

THE WATER ACT
(No 8 of 2002)

IN EXERCISE of the powers conferred by Section 110 of the Water Act, 2002, the Minister for Water and Irrigation, makes the following Rules –

THE WATER RESOURCES MANAGEMENT RULES, 2007

PART I-PRELIMINARY

1. Citation.

These Rules may be cited as the Water Resources Management Rules, 2007.

2. Interpretation. [8 of 1999, Cap. 265]

In these Rules, unless the context otherwise requires –

“abstraction” means the removal of water from any water source, either permanently or temporarily;

“airline” means a tube installed in a borehole or well for the purposes of measuring water level;

“alien species,” means any exotic non-indigenous life forms originating from outside a given ecological location;

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

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

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

“arbitration” means to decide between the parties in a dispute or conflict of water use, source of availability;

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

“Authority” means the Water Resources Management Authority established under Section 7 of the Act;

“authorisation” means authorisation to construct works;

“authorised” means as approved by the Authority;

“authorized officer” means any officer appointed under section 9(3) of the Act to perform such duties as may be required under the Act;

“basic human needs” means the quantity of water required for drinking, food preparation, washing of clothes, bathing, basic sanitation and is assumed to equal to twenty five (25) litres per person per day;

“beneficial use” refers to the use fullness into which water is put from the way it is utilized;

“borehole” means a hole, usually vertical, drilled to determine ground conditions for the extraction of or measurement of groundwater;

“buffer zone” means distinct or established areas that separate potentially antagonistic entries between competing users, which serve to lessen the danger of potential conflicts;

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

“catchment area” means an area designated under Section 14 of the Act;

“catchment area advisory committee” means a committee established under section 16 of the Act;

“Catchment Management Plan” refers to a programme of measures that have been developed for the purposes of conserving and or improving the conditions of the catchment;

“Catchment Management Strategy” refers to a document that has been prepared for the purpose of directing the management of the water resources within the catchment area;

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

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

“class of water resource” refers to the set of categories that have been established under these rules to distinguish one water resource quality from another;

“commercial programme” means any program licensed under relevant law and generates waste effluents as described under these rules;

“commercial irrigation” means irrigation primarily for commercial purposes;

“compensation flow” is the flow released from a dam or weir which is required for downstream uses and the Reserve;

“containerized water” means natural mineral water, spring water and drinking water packaged in a container for purposes of sale or retailing;

“control device” refers to a fitting, equipment or infrastructure which can be adjusted so as to control the flow or level of water;

“dam” refers to an embankment constructed for the purpose of retaining water;

“day” means a day of twenty-four hours;

“decommissioning borehole” means the permanent safe closure, removal or complete sealing of a well with sealants or other materials to prevent its use for any purpose so as to protect the groundwater resource;

“designated person” means any person authorized by the Authority to act on its behalf;

“discharge” means volumetric flow rate;

“domestic water demand” is the quantity of water required to satisfy all domestic needs;

“driller”, “water well driller” or “drilling contractor” means a person, firm or agency which is registered to undertake the construction or rehabilitation of a borehole;

“duty of water” means the efficiency of water with respect to the irrigation of a given area of land, which is said to be high or low depending on the quantity of water required for the purpose;

“easement of aqueduct” means an easement for the storage of water by the construction of a dam, weir, obstruction or other works, with the consequent submergence of the area covered by stored water, but in this connection does not include an easement of work;

“easement of work” means an easement for the construction of a dam, weir, embankment, training works, pump, turbine, power-house and other ancillary works, but does not include an easement for storage, except when the water is stored is obtained from a well;

“effluent” means waste which is –

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

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

“effluent discharge control plan” is the plan referred to in the Second Schedule of these Rules;

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

“environmentally friendly” includes any phenomenon or activity that does not cause harm or degradation to the environment;

“Environmental Management Plan” means the plan referred to under section 42(3) of the Environmental Management and Coordination Act, 1999;

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

“fish farming” means the breeding and or raising of fish for the purposes of commercial production;

“flow” means a volume of water passing across section of a body of water, watercourse or works in a unit of time;

“fresh water limit” means the place in water where at low tide and in a period of low fresh water flow there is an appreciable increase in salinity due to the presence of sea water;

“guidelines” means the description of the methodology for water and waste water quality determination;

“in-course works” or “online works” or “in-stream works” refers to any infrastructure built within or across a water course;

“irrigation” refers to the artificial application of water to a plant;

“lead agency” means any government ministry, department, parastatal, state corporation or local authority, in which any laws vests functions of control or management of any element of the environmental or natural resources;

“legally registered entity” means an organization, corporate body or person that has legal status;

“local authority” has the meaning assigned to it in section 2 of The Local Government Act;

“marine environment” means the maritime area extended in the case of water courses up to the freshwater limit and including inter-tidal zones and salt-water marshes;

“measuring device” refers to a fitting, equipment or infrastructure which can be calibrated to provide an

accurate measure of the flow or level of water;

“natural resources” includes resources of air, land, water, animals and plants including their aesthetic qualities;

“natural water body” means groundwater and water contained in or flowing in a spring, stream, lake, pond, wetland, marsh or swamp;

“non-point source” refers to dispersed sources;

“normal water level” refers to the water level at the dam spillway crest level;

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

“overflowing well” means a borehole from which groundwater discharges at ground surface under natural head, correctly called artesian;

“pan” means hand or mechanically excavated structure constructed for retaining water;

“permit” means a permit for the time being in force under this act;

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

“person” includes an individual, corporation, company, association, government department, partnership or local authority;

“pH” means the negative base 10 logarithm of the hydrogen ion concentration;

“plan” means map or drawing and the associated literature;

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

“pond” means a natural depression that contains water;

“provincial administration” refers to the public administration under the provisional commissioner, district commissioner, district officer, chief or assistant chief;

“public notification” means the process of notifying the public by means of publication in the Kenya Gazette, at least one announcement in a national newspaper in circulation in the locality, at least one announcement in the radio broadcasting in the locality or any other local means of communication;

“public water supply” refers to a water supply that has been developed to supply water to cities, municipalities, townships, villages and communities and includes a variety of different water uses, excluding power generation and irrigation;

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

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

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

“return flow” means the portion of the water abstracted that is returned to the water course;

“riparian land” land in respect of which, management obligations are imposed on the owner by the Authority due to its proximity to water body;

“Soil and Water Conservation Plan” means a set of activities that have to be done in order to reduce the likelihood of soil and water loss from the landscape;

“stakeholder” means a person or entity which has influence over or is affected by a certain activity on a resource;

“standard” means the limits established under these rules which are made pursuant to the Act or any other written law;

“stream” means the water flowing in a watercourse, and includes a river;

“subsistence irrigation” means irrigation primarily for household food security purposes;

“test yield” means the average discharge rate of the constant discharge pumping test conducted on a borehole;

“variation” means any authorized amendment made to a water permit;

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

“wastewater” is water containing waste;

“Water Resources Monitoring Network” means the set of equipment, infrastructure established for the purpose of monitoring the quantity and quality of the water resources;

“Water Resource User Association (WRUA)” is an association of water users, riparian land owners, or other stakeholders who have formally and voluntarily associated for the purposes of cooperatively sharing, managing and conserving a common water resource;

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

“wetland” refers to an area where plants and animals have become adapted to a temporary or permanent flooding by saline, brakish or fresh water;

3. Units.

For the purposes of these Rules, unless specifically stated otherwise, the units of measurement shall be Systeme Internationale (SI) Units.

4. Application of rules.

(1) These Rules shall apply to all policies, plans, programmes, and activities that are subject to the Water Act, 2002.

(2) These Rules shall apply to all water resources and water bodies in Kenya, including all lakes, water courses, streams and rivers, whether perennial or seasonal, aquifers, and shall include coastal channels leading to territorial waters.

5. Mechanism for complaints.

(1) Any person with a complaint related to any matter covered by these Rules shall submit the complaint to the appropriate office of the Authority providing the details as shown in the Tenth Schedule.

(2) The Authority shall reply to the complainant, with copies to all other relevant parties, within twenty-one days of receiving the complaint, stating what action is being taken, the position of the Authority on the matter and or any recommendation to the complainant.

(3) If the complainant is dissatisfied, he or she may forward the matter to the Chief Executive Officer of the Authority.

(4) The Chief executive officer shall reply to the complainant with copies to all other relevant parties, within twenty-one days of receiving the complaint stating what action is being taking, the position of the Authority on the matter and or any recommendation to the complainant;

(5) If the complainant is dissatisfied with the final decision of the Authority, he or she may forward the matter to the Water Appeal Board.

(6) Each complaint shall be given a Complaint Number by the Authority which shall be used for purposes

of monitoring the response to the complaint.

6. Public notification.

Unless explicitly stated otherwise by the Authority, public notification shall consist of publication in the Kenya Gazette, at least one announcement in a national newspaper in circulation in the locality, at least one announcement in the radio broadcasting in the locality, and any other local means of communication.

7. Public consultation.

(1) Unless explicitly stated otherwise by the Authority, public consultation shall consist of the activities as stipulated in Section 107 of the Act.

(2) In giving effect to the requirements of public consultation, the Authority shall take steps to engage members of the public who may otherwise not be informed or aware of the issues being brought before them.

8. Orders.

(1) The Authority may issue an Order on any person to desist from any activity, or to carry out corrective measures to improve compliance with these Rules for better water resource quality and or catchment conditions.

(2) The Order will be made on the prescribed Form WRMA 016 set out in the Twelfth Schedule and shall specify what measures need to be taken, the period of time for compliance with the Order, and any other conditions pertaining to the compliance with the Order.

(3) Any person who is served with an Order by the Authority and fails to comply within the stated period of time shall be guilty of an offence and shall be liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding three months or to both. The person shall also be required to comply with the Order.

(4) Failure to comply with an Order by the Authority may be considered as a basis for suspension, cancellation, or variation of a permit.

(5) Any person who objects to any part of an Order served on him by the Authority shall respond in writing to the Authority within fourteen days, giving particulars of the objection.

(6) In the event of an objection to an Order, the Authority shall, within seven days of receiving the objection, notify the person served with the Order of any changes to the conditions of the Order.

(7) Where an Order is not complied with within the timeframe stated on the Order the Authority may take any appropriate measures to prevent the carrying out of the activity mentioned in the Order, including the confiscation of equipment, plant or works, and any costs incurred by the Authority in effecting these measures shall be a cost recoverable from the recipient of the Order.

(8) If the complainant is dissatisfied, the complainant may follow the mechanism for complaints as

specified in these Rules.

(9) Where the Authority determines that an activity may cause deterioration of the resource quality, the Authority shall take immediate emergency corrective measures without reference to the person who caused it, and any costs incurred by the Authority in effecting these measures may be recovered from the person responsible.

9. Protection of integrity of the water resources monitoring network.

(1) Any person who undertakes any activity that damages or hinders the proper functioning of the monitoring network for a water resource shall be given the opportunity of meeting the cost of repair, within a period of time determined by the Authority.

(2) Any person who undertakes any activity that damages or hinders the proper functioning of water resource monitoring network and who fails to make good the damage or cover the costs of repair, shall be guilty of an offence and shall be liable to a fine not exceeding fifty thousand shillings or to an imprisonment for a term not exceeding three months or to both. The person shall also be required to repair the damage.

10. Water Resource Users Associations

(1) For a WRUA to be considered for registration by the Authority, it should be legally registered, have a constitution conducive to collaborative management of the water resources of a particular resource and which promotes public participation, conflict mitigation, gender main-streaming and environmental sustainability.

(2) Any WRUA that meets the prescribed conditions may seek to register with the Authority, by submitting the prescribed Form WRMA 018 set out in Twelfth Schedule.

(3) The Authority shall respond in writing within thirty days of the receipt of the application by the WRUA;

(4) Upon registration the Authority shall issue the WRUA with a certificate of registration.

(5) The Authority shall maintain a Register of WRUAs as per Form Register 001 set out in the Twelfth Schedule.

(6) Whenever the particular details of the WRUA change the prescribed Form WRMA 018 set out in the Twelfth Schedule should be re-submitted.

(7) The Authority may enter into a Memorandum of Understanding with a WRUA for the purposes of collaborative water resource management of the water resources;

(8) The Memorandum of Understanding may provide for administrative, technical or financial support to the WRUA by the Authority in respect of activities related to the collaborative water resource management;

(9) The Authority may with good cause suspend a WRUA from its Register of WRUAs if the WRUA fails to adhere to its own constitution, fails to engage in collaborative management of the water resources or fails to honour the Memorandum of Understanding with the Authority.

(10) During the period a WRUA is suspended, it shall not be engaged in any activities related to any memorandum of understanding entered into with the Authority, without the approval of the Authority.

(11) The authority may lift the suspension upon being satisfied that the WRUA has taken corrective measures on the issues that led to the suspension.

(12) Failure to take corrective measures, within a specified time, the Authority shall remove WRUA from its register and the WRUA shall cease to be engaged in any water resources management activities covered under any memorandum entered into with the Authority.

(13) WRUA Registration with the Authority does not confer any legal standing on the WRUA but clarifies which entity is considered by the Authority to be a WRUA for a particular water resource.

(14) Any WRUA under suspension that violates the conditions of the suspension or any WRUA removed from the register that engages in water resources management activities covered in the memorandum of understanding entered into with the Authority shall be guilty of an offence.

11. Entry upon land.

Every applicant for authority to enter upon land belonging to other persons for survey or investigative purposes of water resource management or development under section 89 of the Act, shall submit to the Authority the application on the prescribed form Form WRMA 017 set out in the Twelfth Schedule.

12. Water Resource Inspector.

(1) The Authority may, in writing, authorize any person employed in the public service, or any servant, agent or contractor of such person, to exercise any of the powers, duties or obligations vested in it by these Rules.

(2) The following persons shall perform the duties and have the powers of water resources inspector-

(a) any person appointed to a post that is equivalent to or senior than that of a water resources officer or water rights officer in the Authority;

(b) persons other than officers of the Authority, appointed by the Authority by notice in the Gazette, as water resources inspector, which persons may receive such payment in respect of their services as the Authority may determine; and

(c) every person appointed to perform the duties and have the powers of water resources inspector shall carry a document of identification, and shall produce it when required in the performance of his or her duties.

13. Water resource data.

- (1) The Authority shall maintain a database for purposes of water resource management.
- (2) The database shall contain data on climate, surface water, ground water, water quality, catchment conditions, abstractions, permits, water use and any other data relevant to the management of the water resources.
- (3) Any person requiring water resource data from the Authority shall make an application for it in writing.
- (4) The request for data should be reasonable and relevant with respect to a specific activity and area.
- (5) The applicant shall be required to pay the prescribed fee set out in the First Schedule for the data, unless the Authority is satisfied that the data is to be used for research or non-commercial purposes.
- (6) Data provided by the Authority shall not be transferable to a third party and the Authority shall not be liable for any error or omissions in the data.
- (7) The citation of any publication that uses data from the Authority shall be submitted to the Authority with a brief summary of the publication within thirty days of the date of publication.

14. Register of water bodies

- (1) The Authority shall maintain a register and map of all water bodies within the country which will detail the official name and class (if any) of each water body.
- (2) The official name shall be determined by the Authority after consultation with other Government departments and other stakeholders.

15. Powers to exempt from rules.

- (1) The Chief Executive Officer of the Authority may stating both the justification and the time limits order in writing that any provision of these Rules shall not apply to any particular case or person, or to such extent and subject to such special conditions as it may deem reasonable under the circumstances.
- (2) Exemptions made under sub-rule (1) shall not compromise the wider public interest.

PART II-APPROVAL, AUTHORISATION AND PERMITS

16. Activity that requires approval by Authority

- (1) Any person intending to or currently undertaking any of the water use activities defined in the Act including the activities listed in the Fifth Schedule shall obtain approval from the Authority to undertake the activity:
- (2) Notwithstanding anything contained in these rules, no water works approval, authorization and permit shall be issued or renewed for the purposes of supplying water for domestic, public, commercial or

industrial use within the limits of supply of a water service provider without the applicant having received consent of the licensed water service provider for the area.

(3) Sub-rule (2) shall also apply to all authorisations and permits issued before commencement of these rules.

17. Verification of existing permits.

(1) Any person holding a water permit or authorization shall submit a copy of the same and or with other related documents to the Authority for verification within twelve months of the commencement of these Rules.

(2) Failure to submit documents for verification within the specified period may be used as a basis for revocation, variation or cancellation of the permit or authorisation.

18. Validity of applicant.

(1) An application under section 16 shall be made by any person or legally incorporated body, being the owner of the land on which the water is to be or is being used or the authorized operator of the system with lawful access to the water.

(2) The Authority shall require the applicant to provide satisfactory evidence of a person or body's legal status.

(3) An application shall be made by the person intending to use the water, being owner of the land on which the water is to be or is being used or the authorised operator of the system with lawful access to the water.

19. Water resource user identification number.

The Authority shall assign a unique Water Resource User Identification Number for each water user within a given catchment area which shall be used as a reference number in respect of all correspondence, approvals and permits issued by the Authority.

20. Authorised water uses to be appurtenant to land.

(1) Upon the approval of an application, an Applicant shall have authority to undertake the intended water use activity on any land related to the application.

(2) The Authority may require satisfactory evidence of land ownership to undertake the water use activity on any land related to the application.

(3) Satisfactory evidence may consist of, but is not limited to, an authentic title deed, lease agreement, easement, wayleaves or a letter from the land owner or community endorsed by the provincial administration.

21. Authorisation to use works owned by another person.

(1) Any applicant intending to use works owned by another person must obtain approval from the owner

of the works to use the works.

(2) The Authority shall require satisfactory evidence that approval by the owner of the works has been granted to the applicant to use the works.

(3) Where in the opinion of the Authority the monitoring and control of water use could be best achieved by issuance of separate permits to applicants sharing common works, the Authority shall issue separate permits to applicants sharing common works, the Authority shall issue separate water permits or a supplementary permit as may be applicable.

(4) Any agreement between two parties regarding the use of permitted works shall be registered with the Authority to enable the Authority to evaluate the content of the agreement.

(5) Where, in the opinion of the Authority the public interest would best be served by the use of existing works, it will order the owner of the works to make available the works to any applicant so long as the water use of the owner of the works is not adversely affected.

(6) The owner of the works shall be entitled to fair compensation for use of the works by the applicant(s).

22. Category of water resource use activities.

(1) Water use activities shall be categorised into four different categories for the better management of the resource, and the basic principles for classification are set out in the Fifth Schedule.

(2) Details regarding the criteria applicable to each category of water use shall be determined by the Authority in consultation with the Catchment Area Advisory Committees.

(3) The details may vary from water body to water body and from catchment to catchment to reflect catchment differences.

(4) The Authority may from time to time revise the criteria to reflect changing circumstances.

23. Approval of water use through notification by water user.

(1) Any person whose works or water use activity falls within Category A is required to notify the Authority, prior to construction or installation of works, of the water use activity using the prescribed Form WRMA 001 set out in the Twelve Schedule and will be required to pay the prescribed fee.

(2) Endorsement by the Authority on the submitted Form WRMA 001 will confer approval for the applicant to undertake the water use activity described in the application and limited by any conditions imposed on Category A water users.

(3) The Authority may, stating reasons, require any Category A water user to apply for a water permit after re-assessment of the water resource quality, as defined in these rules, or on the basis of any other reasonable cause.

(4) Whenever there are changes to any particulars related to the water user or water use activity, the water user shall notify the Authority within twenty one days of the change in particulars.

(5) Any person who fails to notify the Authority of the water use changes within the specified period shall be guilty of an offence and shall be liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding three months or to both.

24. Permit application.

(1) Any person who proposes to use water falling into Category B, C or D shall make an application for a water use permit in the prescribed Form WRMA 001 set out in the Twelfth Schedule.

(2) The applicant is required to describe the intended purpose(s) for which the application is made.

(3) The Authority may, depending on the description of the intended purpose(s), require a Technical Report.

(4) A separate application for water resource use as set out in the Fifth Schedule shall be made to the Authority with respect to the following criteria –

(a) each abstraction point, whether from surface or groundwater;

(b) each effluent discharge point unless covered under another application;

(c) each point of storage unless covered under another application;

(d) separate activities other than those covered above.

25. Maps to accompany applications.

(1) Every water use applicant shall submit to the Authority a map acceptable to the Authority showing the water body, the location of the works, supply area, location of all authorizations or permits currently held by the applicant relevant to this application and any other relevant details as may be required by the Authority.

(2) All significant points on the map shall be geo-referenced showing Universal Transverse Mercator (UTM) coordinates and zone with respect to the Arc 1960 datum.

26. Payment of application assessment fees.

(1) For each complete application, the applicant shall pay the prescribed fee set out in the First Schedule before the application is processed by the Authority.

(2) In the event that an application made has not been determined within six months, then the application fee shall be refunded to the applicant, together with the application, and a written explanation.

27. Requirement for site assessment report and technical report.

(1) The Authority may require the applicant to submit a Site Assessment Report and or a Technical Report to the Authority to support the application.

(2) A Site Assessment Report or Technical Report shall be substantially as set out in the Second Schedule.

(3) A Site Assessment Report or a Technical Report shall be prepared by a qualified water resource professional.

(4) In exceptional circumstances, where it is demonstrated that an applicant is unable to engage the services of a consultant for the preparation of a Site Assessment Report or any other technical report, the Authority may, at the request of the applicant, undertake the report preparation.

(5) The applicant requesting for the services of the Authority in the preparation of the Site Assessment Report or any other technical report, shall be required to make a request in writing stating why consultant services cannot be engaged.

(6) Upon satisfaction that it is in the interest of the applicant for the Authority to undertake the preparation of the Site Assessment Report or any other technical report, the Authority shall undertake the preparation of the report, provided that the water resource professional officer of the Authority who prepares the report shall not also be involved in the evaluation of the same report.

(7) Where a water resource professional officer of the Authority undertakes the preparation of Site Assessment report or any other Technical Report, the officer shall be deemed to be a Qualified Water Resource Professional.

28. WRUA comments on applications.

(1) The Authority shall submit a copy of every water use application to the relevant registered WRUA, if one exists, for comment.

(2) The WRUA's comments on a water use application shall be submitted to the Authority in the prescribed Form WRMA 003 set out in the Twelfth Schedule within thirty days of receipt of the application by the WRUA.

(3) The Authority may proceed to determine any application after the expiry of the period specified for the WRUA to comment on the application.

29. Public notification of permit application.

(1) The Authority will cause to be published monthly in a National Newspaper of wide circulation list of all the permit applications that fall into Permit Category C and D.

(2) The Authority shall display a notice of all applications received within the region, at the district commissioner's district officer's, chief Authority's regional, sub regional, and district agency offices at the end of each month.

(3) The Authority shall display at the Sub Regional Office a notice of all applications received by the Authority, within each sub region, at the end of each week.

(4) The public notification will state the name of the applicant, the water resource for which the application has been made, the quantity and purpose for which the application has been made, the land registration number, the name of the nearest market centre and any additional details that the Authority may consider relevant to the public with respect to the permit application.

30. Objection to permit application.

(1) Any person may raise an objection in writing to the Authority stating ground for the objection, to any permit application.

(2) The objection shall be lodged with the Authority, and copied to the WRUA, within thirty days of the public notification of the permit application.

(3) The Authority shall acknowledge receipt of an objection by writing to the applicant and the objector within fourteen days of receiving the objection.

(4) The Authority shall notify the objector in writing within thirty days of its decision with respect to the application.

31. Site meeting.

(1) Where any objections have been lodged against a particular permit application, the Authority may undertake a site meeting with relevant stakeholders and WRUA (if one exists), at the particular place for which the application was made before determining the permit application.

(2) The Authority shall give fourteen days notice to all relevant parties and WRUA, (if one exists), notifying them of the date and location of the proposed site meeting.

(3) The site meeting in sub-rule (1) shall be open to the public.

32. Rejection of application.

Where the Authority rejects an application, it shall within thirty days of making the decision, notify the applicant, and any objector(s) to the application, of its decision, notify the applicant, and any objector(s) to the application, of its decision in writing.

33. Authorisation to construct Works.

(1) Upon the approval of an application for a water use permit, the Authority shall issue an authorization to construct works in the prescribed Form WRMA 004 set out in the Twelfth Schedule.

(2) The authorization to construct works signifies the commitment by the Authority to issue a valid water use permit if the conditions stated on the Authorisation are fulfilled.

(3) The period of time for completion of the Works shall be specified in the Authorisation.

(4) Failure to complete works, within the specified time, may result in the cancellation of the authorization, unless a time extension has been applied for.

34. Limitations of authorization.

An Authorisation shall not authorize the applicant to commence abstraction or the proposed use of the water until the conditions governing the authorization are certified as having been met.

35. Conditions of authorization.

(1) The Authority may state on the authorization any conditions which it deems appropriate after considering the nature of the body of water concerned and the works to be constructed.

(2) It shall be the responsibility of the Applicant to fulfill all the conditions imposed in the Authorisation at the applicant's cost within the period of time stated on the Authorisation.

(3) Failure to comply with the conditions of Authorisation shall be sufficient cause for the suspension or cancellation of the Authorisation.

36. Extension of authorization.

(1) Where the Works are not complete within the time limited by the Authorisation, then a progress report shall be submitted to the Authority in lieu of a completion certificate and the applicant may apply for an extension of time using the prescribed Form WRMA 005 set out in the Twelfth Schedule, which shall be considered on such terms as the Authority may specify.

(2) An extension of the period of Authorisation may be granted for a maximum of twelve months after the initial Authorisation period.

(3) An extension for a period beyond twelve months shall be subject to adequate and reasonable justification or proof of satisfactory and continuing progress.

37. Register of authorization and permits.

(1) The Authority shall maintain a register of authorizations and a register of permits in the prescribed form set out in the Twelfth Schedule for each particular resource.

(2) A person may obtain a copy of the register of authorizations or register of permits upon payment of the prescribed fee set out in the First Schedule.

38. Completion certificate.

(1) Upon expiry of the time specified by an Authorisation or before the expiry of the specified time if the construction is sooner completed, the applicant shall submit to the Authority a completion certificate in the prescribed Form WRMA 008 as set out in the Twelfth Schedule.

(2) Upon receipt of a completion certificate the Authority shall within twenty-one days of the receipt

inspect the works to ascertain that all the special conditions stated on the Authorisation have been fulfilled to its satisfaction.

(3) The inspection of the works shall be undertaken by a Water Resources Inspector or by a person authorized by the Authority.

(4) Where the inspector of the works is not satisfied with the completion status of the works, then the inspector shall issue an Order within fourteen days detailing steps that shall be taken to bring the works to a satisfactory condition.

(5) Where the inspector of the works is satisfied that the works are complete, the Authority shall issue a Permit in the prescribed Form WRMA 010 set out in the Twelfth Schedule within twenty-one days of inspection.

39. Water use permit validity and requirement for fees.

(1) The permits issued for all types of water use shall be valid for a period not exceeding five years.

(2) A Permit applicant shall be required to pay the prescribed permit fees for the permit validity period set out in the First Schedule before a valid permit can be issued.

(3) Failure to pay the appropriate fee may be used as a basis for revocation of approval for water use.

40. Conditions of permit.

(1) The Authority may impose on the Permit any special conditions which are deemed appropriate after considering the nature of the body of water and the works constructed.

(2) The permit holder shall be responsible for the fulfillment of all the conditions imposed in the Permit.

(3) Failure to comply with the conditions may be used by the Authority as a basis for cancellation of the permit.

(4) A permit holder shall be required to maintain a record of all water abstracted, diverted, stored or discharged, giving the date, time, quality and quantity and methods of such abstraction, diversion, storage, or discharge and the purpose or purposes for which such water was used, and such records shall be furnished to the Authority at such times as it may demand them.

41. Transfer of permit by permit holder.

A permit holder may apply to the Authority for the transfer of the permit to another person by submission of the prescribed Form WRMA 013 set out in the Twelfth Schedule duly completed.

42. Variation of permit by permit holder.

(1) A Permit holder may apply to the Authority for variation of the permit by submission of the prescribed Form WRMA 012 set out in the Twelfth Schedule as provided for in Section 40 of the Act which includes the activities listed in the Fifth Schedule.

(2) Where the variation does not result in a change in the category of water use, the Authority shall within thirty days issue a revised permit.

(3) Where the variation results in a change of the category of water use, the permit holder shall be required to reapply for another permit.

(4) Any person who fails to notify the Authority of the variation of the permit status commits an offence and shall be liable to a fine not exceeding ten thousand shillings or imprisonment for a term not exceeding three months or to both.

43. Variation or cancellation of permit by the Authority.

(1) The Authority may vary or cancel a permit as provided for in Sections 35 to 39 of the Act.

(2) The permit holder shall respond within thirty days showing cause to the Authority as to why the permit should not be varied or cancelled.

(3) In order to give effect to the suspension, cancellation or variation of any permit, the Authority may take any appropriate measures for enforcement including the confiscation of equipment or plant, or removal of works, any costs incurred by the Authority in the enforcement measures shall be recoverable from the permit holder.

(4) The Authority shall notify the WRUA of any permit variations or cancellations within thirty days.

44. Renewal of Permit.

(1) A permit holder shall apply for the renewal of a permit by submitting the Form WRMA 011 set out in the Twelfth Schedule, with the prescribed fees for renewal and any water use charge arrears within three months before the expiry of a permit.

(2) Any late submission of the application for the renewal of permit will attract a penalty of five hundred shillings per month.

(3) The Authority shall inspect the works before processing the application for renewal.

(4) The Authority may impose new or vary existing permit conditions as necessary in response to causes as stated in Section 35(1) of the Act.

(5) Where the permit holder does not apply for the renewal of the permit, the Authority shall, on expiry of the permit, initiate cancellation in accordance with section 38 of the Act.

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

(1) The Authority shall maintain a Register of Approved Water Users, Water Uses and Permits as provided by section 43 of the Act.

(2) A person may obtain a copy of the Register of Approved Water Users, Water Uses and Permits upon payment of the prescribed fee set out in First Schedule.

46. Limitation of liability of authority with respect to approved water uses and permits.

The fact that an authorization or permit is given shall not be a defence to any civil action or to a criminal prosecution under any other legislation.

47. Public notification of authorization and permits.

(1) The Authority shall display on the notice board, at its offices and at the offices of the chiefs, a list of notifications on authorizations, permits and cancellations, within their respective areas of jurisdiction.

(2) The list shall include a summary of the information pertaining to the water activity.

(3) Any person wishing to obtain full details of a particular permit shall request for the details by the prescribed form WRMA 014 set out in the Twelfth Schedule and pay the prescribed fee as set out in the First Schedule.

48. Requirements to meet other rules and Acts.

The right of a permit holder shall, notwithstanding anything stated in the authorization or permit, be subject to and conditional upon the compliance with the provisions of the Act and any other statutory requirements.

PART III-SURFACE WATER

49. Normal flow and flood flow.

(1) For the purposes of this Part, “flood flow” is defined as any flow that exceeds the Q80 flow value and “normal flow” is defined as any flow that is less than the Q80 flow value.

(2) The Q80 flow value is the flow value that is equaled or exceeded eighty percent of the time.

(3) The Q80 flow value shall be derived from a naturalized flow duration curve, preferably derived from daily flows.

50. Declaring a Watercourse.

(1) The Authority may, with reasonable cause and after public consultation declare a natural watercourse not to be a watercourse or a constructed channel to be a watercourse for the purposes of water resources management.

(2) When a body of water has changed into a new course the Authority shall recognize the new course to be a watercourse and shall require the original course to be retained as a flood channel.

51. Boundary of properties defined by a watercourse.

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

52. Wetlands.

(1) Any portion of land in excess of one hectare which is naturally subject to seasonal or permanent flooding and has the ecological characteristics of a swamp or marsh shall be considered to be a wetland for purposes of these Rules.

(2) The Authority may by public notification and with good cause, declare any portion of land less than one hectare to be a wetland for purposes of water resources management.

(3) The land owner or legally authorized operator of the land on which a wetland is situated is required to apply to the Authority for approval for any proposed or existing developments such as drainage, discharge into or construction that would affect the wetland.

(4) Whenever any proposal for the drainage and reclamation of a swamp involves the subsequent use by the applicant of all or any of the water conserved by the drainage or reclamation of such swamp the applicant shall submit an application for a permit for the diversion abstraction, storage or use of such water with a Hydrological Assessment Report and Environment Impact Assessment.

(5) No works involving the drainage of a swamp shall deprive any lawful water user of reasonable access to water except by agreement or on payment of compensation, or on supplying water from other sources or by other means, and the applicant concerned shall submit to the Authority all plans and documents showing the proposals to provide such water user with access to water, and any agreements to this effect, and, if the proposals include any works for supplying such water user with water, submit an application for a permit.

53. Allocation of water for irrigation.

(1) In allocating water for irrigation, the Authority shall –

(a) give priority to subsistence irrigation; and

(b) be guided by crop water requirements in the area and the efficiency of water use.

(2) When considering aggregate water demand for subsistence irrigation, the Authority may declare by public notification of each catchment area or part thereof an upper limit for the allocation of water either in aggregate or for one permit where the allocation is shared among more than one household.

54. Prior right to water for storage.

The right to store water shall be subject to prior right to its uninterrupted flow for as much as it is required for actual and beneficial use, and to the obligations imposed by the Act.

55. Need for storage.

The Authority may require a water use permit applicant to develop adequate storage in respect of the application for water use.

56. Classification of dams.

(1) Dams shall be classified according to the criteria set out in Table 1, in the Fourth Schedule.

(2) When establishing the class of a dam the criterion resulting in the higher risk class will prevail.

57. Dam to be designed by a qualified water resource professional.

A dam shall be designed and supervised by the appropriate category of qualified water resource professional as set out in Table 2 in the Fourth Schedule.

58. Dam to be constructed by the appropriate category of contractor as set out in Table 3 in the Fourth Schedule.

59. Dam safety inspection.

(1) Every dam owner shall ensure that the dam is inspected according to the criteria given in Table 4 in the Fourth Schedule and the inspection report prepared and submitted to the Authority.

(2) Compliance with dam inspection requirements shall be among the conditions to be considered before permit renewal is processed where dams are involved.

60. Minimum net freeboard.

(1) The net freeboard for Class A shall not be less than 0.6m.

(2) The net freeboard for Class B and C dams shall not be less than 1.0 m or as otherwise specified by the Authority on a case by case basis.

61. Minimum spillway design flood.

(1) The minimum acceptable return period for the design of a dam spillway shall be as provided in Table 5, set out in the Fourth Schedule.

(2) The Authority may require a higher return period with respect to the conditions and risks associated with each site.

62. Release and use of stored water.

A permit holder who has a permit to store or impound water from any body of water or the operator, may, with the approval of the Authority, turn the water so stored being appurtenant to the land upon which it is to be utilized and subject to the conditions of the authorization or permit authorizing the diversion or abstraction herein afterwards mentioned, at a point downstream of the point of storage, divert or abstract from the body of water into which the stored water is turned the quantity of water so turned, subject to such deductions for evaporation and seepage as the Authority may, from time to time, order.

(2) A permit holder, who has a permit to store or impound water from any body of water, or the operator, before turning water into a natural watercourse as aforesaid, shall give to the Authority and to all persons entitled to use water from any part of the body of water between the point of release of the stored water and the points of utilization of the said water such notice of the use of the body of water for the purpose aforesaid and particulars regarding the time during which it will be turned into the body of water, the rate of discharge of the stored water and other matters as the Authority may, from time to time, require.

(3) No other permit holder other than the permit holder who releases the stored water as aforesaid, or the operator, shall divert or abstract any proportion of the flow of the body of water due to the water released, nor shall any permit holder impound or store, except to such an extent as may be imposed upon him by the maximum capacity of the works for discharging the flow of the body of water through or around the works which abstract the flow of the water, any proportion of the flow of the body of water due to the water so released.

63. Compensation flow.

A permit holder storing or arresting the flow of water by means of a dam or weir located on a body of water or watercourse shall unless otherwise decided by the Authority, provide at a depth measured from the top of the dam or weir and to be specified by the Authority in each particular case, an outlet, controlled by a valve, sluice gate or other device, which shall be capable of being operated at all stages of the flow of such body of water or watercourse so that the normal flow, or other flow as required by the Authority, of such body of water or watercourse can be passed through or around such dam or weir at all stages.

Provided that where the normal flow of the body of water or watercourse is automatically by-passed around the reservoir, without any storage or arresting of the flow of the water being effected such outlet works need not be constructed.

64. Dam design report.

(1) Any application for a permit to construct a Class A, B or C dam shall be accompanied by a dam design report in the Form prescribed in the Second Schedule, for approval by the Authority.

(2) The level of detail in the dam design report shall be dependant on the class of dam under consideration.

65. Dam construction progress report.

A permit applicant, shall upon commissioning the construction of a dam, submit a dam construction progress report at such intervals determined by the Authority.

66. Dam completion and dam operation reports.

(1) Upon the completion of construction, the permit applicant shall submit to the Authority a dam completion report, in the prescribed Form set out in the Second Schedule and completion certificate.

(2) The issuance of the permit shall be conditional upon the approval of the dam completion certificate

and dam operation report by the Authority.

67. Notice downstream

(1) The operator of any dam shall be responsible for taking adequate measures detailed within the approved dam operation report to notify the Authority and persons downstream likely to be affected in the event of any discharge from the dam whether caused by dam failure, or intended releases from the dam that might result in damage downstream.

(2) The operator of any dam shall be responsible for taking adequate measures detailed within the approved dam operation report to protect persons, infrastructure and environment downstream likely to be affected in the event of any discharge from the dam whether caused by dam failure or intended releases from the dam that might result in damage downstream.

(3) Any person who fails to follow the steps detailed in the approved dam operation report shall be guilty of an offence in the event of such discharge and shall be liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months or both.

68. Failure of or damage to a dam to be reported.

(1) The permit holder or operator or the person having the control of any dam, shall in the even of serious damage or failure, submit an interim dam damage or failure report within three days and a detailed Report in the prescribed Form set out in the Second Schedule to the Authority within twenty one days of the event.

(2) Any person who fails to submit the dam damage or failure report commits an offence and shall be liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding three months or both.

69. Hydo power.

(1) Every permit to develop an amount of power less than the full hydropower potential of the site may be subject to special conditions if the Authority considers that the full power development of the site at a later date may be required.

(2) Where an existing permit holder is unable, or unwilling to enlarge the works to develop the full hydropower potential of the site, and it is considered by the Authority to be in the public interest to do so, the Authority may cancel the authorization or permit and authorize the works to be carried out by another person.

(3) When action is taken under sub-rule(2), the former operator shall be entitled to compensation by the new operator.

(4) For the purpose of ascertaining the hydropower potential or developed under any authorization or permit, the Authority shall have free access to all reports, plans and records and may request for any other information or data as required.

(5) A permit issued for hydropower purposes, shall at all times be subject to any enactment affecting the construction and operation of works for the supply of power there from.

70. Surface water data.

The Authority shall maintain a surface water database from which data shall be accessible during normal office hours by any person on the payment of the prescribed fees listed in the First Schedule.

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

(1) Where, in the opinion of the Authority, after consultation with the fisheries officer, it is necessary for the free movement of fish upstream or downstream of any dam or weir on any body of water, the Authority may require a permit applicant or order a permit holder to provide in such dam or weir a fish pass, fish ladder or other structure, approved by the Authority, by which fish may move freely up or down such a body of water.

(2) Notwithstanding anything contained in these Rules, the Authority may, on the application of any person, authorize the construction or erection in a body of water:-

(a) works of a temporary nature which are designed solely for the purpose of improving the conditions of fish life or the facilities for fishing, in such body of water provide such works will not have the effect of raising the normal level of the body of water more than one metre; or

(b) fish ladders or other means of ingress and egress for fish provided such works do not cause any obstruction in the flow of such body of water.

(3) An application under this rules shall be in the prescribed Form WRMA 001 set out in the Twelfth Schedule and shall be submitted to the Authority through the fisheries officer.

PART IV-GROUNDWATER

72. Groundwater development authorization.

(1) All applicants intending to abstract ground water shall make an application for the approval of the Authority in the prescribed Form WRMA 001 set out in the Twelfth Schedule.

(2) Upon receipt of the application, the Authority shall determine the category of the application.

(3) Where the Authority determines that the application falls under Category A for a well, and the method of abstraction does not include motorized pumping, the Authority shall, after considering the application, approve upon such conditions as it may deem necessary or refuse the application.

(4) Where any borehole or well is intended to be equipped with a motorized pump the application shall be accompanied by a hydrogeological assessment report in the prescribed form set out in the Second Schedule.

(5) Before any well or borehole is replaced, deepened or widened, the owner of the well or borehole, or his duly authorized representative, shall file with the Authority an application for the authority to carry out such replacement, deepening or widening of an existing well or borehole, for any water use category.

(6) Any well or borehole which encounters, in the course of drilling, collapse, loss of tools, or other associated drilling problems, hereinafter referred to as down hole problems, but exclude a dry borehole, the owner of such a well such drill, without further reference to the Authority a replacement borehole, whose site shall not more than 15 metres, from the previously approved site.

(7) Before any well or borehole, after encountering down hole problems, is moved to anew site of more than 15 metres from the previously approved site, the owner of the borehole or well, or his or her duly authorized representative, shall file with the Authority an application for authority to move to the new site.

(8) Any person who contravenes the provisions of this rule shall be guilty of an offence and shall be liable to a fine not exceeding ten thousand shillings or imprisonment for a term not exceeding three months or both.

73. Regulation of groundwater development.

(1) For the regulation of the groundwater development, the Authority will determine in the allocation plan for a given aquifer or part thereof, the spacing of boreholes, or wells to be equipped with motorized plant and will be guided by –

- (a) existing borehole or well spacing;
- (b) individual aquifer characteristics, including water quality;
- (c) existing aquifer use; and
- (d) existing bodies of surface water

(2) The allocation plan shall be available and accessible to the public during normal working hours from any of the