circumstances; or

(2) Any person so entering upon land shall cause as little as possible in exercising of the powers conferred by this Act, and any compensation payable under section (166) of this Act, if not agreed by the persons affected, shall be determined by arbitration.

ref ?

(3) Any person who prevents, hinders or obstructs any authorized person from entering upon any land in accordance with this Act, or who prevents, hinders or obstructs any such person from lawfully carrying out his powers of duties under this Act, shall be guilty of an offence.

Authority to
enter upon or any
land for survey
and preliminary
investigation.

188.(1) Any person proposing to apply for a permit, operator, wishing to enter upon the land of another person, if his proposals are opposed by such other person, may upon submitting in the manner prescribed a general description of his proposals and a schedule of lands which may be affected by the construction and operation of such works, together with the names and addresses of the holders of such lands, and upon payment of the prescribed fee, obtain from the concerned Board authority to enter upon

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such land and do any necessary preliminary investigation in connexion with the location of such proposed work.

(2) The concerned Board may prescribe a time limit within which such investigation shall be completed.

(3) Such person or operator or any person authorized by him may, with such assistance as is necessary, enter into and upon any such land to take levels, make surveys and do other necessary work in connection with such location.

(4) The concerned Board shall not issue any such authority until it has served a notice on each landholder concerned, that application to enter his lands has been made by such person or operator.

(5) The grant of any such authority shall not authorize or be deemed to authorize the doing of any damage upon any lands entered upon, and if any damage is done compensation shall, failing agreement between the parties as to the amount of such compensation, be determined by arbitration.

Right of entry
of Minister.

189.(1) The National Water Board, or any person deputed by it, may, in the exercise of the right of the Minister to the control of bodies of water, enter, if necessary without notice, upon any land and inspect such bodies of water and take such measures as may be thought fit for the purposes of the conservation and regulation of such water, for its preservation from pollution, for the protection of the bed over which it flows and for removing any obstruction from, or for clearing and deepening, the bed, and may interfere summarily to prevent the excessive or illegal diversion, waste or pollution of such water or interference with such bed, and it shall not be necessary for the National Water Board or any person deputed by it to obtain any injunction or other order of court to entitle it or him to make such entry or to take such measures.

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(2) Compensation shall be paid to the holder of any such lands for any actual injury caused by measures taken under the powers conferred by this section, other than measures for the avoidance of waste or removal of unauthorized works to stopping unauthorized diversion, abstraction or obstruction of water or the prevention of pollution. and, failing agreement, the amount of compensation shall be determined by arbitration.

Information to
be afforded to
inspecting officer.

190.(1) Every operator, which expression shall include his managers, servants and workmen, shall afford to any inspecting officer such information as is within his knowledge in all matters relating to any inquiry held by such inspecting officer under this Act, and shall submit to such inspecting officer all plans, specifications, drawings and documents relating to the construction, maintenance, repair or state of repair of the works, or any portion thereof, of such operator.

(2) the production of instructions in writing, signed by the chairman, shall be sufficient evidence of the authority of such inspecting officer.

Operator to
produce
documents on
order of
National Water
Board.

191. Every operator, upon the order of the National Water Board or any person authorized by the National Water Board for that purpose, shall produce for inspection any licence, sanction, permit, authorization, map, plan, specification, drawing or other document relating to the works or to the licence, sanction or permit of such operator or to the flow of water in such works or in the body of water affected by such works.

Service of notices

192. Any notice required to be served in pursuance of this Act shall be served –

- (a) by delivering of the same personally to the person required to be served; or, if such person is absent or cannot be found;

- (b) by leaving the same at the usual or last known place of abode, in Kenya, of such person; or
- (c) by post, addressed to the usual or last known address, in Kenya, of such person; or
- (d) in the case of a notice required to be served on a local authority, corporate body or company, by delivering the same to its clerk or secretary or by leaving the same at his office with some person employed there, or by post addressed to such clerk or secretary at his office:

Provided that –

- (i) if any landholder is not known and, after diligent inquiry, cannot be found, such notice may be served on him by leaving it, addressed to such landholder, with some occupier of the land, or, if there is not an occupier, then by causing it to be put in a conspicuous position on the property in Kenya last known to have been occupied by him;
- (ii) any notice required to be given to a landholder may be addressed to “the owner” of the land or premises described in the address in respect of which notice is given, without further name or description.

Proof of orders.

193. All documents purporting to be orders made by the Minister, the National Water Board, a River Basin Board or a District Water Board or the chairman or the officer deputed by them as the case may be, shall be prima facie evidence of the due making thereof without further proof, unless the contrary is shown.

Orders, etc.,
to be in writing

194. All orders, notices, consents, approvals, demands or other documents authorized or required by this Act to be given, made or issued by the Minister or by any concerned board, local authority or water undertaker, and all notices, applications or other documents authorized or required by this Act to be given or made to the Minister or to any concerned board, local authority or water undertaker, shall be in writing.

Authentication
of documents.

195.(1) Any notice, consent, approval, demand or other document which any local authority, concerned Board or water undertaker is authorized or required by or under this Act to give, make or issue may be signed –

- (a) on behalf of a board or local or other authority –
 - (i) by the clerk of such board, authority of local authority; or
 - (ii) by any officer of such board, authority of local authority, authorized by it in writing to sign documents of the particular kind or the particular document;
- (b) on behalf of a water undertaker not being a local authority –
 - (i) by the clerk or secretary of the water undertaker; or
 - (ii) by any other officer of the water undertaker authorized by him in writing to sign documents of the particular kind or the particular document.

(2) Any document purporting to bear the signature of any person expressed to hold an office by

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virtue of which he is under this section empowered to sign such a document or expressed to be duly authorized by the authority, board or water undertaker concerned to sign such a document or the particular document, shall, for the purposes of this Act, be deemed, until the contrary is proved, to be duly given, made or issued by authority of such authority, board or water undertaker.

Permits, etc.,
to be evidence

196. The production of a licence, sanction, authorization, or any copy thereof purporting to be certified by the chairman of the concerned Board, shall, without further proof, *prima facie* evidence in all courts of the matters and things specified therein.

Qualified engineer.

198.(1) Where under this Act it is required that any act shall be done or requirements be provided by a qualified engineer, the provisions relating to such engineer shall be as prescribed.

(2) The onus of proof that any project, plan, document or application required under this Act to be supplied, prepared or provided by a qualified engineer has been so supplied, prepared or provided shall be on the party presenting or using it.

Compensation
to be decided
by arbitration.

199. If any parties cannot agree as to the amount of compensation or costs to be paid under this Act, the amount of such compensation or costs shall be determined by arbitration.

Protection of
Minister,
Authority
and Boards.

200. No action shall lie, or be maintained, against the Minister, the National Water Board, a River Basin Board or a District Water Board for anything done in good faith in the performance or intended performance of any authority conferred or duty imposed under this Act or under any rules, regulations or order made thereunder.

Penalties.

201.(1) Every person who is guilty of an offence under this Act, or under any rules or regulations made thereunder, shall be liable to the penalty expressly imposed by this Act or by the rules, and, where no penalty is ~~and as from time to time gazetted~~

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~~expressly provided, shall be liable to a fine not exceeding five thousand shillings or, in default of payment, to imprisonment for a term not exceeding three months.~~

(2) Any operator who wilfully contravenes any of the provisions of this Act or any rules, regulations or order made thereunder, or any of the terms or conditions of his licence, sanction, permit or authorization, shall, in addition to all other penalties, be liable to have such licence, sanction, permit or authorization cancelled.

Penalties may
be recovered by
authorized
persons.

202.(1) Except where otherwise in this Act provided, all penalties imposed by this Act, or by any rules, regulations or order made thereunder, may be recovered, in any court of competent jurisdiction, by any person authorized in that behalf by the Minister.

(2) Such penalties may be recovered from the person actually committing the offence or from the person on whose behalf he is acting.

Recovery of
penalty not to
prejudice right
to take other
proceedings.

203.(1) Every penalty imposed upon any person by this Act, or by any rules or regulations made thereunder, shall be without prejudice to the right to recover from such person -

- (a) any sum for any damage sustained through his act or default; and
- (b) the cost and expenses incurred in remedying such damage.

(2) The payment of any such penalty shall not affect the right of any other person to bring any action or to take any proceedings against such person.

Institution of
proceedings.

204. The Minister, the National Water Board, a River Basin Board or a District Water Board may institute and maintain proceedings in any court against any person accused of an offence under this Act or under any rules or

regulations, and may, in his or its own name, take any civil proceedings against any person.

Rules.

205.(1) The Minister may, on the advice of the National Water Board, make rules providing for all or any purposes, whether general or to meet particular cases, that he may consider necessary for the administration of this Act, or for carrying out the objects or purposes of this Act, or for giving full effect to the provisions of this Act, and, without prejudice to the foregoing powers, providing for all or any of the matters following –

- (a) Water qualified engineers and other water professionals;
- (b) fees for services in connection with permits;
- (c) associations of operators;
- (d) controlling and measuring devices;
- (e) community projects and permits;
- (f) temporary works;
- (g) plans and specifications to be submitted by applicants under this Act;
- (h) forms to be used under this Act;
- (i) inspection of works;
- (j) drainage and reclamation of swamps;
- (k) water power permits;
- (l) abandoned works;
- (m) water bailiffs;
- (n) National Water Board:

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- (o) Protection of fish and fish food;
- (p) water undertakers or water and sanitation providers;
- (q) pollution;
- (r) dam contractors and the construction, extension or improvement of dams;
- (s) the appointment, termination of appointment and terms of office of members, and regulating the proceedings of the National Board, Water and sanitation Regulatory Board, a River Basin Boards, Community Water Committees and a District Water Boards;
- (t) Water and Sanitation Regulatory Board
- (u) River Basin Boards;
- (v) District Water Boards.

(2) ~~Such rules may provide for the imposition of a penalty for any contravention of any such rule, not exceeding twenty thousand shillings or, in default of payment, imprisonment for a term not exceeding twelve months.~~ Any person contravening such rules shall be guilty of an offence.

Temporary provision.

NEW DATE
REQUIRED

206.(1) Notwithstanding any provision in this Act or in any other written law, the Water Resources Authority, the Water Apportionment Board, and all Regional Water Boards, as established or constituted immediately before the 1st June, 1963, shall continue in being and the provisions of the Water Act or any subsidiary legislation thereunder relating to such Authority and such Boards, shall continue in force until the Minister, by notice or notices in the Gazette, revokes this subsection either in full or in part as may be necessary.

The Water Act

INDICATE
NEWLY NAMED
BOARDS HERE

(2) The provisions of this Act, other than subsection (1) of this section, relating to the Water Resources Authority, the Water Apportionment Board, Regional Water Committees and Catchment Boards, shall come into operation either in full or in part as may be necessary on such date as the Minister may by notice or notices the Minister shall also revoke subsection (1) of this section, either in full or in part as may be necessary.

SCHEDULE

Representatives of the Government Ministries responsible for the following matters:-

Agriculture
Environment
Fisheries
Health
Industry
Natural Resources (e.g Forestry, wildlife etc)
Public Administration
Public Works
Research and Technology
Water Resources
Lands and Settlement

Representatives of the following institutions

Kenya Agricultural Research Institute
Kenya Forestry Research Institute
Kenya Water Institute
Kenya Wildlife Service