



WATER RESOURCES AUTHORITY

EXPLANATORY MEMORANDUM

(Pursuant to Section 5A of the Statutory Instruments Act, No. 23 of 2013)

to

THE KABEERE SPRINGS CATCHMENT PROTECTION AREA ORDER, 2023

Legal Notice No. 104 of 2023

PART I

Name of the Statutory Instrument:	The Kabeere Springs Conservation Area Order, 2023
Name of the Parent Act:	Water Act No. 43 of 2016
Enacted Pursuant to:	Section 23 of the Water Act No. 43 of 2016
Name of Agency:	Water Resources Authority
Gazetted on:	26 th July 2023
Tabled on:	1 st August 2023

PART 2

1. The purpose of the Kabeere Springs Catchment Conservation Area Order

- 1.1. Kabeere springs contributes to 50% of the discharge of Ngusishi River. The river supports many horticultural farms and subsistence farming, livestock and wildlife, it is therefore important to protect and conserve its catchment for ecological sustainability of the river.
- 1.2. There is a threat of destruction to the springs due to human activities carried out within the area which is diminishing water flows. These complaints have been addressed by the Authority and other stakeholders within the catchment without success owing to the fact that the land owner does not see the Importance of safeguarding the springs' catchment it is therefore important to Gazette this land.
- 1.3. To ensure the conservation and Protection of the springs a stakeholder's meeting was convened on 19th November 2021 to build consensus on the way forward.
- 1.4. The Water Resources Authority has seen the need to protect the catchment area and increase their environmental functions.

2. The Legislative context

- 2.1. The Water Act was enacted in 2016, and came into force on 21st April, 2017. This law gave effect to various provisions of the Constitution of Kenya including the protecting the right to clean and healthy environment, sustainable management of water resources and soil and water conservation.
- 2.2. The water Resources Authority is empowered by Section 23 of the Water Act, 2016 to declare a catchment area, through publication in the Gazette to be a Groundwater Conservation Area.
- 2.3. Subsequently, the Authority is given power under Section 22 of the Water Act, 2016 that where it is satisfied that special measures are necessary to protect catchment area or part thereof, it may, with the approval of the minister, by order published in Gazette declare such an area to be protected.
- 2.4. In declaration of an area to be a Groundwater Conservation Area, the Authority is empowered to impose such requirements to prohibit such conduct or activities in relation to the Groundwater Conservation Area as may be necessary for the conservation of groundwater.
- 2.5. Based on Statutory power given under the Water Act, the Authority intends to publish the Kabeere Springs Catchment Conservation Area

Order which makes provision for the implementation of the Kabeere Springs Management Plan.

- 2.6. Part XII and the Seventh Schedule of the Water Resources Regulations 2021, sets out the contents of Management Plans related to a protected area to include:
 - i.) Procedures to be applied for the management of the Protected Area or Groundwater Conservation Area;
 - ii.) Prohibited activities;
 - iii.) Any measures required to be undertaken for water resource conservation and protection;
 - iv.) The timeframe for implementation of required measures;
 - v.) Any other conditions that the Authority may consider relevant
- 2.7. Under Regulation 102(3) of the Water Resources Regulations 2021, the Authority is required to undertake Public Consultation with respect to the establishment of areas to be Protected or designated as Groundwater Conservation Areas.
- 2.8. The Kabeere springs Management plan therefore presents the proposed management procedures and prohibited activities within the Kabeere springs within the criteria and prescriptions of the Water Resources Regulations, 2021.

3. Policy Background

- 3.1. The promulgation of the Constitution of Kenya 2010 marked the beginning of the policy review for the water sector. This was intended to fully align the policy and legal priorities of the water sector, in terms of the mandates of the national government, and the 47 county governments as stipulated in the Constitution.
- 3.2. In terms of policy, the water sector is divided into three main sub-sectors: water resources management; water harvesting and storage and water services. There is also various enabling sub-sector whose importance cuts across, including water financing; climate change; gender equity; roles of youth and children; interests and needs of persons with disabilities.
- 3.3. The applicable policy is the National Water Policy, Sessional Paper No. 1 of 2021.

4. Consultation Outcome

- 4.1. Every effort has been made to ensure these Regulations are in compliance with Article 10 of the Constitution. In this regard, Public (in particular, the Kabeere Springs Catchment Area community) and stakeholder consultations were held during the development of the Order.
- 4.2. In this regard, a stakeholders' meeting was convened on 19th November, 2021 to build consensus on the way forward. The Kabeere Springs community has expressed their willingness and intentions to have the wetland protected and conserved a top priority in order to assure the Riparian community and other stakeholders of adequate and sustainable water resource availability.

5. Guidance

- 5.1. The Authority will commence dissemination and sensitization on the provisions of the Kabeere Springs Conservation Area Order, 2023 and the Management Guidelines immediately they come into operation.
- 5.2. A programme for public dissemination and sensitization will also be developed and implemented, taking into account how the Conservation Order will impact the availability of renewal surface and groundwater resources; conservation of catchments, rivers and riparian land.

6. Monitoring and Review

- 6.1. The desired future condition is derived from the current status of the Kabeere Springs. According to the Kabeere Springs Management Guidelines, the springs have been experiencing stress.
- 6.2. The Authority has incorporated a performance Monitoring and evaluation matrix within the Management Guidelines. These will be used to capture detail of the progress of implementation of the planned conservation activities.
- 6.3. Monitoring will also be pursued through ensuring the implementation of the following strategies:
 - (a) Sensitization of the user community on the need to protect the springs to ensure sustainable yield;
 - (b) Development of an action plan to protect the catchment and their rehabilitation;

- (c) Participatory mapping of the protection zones around the springs with the community;
- (d) Apply the law to protect springs (enforcement for wetlands/riparian/springs protection);

7. Contact

The Contact person at the Water Resources Authority is the Chief Executive Officer, Mr. Mohamed M. Shurie, OGW or the Manager-Water Resources Assessment & Monitoring, Mr. John N. Kinyanjui.

Email communications may be addressed to: info@wra.go.ke

**MOHAMED M. SHURIE, OGW
CHIEF EXECUTIVE OFFICER
WATER RESOURCES AUTHORITY**

Dated this 1st day of August 2023