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THE WATER RESOURCES MANAGEMENT RULES, 2006

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THE WATER ACT 2002
(No. 8 of 2002)

IN EXERCISE of the powers conferred by Section 110 of the Water Act 2002, the Minister, on the recommendation of the Water Resources Management Authority and upon consultations with the relevant stakeholders makes the following Rules: -

THE WATER RESOURCES MANAGEMENT RULES, 2006

PART I - PRELIMINARY

1 Citation

These Rules may be cited as the Water Resources Management (Water) Rules 2006.

2 Interpretation

In these Rules, except where inconsistent with the context:-

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

"Act" means the Water Act 2002;

“airline” is 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 parties in a dispute or conflict of water use, source or 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 duties as may be required under the Act.

"Basic human needs" is the quantity of water required for drinking, food preparation, washing of clothes, bathing, basic sanitation and is assumed to be 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 that 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 the 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 a 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, and is said to be high or low as the quantity of water required for such an area is small or large respectively

“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 works authorized, or the exercise of rights conferred, by a permit;

"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 stored is obtained from a well;

"Effluent" means waste which is:

a) a liquid which flows out of a containing space. b) sewage water or other liquid, untreated, partially or completely treated discharged directly or indirectly into a water resource.

“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" is a mechanism aimed at the protection, conservation and sustainable use of the various elements or components of 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" is the breeding and or raising of fish for the purposes of commercial production;

"flow" means a volume of water passing a cross 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;

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

"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

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

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

"inspector" means a person appointed by the Minister or the Authority to exercise the powers of an inspector under this Act;

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

- (a) any person who by any established right, customer estate whatsoever is, or is entitled to be, the holder or possessor of land;
- (b) any person lawfully holding or occupying land in accordance with the provisions of any law empowering the allotment of land upon the promise of title, subject to the fulfilment by the allottee of prescribed conditions; and
- (c) any person to whom a mining lease or mining location has been granted under the Mining Act; Cap. 306

"Lead agency" means any government ministry, department, parastatal, state corporation or local authority, in which any law vests functions of control or management of any element of the environment or natural resources;

"legally registered entity" means an organisation, corporate body or person that has legal status

“licence” means a licence in force under this Act;

“limits of supply” in relation to a water undertaking, means the limits with which the licensee is for the time being authorized to supply water;

"Local authority" has the meaning assigned to it in section 2 of The Local Government Act (Cap 265) which includes the following:

- (a) Town Council
- (b) Municipal Council
- (c) City Council
- (d) County Council
- (e) Urban Council

"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;

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

“Ministry” means Ministry in charge of water affairs

"Natural resources" include 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" means an individual, corporation, company, association, government department, partnership or a 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;

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

- (a) less fit for any beneficial purpose for which it is or may reasonably be expected to be used; or
- (b) harmful or potentially harmful to –
 - (i) the welfare, health or safety of human beings;
 - (ii) any aquatic or non-aquatic life or property; or
 - (iii) the environment;

"Pond" means a natural depression that contains water;

"Provincial Administration" refers to the public administration under the provincial commissioner, district commissioner, district officer, chief or assistant chief.

"public consultation", in relation to any application made, or action proposed to be taken under this Act, has the meaning assigned to it in section 107 of the Act.

"public notification" is 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.

"regional office" means an office of the Authority established under section 10 of the Act;

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

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

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

"Resource Quality" in relation to a water resource, means the quality of all the aspects of a water resource including:

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

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

"return flow" is that portion of the water abstracted that is returned to the water course.

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

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

"Soil and Water Conservation Plan" refers to a set of activities that have to be done in order to reduce the likelihood of soil and water loss from the landscape.

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

Stakeholder is a person or entity that has influence over or is affected by a certain activity on the resource.

"Standard" means the limits as established under these 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.

"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, and includes a marsh;

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

“use”, in relation to water contained in or forming part of a water resource, means –

- (a) abstraction, obstruction or diversion of the water resource;
- (b) discharge of materials or substances into the water resource;
- (c) derivation of energy from the water resource
- (d) derivation of chemicals from a water resource
- (e) any other activity, of a kind prescribed by these Rules, in relation to the water resource;

“Variation” means any authorised amendment made to a water permit

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

“Wastewater” is water containing waste.

“Water Appeal Board” means the Water Appeal Board established by this Act;

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

“water resource” means any lake, pond, swamp, marsh, stream, estuary, aquifer, spring, artesian basin or other body of flowing or standing water, whether above or below ground;

“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.

“water service” means any service of or incidental to the supply of water or the provision of sewerage;

“water services board” means a water services board constituted under part IV of the Act;

“water service provider” means a as defined in the Act;

“water table” means

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

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

"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 temporary or permanent flooding by saline, brackish or fresh water;

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

3 Units

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

4 Application of Rules

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

4.(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

5.(1) Any person with a complaint related to any matter covered by these Rules should submit his or her complaint to the appropriate Office of the Authority providing the following details as shown in the Eleventh Schedule.

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

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

5.(4) The Chief Executive Officer will reply to the complainant, copied to all other relevant parties, within twenty one days of receiving the complaint stating what action is being taken, the position of the Authority on the matter and or any recommendation to the complainant;

5.(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.

5.(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

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

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

8 Orders

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

8.(2) The order will be made on the Form WRMA 016 shown in Thirteenth Schedule and will specify what measures need to be taken, the period of time for compliance with the Order, and any other conditions pertaining to the compliance of the Order.

8.(3) Any person who has been served with an Order by the Authority and fails to comply within the stated period of time will be considered to be in breach of these Rules and will be guilty of an offence.

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

8.(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 justification for the basis of his or her objection.

8.(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.

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

8.(8) If the complainant is dissatisfied, he or she may follow the mechanism for complaints as specified in these Rules.

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

9 Protection of integrity of the water resources monitoring network

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

9.(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.

10 Water Resource Users Associations (WRUAs)

10.(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 mainstreaming and environmental sustainability.

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

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

10.(4) Upon registration, the Authority will issue the WRUA with a certificate of registration.

10.(5) The Authority shall maintain a Register of WRUAs as per Form Register 001 in the Thirteenth Schedule.

10.(6) Whenever the particular details of the WRUA change Form WRMA 018 in the Thirteenth Schedule should be re-submitted.

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

10.(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 collaborative water resource management;

10.(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.(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.

10.(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.

10.(12) Failure to take corrective measures, within a specified time, the Authority shall remove the 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.

10.(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.

10.(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 an authority to enter upon land belonging to other persons for survey or investigative purposes of water resource management or development as in Section 89 of the Act, shall submit to the Authority an application on Form WRMA 017 as detailed in the Thirteenth Schedule.

12 Water Resource Inspector

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

12.(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 equal to or more senior than that of a water resources officer or water rights officer in the Authority;
- (b) Persons other than officers of the Authority, appointed by the Authority by notice in the Gazette, as water resources inspector, which persons may receive such payment in respect of their services as the Authority may determine.
- (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

13.(1) The Authority shall maintain a database for purposes of water resource management.

13.(2) The database shall contain data on climate, surface water, groundwater, water quality, catchment conditions, abstractions, permits, water use and any other data relevant to the management of the water resources.

13.(3) Any person requiring water resource data from the Authority shall apply for it in writing.

13.(4) The request for data should be reasonable in the opinion of the Authority with respect to a specific activity and area;

13.(5) The applicant is required to pay for the data according to the fees laid out in the First Schedule, unless the Authority is satisfied that the data is to be used for research or non-commercial purposes;

13.(6) Data provided by the Authority is not for resale or transferable to a third party;

13.(7) The Authority will not be held liable for any errors or omissions in its data;

13.(8) The citation for any publication that uses data from the Authority shall be submitted to the Authority with a brief summary of the publication within 30 days of the date of publication.

14 Register of Water Bodies

14.(1) The Authority will maintain a register and map of all water bodies which will detail the official name and class (if any) of each water body.

14.(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

15.(1) The Chief Executive Officer of the Authority may stating both the justification and the time limits order in writing that the provisions of any of these Rules shall not apply to any particular case or person, or only to such extent and subject to such special conditions as it may deem reasonable under the circumstances.

15.(2) Exemptions made under (1) of this section shall not compromise the wider public interest.

PART II - APPROVAL, AUTHORISATION AND PERMITS

16 Type of activity that requires approval by Authority

16.(1) Any person intending to or currently undertaking any of the water use activities defined in the Act including the activities listed in the Sixth Schedule shall obtain approval from the Authority to undertake the activity:

16.(2) Notwithstanding anything contained in these rules, no water works approval, authorisation 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.

16.(3) Subsection (2) of this section shall also apply to all authorisations and permits issued before commencement of these rules.

17 Verification of Existing Permits

17.(1) Any person holding a water permit or authorisation shall submit a copy of the same and or other related documents to the Authority for verification within twelve months of these Rules coming into effect.

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

18 Validity of Applicant

18.(1) An application under section 17 shall be made by any natural or legal person or legally incorporated body, whether the 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.

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

18.(3) An application shall be made by the person intending to use the water, whether 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

20.(1) An Applicant shall have authority to undertake the intended water use activity on any land related to the application;

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

20.(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

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

21.(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.

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

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

21.(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.

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

22 Category of Water Resource Use Activities

22.(1) Water use activities are hereby categorised into four different categories for the better management of the resource, and the basic principles for classification are as shown in the Sixth Schedule.

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

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

22.(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

23.(1) Any person whose works or water use activity falls into Category A is required to notify the Authority, prior to construction or installation of works, of his or her water use activity using Form WRMA 001 and will be required to pay the appropriate fee.

23.(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.

23.(3) The Authority may, giving 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.

23.(4) In the event of changes to any particulars related to the water user or water use activity, the water user is required to notify the Authority within twenty one days of the change in particulars.

23.(5) Any person who fails to notify the Authority of the water use changes within the specified period shall be guilty of an offence.

24 Permit Application

24.(1) Any person who proposes to use water on a scale falling into Category B, C or D is required to apply for a water use permit using Form WRMA 001 as in the Thirteenth Schedule.

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

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

24.(4) A separate application for water resource use as defined in the Sixth 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

25.(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.

25.(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

26.(1) For each complete application payment of the appropriate application fee shall be made as shown in the First Schedule before the application is processed by the Authority.

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

27 Requirement for Site Assessment Report and Technical Report

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

27.(2) A Site Assessment Report or a Technical Report will be substantially as shown in the Second Schedule;

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

27.(4) In exceptional circumstances where it is demonstrated that an applicant is unable to use the services of a consultant in 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.

27.(5) The applicant 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 written request stating why he or she cannot use consultant services.

27.(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 any water resource professional officer of the Authority who prepares the report shall not also be involved in the evaluation of the same report.

27.(7) In the circumstances where a water resource professional officer of the Authority undertakes duties of preparing a Site Assessment report or any other Technical Report, he or she shall be deemed to be a Qualified Water Resource Professional.

28 WRUA Comments on applications

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

28.(2) WRUA comments on a water use application shall be submitted to the Authority on Form WRMA 003 within thirty days of receipt of the application by the WRUA.

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

29 Public Notification of Permit Applications

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

29.(2) The Authority will cause to be displayed a notice of all applications received, within the region, at the district commissioner's, district officer's, chief's, Authority's regional, sub regional, and district agency offices at the end of each month.

29.(3) The Authority will cause to be displayed at the Sub Regional Office a notice of all applications received by the Authority, within each sub region, at the end of each week.

29.(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

30.(1) Any person may object in writing to the Authority stating grounds for the objection, to any permit application.

30.(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.

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

30.(4) The Authority will notify the objector in writing, within twenty-one days of its decision with respect to the application

31 Site Meeting

31.(1) In the event that 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 has been made before determining the permit application.

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

31.(3) The site meeting in (1) under this section shall be open to the public.

32 Rejection of Application

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

33 Authorisation to Construct Works

33.(1) Once the application for a water use permit has been given approval by the Authority, the Authority will issue an Authorisation to Construct Works as per Form WRMA 004 in the Thirteenth Schedule.

33.(2) The Authorisation to Construct Works provides the commitment by the Authority to issue a valid water use permit if the conditions stated on the Authorisation are fulfilled.

33.(3) The period of time for completion of the Works will be stated on the Authorisation.

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

34 Limitations of Authorisation

An Authorisation in no way allows the applicant to commence abstraction or the proposed use of the water until the conditions governing the authorisation are certified as having been met.

35 Conditions of Authorisation

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

35.(2) It is the responsibility of the Applicant to fulfil all the conditions prescribed in the Authorisation at his or her cost within the period of time stated on the Authorisation.

35.(3) Failure to comply with the conditions of Authorisation is sufficient cause to suspend or cancel the Authorisation.

36 Extension of Authorisation

36.(1) If the Works are not complete within the time limited by the Authorisation, then a Progress Report will be submitted to the Authority in lieu of a Completion Certificate and the Applicant may apply for an extension of time using Form WRMA 005 in the Thirteenth Schedule, which shall be considered on such terms as the Authority may specify.

36.(2) Extension of the period of Authorisation may be granted for a total maximum of twelve months after the initial Authorisation period.

36.(3) Extension beyond twelve months will be subject to adequate and reasonable justification or proof of satisfactory and continuing progress.

37 Register of Authorisations and Permits

37.(1) The Authority will maintain a Register of Authorisations and a Register of Permits as per the appropriate form shown in Thirteenth Schedule for each particular resource.

37.(2) A person may obtain a copy of the Register of Authorisations or Register of permits by payment of the fee as detailed in the First Schedule.

38 Completion Certificate

38.(1) Upon the expiry of the time limited by an Authorisation or before the expiration of that time if the construction be sooner completed, the applicant shall submit to the Authority a Completion Certificate in Form WRMA 008 as detailed in the Thirteenth Schedule.

38.(2) Within twenty one (21) days of the receipt of a Completion Certificate, the Authority shall inspect the works to ascertain that all the special conditions stated on the Authorisation have been fulfilled to its satisfaction.

38.(3) Inspection of the Works will be undertaken by a Water Resources Inspector or by a person authorised by the Authority.

38.(4) If the inspector of the works is not satisfied with the completion status of the works, then he or she shall issue an Order within fourteen (14) days detailing steps that shall be taken to bring the works to a satisfactory condition.

38.(5) If the inspector of the works is satisfied that the works are complete, then the Authority shall issue a Permit on the Form WRMA 010 as in the Thirteenth Schedule within twenty one (21) days of the date of inspection.

39 Water Use Permit validity and requirement for fees

39.(1) The maximum permit validity period shall be five years for all types of water use.

39.(2) A Permit Applicant shall be required to pay permit fees for the permit validity period, as detailed in the First Schedule before a valid permit can be issued.

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

40 Conditions of Permit

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

40.(2) It is the responsibility of the permit holder to fulfil all the conditions prescribed in the Permit at his or her cost.

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

40.(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 his or her permit to another person by submission of Form WRMA 013 in the Thirteenth Schedule duly completed.

42 Variation of Permit by Permit Holder

42.(1) A Permit holder shall apply to the Authority for variation of the permit by submission of the appropriate Form WRMA 012 in the Thirteenth Schedule as provided for in Section 40 of the Act which includes the activities listed in the Sixth Schedule.

42.(2) If the variation is such that it does not result in a change in the category of water user, the Authority shall within thirty days issue a revised permit.

42.(3) If the variation is such that it results in a change in the category of water user then the permit holder shall be required to reapply.

42.(4) Failure to notify the Authority of the variation of the permit status constitutes an offence.

43 Variation or cancellation of Permit by the Authority

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

43.(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.

43.(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 and any costs incurred by the Authority in effecting these measures shall be a cost recoverable from the permit holder.

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

44 Renewal of Permit

44.(1) Three months before the expiry of a permit, a permit holder shall apply for renewal of a permit by submitting the Form WRMA 011 as detailed in the Thirteenth Schedule, with the prescribed fees for renewal and any water use charge arrears.

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

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

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

44.(5) (d) If the permit holder does not apply for the renewal of the permit, the Authority will, on expiry of the permit, initiate cancellation in accordance with section 38 of the Water Act 2002.

45 Register of Approved Water Users, Water Uses and Permits

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

45.(2) A person may obtain a copy of the Register of Approved Water Users, Water Uses and Permits by payment of the fee as detailed in First Schedule.

46 Limitation of Liability of Authority with respect to Approved Water Uses and Permits

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

47 Public Notification of Authorisations and Permits

47.(1) The Authority shall cause to be displayed on the notice board, at its offices and at the offices of the chief, a list of notifications on authorisations, permits and cancellations, within their respective jurisdiction.

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

47.(3) Any person wishing to obtain full details of a particular permit must apply using form WRMA 020 as detailed in the Thirteenth Schedule and pay the require fee as specified in the First Schedule.

48 Requirements to meet other Rules and Acts

The right of a permit holder shall, notwithstanding anything in his or her authorisation or permit contained, be subject to and conditional upon his or her compliance with the provisions of the Water Act 2002 and any other statutory requirements.

PART III - SURFACE WATER

49 Normal Flow and Flood Flow

49.(1) For the purposes of these Rules, “flood flow” is defined as any flow that exceeds the Q_{80} flow value and “normal flow” is defined as any flow that is less than the Q_{80} flow value.

49.(2) The Q_{80} flow value is the flow value that is equalled or exceeded eighty percent of the time.

49.(3) The Q_{80} flow value shall be derived from a naturalised flow duration curve, preferably derived from daily flows.

50 Declaring a Watercourse

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

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

51 Boundary of Properties Defined by a Watercourse

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

52 Wetlands

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

52.(2) The Authority may by Public Notification and with good cause, declare any portion of land less than one hectare as a wetland for purposes of water resources management.

52.(3) The land owner or legally authorised operator of the land on which a wetland 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

52.(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.

52.(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 his or her proposals to provide such water user with access to water, and any agreements to this effect, and he or she shall, if his or her proposals include any works for supplying such water user with water, submit an application for a permit.

53 Allocation of water for Irrigation

53.(1) In allocating water for irrigation, the Authority will;

- (a) give priority to subsistence irrigation.
- (b) be guided by crop water requirements in the area, and the efficiency of water use.

53.(2) In considering aggregate water demand for subsistence irrigation, the Authority may declare by public notification for each catchment area or part thereof an upper limit for the

allocation of water either in aggregate or for any one permit where the allocation is shared among more than one household.

54 Prior Right to Water for Storage

The right to store water shall be subject to prior right to its uninterrupted flow for so 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 his or her application for water use.

56 Classification of Dams

56.(1) Dams shall be classified according to the criteria detailed in Table 1, in the Fifth Schedule.

56.(2) In 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 Fifth Schedule.

58 Dam to be constructed by a registered Dam Contractor

A dam shall be constructed by the appropriate category of contractor as set out in Table 3, in the Fifth Schedule.

59 Dam safety Inspection

59.(1) Every dam owner shall be required to cause inspection of his or her dam according to the criteria given in Table 4 in the Fifth Schedule and an Inspection Report prepared and submitted to the Authority.

59.(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

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

60.(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

61.(1) The minimum acceptable return period for the design of a dam spillway is as shown in Table 5, in the Fifth Schedule.

61.(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

62.(1) A permit holder who has a permit to store or impound water in any body of water or the operator, may, with the approval of the Authority, turn the water so stored into a natural watercourse, and may, subject to the water so stored being appurtenant to the land upon which it is to be utilized, and subject to the conditions of his or her 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.

62.(2) A permit holder, who has a permit to store or impound water in 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 such 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.

62.(3) No 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 so 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 his or her works for discharging the flow of the body of water through or around his or her 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

63.(1) 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.

63.(2) 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 no such outlet works need be constructed.

64 Dam Design Report

64.(1) Any application for a permit to construct a Class A, B or C dam shall be accompanied by a Dam Design Report substantially as shown in the Second Schedule, for approval by the Authority.

64.(2) The level of detail in the Dam Design Report will be dependent on the class of dam under consideration.

65 Dam Construction Progress Report

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

66 Dam Completion and Dam Operation Reports

66.(1) On completion of construction, the permit applicant shall submit to the Authority a Dam Completion Report and a Dam Operation Report substantially as shown in the Second Schedule, in conjunction with the Completion Certificate.

66.(2) Issuance of the permit is conditional upon approval of the Dam Completion and Dam Operation Report by the Authority.

67 Notice Downstream

67.(1) It is the responsibility of the operator of any dam to take adequate measures at his or her cost as 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.

67.(2) It is the responsibility of the operator of any dam to take adequate measures at his or her cost as detailed within the approved Dam Operation Report to protect persons, infrastructure and environments 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.

67.(3) In the event of such a discharge, failure to follow the steps detailed in the approved Dam Operation Report shall constitute an offence.

68 Failure of or damage to a dam to be reported

68.(1) The permit holder or operator or the person having the control of any dam, in the event of serious damage or failure, shall submit an interim Dam Damage or Failure Report within three days, and a detailed Report substantially as shown in the Second Schedule to the Authority within twenty one days of the event.

68.(2) Failure to submit the Dam Damage or Failure Report shall constitute an offence.

69 Hydro Power

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

69.(2) If an existing permit holder is unable, or unwilling, to enlarge his or her 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.

69.(3) When action is taken under paragraph (2) of this rule, the former operator shall be entitled to compensation by the new operator.

69.(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.

69.(5) A permit issued for hydropower purpose, 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

71.(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 at his or her cost in such dam or weir a fish pass, fish ladder or other structure, approved by the Authority, whereby fish may move freely up or down such a body of water:

71.(2) Notwithstanding anything contained in these Rules, the Authority may, on the application of any person, authorize him or her to construct or erect 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 provided such works will not have the effect of raising the normal level of the body of water more than one metre;
- (b) fish ladders or other means of ingress and egress for fish provided such works do not cause any obstruction in the flow of such body of water.

71.(3) An application under this section of these Rules shall be on Form WRMA 001 and shall be submitted to the Authority through the Fisheries Officer.

PART IV - GROUNDWATER

72 Groundwater Development Authorisation

72.(1) All applicants intending to abstract ground water shall seek the approval of the Authority using form WRMA 001.

72.(2) Upon receipt of the form WRMA 001, the Authority shall determine the category of the application.

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

72.(4) Where any borehole or well is intended to be equipped with a motorised pump, the application shall be accompanied by a hydrogeological assessment report substantially as shown in the Second Schedule.

72.(5) Before any well or borehole is replaced, deepened or widened, the owner of the well or borehole, or his duly authorised 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.

72.(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 shall drill, without further reference to the Authority a replacement borehole, whose site shall not be more than 15 metres, from the previously approved site.

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

72.(8) Any person contravening the provisions of this section shall be guilty of an offence.

73 Regulation of Groundwater Development

73.(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
- (d) Existing bodies of surface water

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

74 Borehole, and well test pumping

74.(1) All new boreholes, and wells to be equipped with motorised plant, shall be subjected to test pumping.

74.(2) Test pumping shall comprise a continuous and constant rate pumping test of not less than twenty four hours duration and recovery duration of not less than twenty hours, or as otherwise stipulated by the Authority.

75 Supervision of Works

All boreholes and wells to be equipped with motorised plant shall be constructed under the supervision of a qualified water resource professional.

76 Borehole or Well Completion Record

On the completion of construction of a borehole, or well to be equipped with motorised plant, the applicant shall submit to the Authority a Borehole or Well Completion Record WRMA Form 009A

or 009B, respectively, in conjunction with the Completion Certificate, within twenty eight days of completion of works.

77 Award of permit or approval

77.(1) Approval to abstract groundwater under Category A for a well, shall be issued on receipt of the application or, as determined by the Authority on verification of the details.

77.(2) In the event that Authority determines that verification on site is necessary, the Authority shall undertake the verification within twenty eight days.

77.(3) Approval to abstract groundwater from a borehole, in Category A, as defined in the Sixth Schedule shall not be issued until after the Authority has analysed the data provided in the Borehole Completion Record Form WRMA 009A, where applicable.

77.(4) A permit to abstract groundwater from boreholes, or wells intended to be equipped with motorised pumps in Categories B, C, or D, as defined in the Sixth Schedule shall not be issued until after the Authority has analysed the data provided in the Borehole or Well Completion Record Form WRMA 009A or 009B, respectively.

78 Artificial Ground Water Recharge

78.(1) No person shall undertake to construct works for the purposes of conducting the artificial groundwater recharge of an aquifer, whether or not in a groundwater conservation area, unless such a person has been duly authorised by the Authority so to do.

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

78.(3) Any person contravening the provisions of this section shall be guilty of an offence.

79 Monitoring data

The Authority may, from time to time and in carrying out its responsibilities towards groundwater resources management, require any person or entity, permit holder or operator, to provide it with abstraction, water levels, water quality or any other specified information within a reasonable time or on a regular basis.

80 Groundwater data

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

PART V - WATER QUALITY MONITORING AND EFFLUENT DISCHARGE

81 Control of Water Pollution

81.(1) No person shall discharge or apply any poisonous, toxic, noxious or obstructing matter, radioactive waste or other pollutants or permit any person to dump or discharge such matter

into any water resource unless the discharge of such poisonous, toxic, noxious or obstructing matter, radioactive waste or pollutant is treated to permissible standards as authorised by the Authority.

81.(2) Subsection (1) of this section shall also apply to all discharge activities started before commencement of these rules.

81.(3) Any person who contravenes the rules under this section shall be guilty of an offence.

82 Effluent discharge into any water resource

82.(1) No person shall:

- (a) Discharge effluent into a water resource without a valid discharge permit issued by the Authority.
- (b) Discharge wastewater or effluent, which does not meet the water quality requirements stipulated in the effluent discharge permit.
- (c) Generate and discharge effluent onto land or into any water resource without compliance with an approved Effluent Discharge Control Plan.
- (d) Discharge into any water resource effluent from a sewage treatment plant, trade or industrial facility without a calibrated flow measuring device approved by the Authority.

82.(2) The right of a permit holder or his authorised operator, to discharge effluent shall be exercised in accordance with the conditions in his or her permit conditions and shall be limited to the quantity of pollutants, as stipulated in the permit.

82.(3) Any person who contravenes the rules under this section shall be guilty of an offence.

83 Water Quality Requirements

83.(1) The Authority will be guided by the following criteria, in determining the water quality requirements for each application for an effluent discharge permit;

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

84 Effluent Discharge Records

84.(1) Any person discharging effluent is required to maintain records of effluent discharge in terms of quantity and quality in accordance with the Effluent Discharge Control Plan approved by the Authority.

84.(2) The effluent discharge records shall be submitted to the Authority, on a quarterly basis.

84.(3) The effluent discharge records shall be maintained and shall be available for inspection by the Authority.

85 Effluent Discharge Control Plan

Each application for an effluent discharge permit shall contain an Effluent Discharge Control Plan substantially as detailed in the Second Schedule of these Rules.

86 Authorising effluent discharge applications

Where the Authority is satisfied that the effluent discharge to the water resource will meet the limits stipulated by the Authority, the Authority will issue an authorisation and append the necessary conditions including volume and effluent discharge requirements.

87 Award of Effluent Discharge Permits

Upon inspection and approval of the authorised effluent discharge works, the Authority shall issue a water permit (Effluent Discharge) and shall append the necessary conditions including limits to and monitoring frequency for volume and quality of effluent discharge.

88 Spillage

88.(1) No person shall wilfully and deliberately allow any substance to spill out into any water resource or onto land where such spillage may or is likely to contaminate any body of surface or groundwater.

88.(2) In the event of accidental spillage where such spillage may or is likely to contaminate any body of surface or groundwater.

88.(3) The owner of the spilt substance shall immediately inform the Authority of the accident and take immediate and adequate measures to prevent spread of the spillage and its likely adverse effects to water resources.

88.(4) The Authority shall upon receiving information on spillage, take measures to notify the public of the spillage and to also cause action to be taken to deal with the spillage.

88.(5) The costs incurred by the Authority in regard to notifying the public and dealing with the spillage shall be recoverable from the owner of the spilt substance.

88.(6) Any owner of a spilt substance who fails to inform the Authority immediately after spillage or fails to take immediate action to prevent spread of the spillage and its likely adverse effects to water resources shall be guilty of an offence and punishable under these rules or under the Act.

89 Water Quality Monitoring

89.(1) The Authority shall inspect and sample any sources of water pollution.

89.(2) No prior notice of inspection for water quality monitoring of any premises shall be required.

89.(3) Any person, who obstructs, constrains or prevents a Water Resource Inspector who has sufficiently identified himself or herself from undertaking a pollution control inspection shall be guilty of an offence under these Rules.

90 Water quality and Effluent Discharge Data

90.(1) The Authority shall maintain a water quality database that will include effluent discharge data: data from it shall be accessible during normal office hours by any person on the payment of the prescribed fees listed in the First Schedule.

91 Pollution Control Enforcement

91.(1) In the event that a Water Resource Inspector intends to take a water quality sample for purposes of prosecution, activities listed in the Twelfth Schedule shall apply.

91.(2) The prescribed procedures do not prevent the Authority from installing automatic water quality monitoring and sampling equipment for any purpose as desired by the Authority.

92 Non-point source Pollution

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

PART VI - WORKS

93 Inspection of works prior to, during and post construction

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

94 Temporary works

94.(1) Any person constructing temporary works shall apply for a permit from the Authority to divert, abstract, impound, obstruct, store or use water to such extent only as may be necessary for such construction, and shall do so at such times and in such manner as to interfere as little as possible with the works of other operators and to cause as little damage as possible to the property of any person.

94.(2) A person constructing works shall be liable for any interference or damage resulting from his or her works.

94.(3) All temporary works shall be removed by the responsible permit holder within a period of three months, or such other period as the Authority may specify, from the date of completion of the works authorized or from the date of expiry of the authorization (whichever is earlier): provided that any quarries, borrow-pits, excavations, cuttings, tunnels or other temporary works which cannot be economically rehabilitated or removed shall instead be rendered safe in the interests of health and property by fencing or such other measure as the Authority may consider satisfactory.

94.(4) In the event that any temporary works are not removed, rehabilitated or rendered safe within the prescribed period, the Authority shall issue an order for the removal, rehabilitation or rendering safe of the works.

94.(5) Failure to comply with the order shall constitute an offence.

95 Abandoned Works

95.(1) Abandonment or cancellation of an authorization or permit or any part thereof shall not have the effect of relieving the owner of the land or undertaking to which the authorization or permit is or was appurtenant of liability for any damage resulting from the works constructed, operated or maintained by the permit holder, or from any defect or insufficiency in the works.

95.(2) The Authority may, within six months of the cancellation or expiry of an authorization or permit, serve upon the permit holder or former permit holder whose authorization or permit has been cancelled or expired, an order for the disposal of all or any portion of the works previously used under the authority of the authorization or permit.

95.(3) Failure to comply with the order on abandoned works constitutes an offence.

PART VII - CONDITIONS OF AUTHORISATION, PERMITS AND APPROVED WATER USES

96 Easement

Subject to the provisions of the Act, every application for an easement shall be in Form WRMA 002 shown in the Thirteenth Schedule.

97 Compliance with the Environmental Management and Coordination Act

Where applicable, the Authority shall, require an applicant to show evidence of compliance with the provisions of the Environmental Management and Coordination Act.

98 Inspection of Works

The Authority may place on any authorised water use, Authorisation or Permit a schedule of inspection by a Water Resource Inspector from time to time or at the completion of specified milestones during the construction of any works as specified by the Authority.

99 Controlling and Measuring Devices

99.(1) Within two years of these rules coming into effect, every Class B, C or D water user, whether for water abstraction or effluent discharge, shall be required to have installed a controlling device and measuring device for the accurate measurement of water abstracted, obstructed or diverted and for effluent discharged.

99.(2) A Class B, C or D water user shall inspect, or cause to be inspected, at such time intervals as may be necessary, any controlling or measuring device prescribed in his or her permit in order to ensure that the quantity of water abstracted, diverted or stored, or effluent discharged is accurately measured.

99.(3) Every adjustable device or controlling device, including any sluice gate, valve or other works, where such device or work is used to control the quantity of water diverted, abstracted or stored, or effluent discharged shall be provided by the permit holder with a means of locking it sufficiently to prevent any unauthorized person from interfering with it.

99.(4) The keys of such locking device or works shall be produced forthwith to an officer of the Authority when so required.

99.(5) If need be, the locking device can be in such way that the Authority and permit holder are present when opening.

99.(6) Any measuring device used for the purpose of measuring abstraction or effluent discharge shall be able to be calibrated and such calibration results shall be made available to the Authority upon request.

99.(7) Calibration of the flow measuring device shall be done by the Authority or an agent of the Authority.

99.(8) In the event of doubt over the accuracy of a flow measuring device the Authority may require the accuracy of the device to be verified and where required, the device be recalibrated at the cost of the permit holder.

99.(9) A measuring device shall be substantially in the form of a calibrated meter for piped or pumped systems and a calibrated weir or flume for open channel abstraction or discharge systems, or any other appropriate device approved by the Authority.

99.(10) The controlling device shall be located at the point where the water is abstracted, diverted or the effluent discharged or at a point approved by the Authority.

99.(11) The measuring device shall be located at a point approved by the Authority.

99.(12) If any water user fails to comply with any order given under this section, the Authority may take such steps as it may consider necessary to execute the order, and any expenses incurred in taking such steps shall be recoverable as a civil debt from the water user or person upon whom such order is made.

100 Limitation of Flow or Quantity

100.(1) Notwithstanding the quantity of water granted by his or her permit no permit holder shall abstract or divert more water from any body or bodies of water than can, for the time being, be beneficially used by him or her in accordance with the terms of his or her permit.

100.(2) Having due regard to the priority of the purpose for which the water is granted, a permit holder shall, on being so directed by the Authority:

- (a) Abstract, impound, or divert the quantity of water which may be necessary for his or her purpose at such times and in accordance with a schedule of abstraction that encompasses all other permit holders on the same body of water, or other body of water, as may, in the opinion of the Authority secure the most equitable use of water.
- (b) Discharge the quantity of water in accordance with a schedule of releases that encompasses all other permit holders on the same body of water, or other body of water, as may, in the opinion of the Authority secure the most equitable use of water.

101 Collection and submission of Abstraction, Water Quality and Effluent Discharge Data

101.(1) Each Class B, C or D permit holder is required to maintain a record of the daily abstraction and or effluent discharge, in cubic metres per day, made by him or her.

101.(2) The record shall state the permit number, date and volume of abstraction and or discharge;

101.(3) The records for abstraction and or discharge for the preceding twenty four months shall be available for inspection by the Authority.

101.(4) The Authority may require an applicant for water use, or applicant for permit renewal to take water quality samples and cause the samples to be analysed at his or her cost in a water quality laboratory approved by the Authority.

102 Storage

The Authority may require an applicant for water use for any purpose to develop adequate storage facilities such that abstraction is not undertaken from normal flow or during periods of time that the Authority may impose restrictions.

103 Airline

103.(1) Every permit applicant or permit holder, unless exempted by the Authority, shall install an airline in his or her boreholes, such that the measurement of water levels is possible by the Authority or any authorised person.

103.(2) Failure to install an airline shall constitute an offence.

PART VIII - WATER USE CHARGES

104 Water Use Charges

104.(1) Any person in possession of a valid permit or who is required to have a valid permit for water use, shall be required to pay to the Authority water use charges on the basis of the water abstracted, diverted, obstructed or used including energy derived from a water resource at the appropriate rate as set out in the First Schedule.

104.(2) Payment of water use charges shall be made to the Authority by the 15th day of April, July, October and January for water used in the preceding quarter of the calendar year.

104.(3) Where desirable by the water user, payment may be remitted to the Authority by monthly instalments.

104.(4) Any changes by the Authority to the timing or manner of payment shall be subject to Public Notification.

105 Variation of Water Use Charges

105.(1) The Authority may review the water use charges as and when necessary for approval and gazettelement.

105.(2) In reviewing the water use charges, the Authority will be guided by:

- (a) Inflation rate;
- (b) Cost of managing the water resources and water catchment areas.
- (c) The use of water charges as a tool for water demand management;
- (d) The use of water as a social and economic good.
- (e) Any other criterion that the Authority may consider appropriate.

106 Self-Assessment of Water Used

106.(1) It is the responsibility of the permit holder or any person who is required to have a valid permit to make a fair assessment of the quantity of water used by him or her with respect to each permit.

106.(2) The permit holder is required to submit his or her assessment of water used with supporting records and calculations to the Authority on WRMA Form 015 as set out in the Thirteenth Schedule.

106.(3) In the event that the permit holder does not submit a fair assessment of the quantity of water used by him or her, the Authority will make a fair estimate of the quantity of water used.

106.(4) In making this assessment, the Authority will be guided by the allocation in the permit and by observations and evidence of water use activities.

106.(5) In the event that the assessed quantity of water used as determined by the water user or by the Authority is 25% more or less than the permitted allocation taking into account seasonal variations, the Authority may re-evaluate and vary the permitted allocation.

106.(6) In the event that the permit holder and the Authority cannot agree on the assessment of the quantity of water used, then the opinion of the Authority shall prevail and any payment due shall be made.

106.(7) If, after payment, the permit holder is dissatisfied with the Authority's assessment, he or she may lodge a complaint in accordance with Section 5 of these Rules.

107 Time Limitation on Arrears

107.(1) Where the Authority discovers that a permit holder, or a person who is required to have a water permit, who is obliged to pay water use charges from the entry into force of these Rules and who has not done so, then it shall be entitled to charge arrears, for a period not exceeding twelve months.

107.(2) Where the Authority discovers that a permit holder, has under-declared his or her water use, from the entry into force of these Rules, then it shall be entitled to charge for the under declared water use in arrears, for a period not exceeding twelve months.

108 Water Resource Conservation Charge

An additional 5% will be added to the water use charges for any water abstraction or diversion within a groundwater conservation area or protected area gazetted under the Water Act to cover for the cost of greater management required for such areas.

109 Penalty for Over- Abstraction

109.(1) In the event that the water abstracted exceeds the permitted amounts by over 5%, the excess shall be charged at a penalty rate of one shilling per cubic metre.

110 Incentive for Flood Water Storage

110.(1) Any person in possession of a valid permit who has created and uses flood water storage facilities shall be entitled to a discount on water use charges.

110.(2) The value of the discount shall be a maximum of 10% in the case of storage that equals or exceeds ninety times the daily water demand and shall otherwise be calculated on a pro rata basis.

111 Penalty for Lack of Measuring Device

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

112 Appointment of Revenue Collection Agents

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

113 Modes of payment of water use charges

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

114 Interest for Late Payment

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

115 Failure to Pay

115.(1) Failure to pay the appropriate water use charges is a breach of the conditions of a permit and may be a basis for its revocation.

115.(2) The Authority may within fourteen days, following notice given to the permit holder, suspend, initiate the cancellation process or vary in whole or in part the permit if the Permit Holder fails to pay in full the water use charges for any one payment period for a period of 120 days after the due date.

115.(3) Any Permit Holder whose permit has been suspended, cancelled or varied due to non-payment may not reapply for a lift of suspension, or a new permit or amendment until the outstanding amount and any associated cost is paid in full.

115.(4) Any application for a new permit or amendment of an existing permit shall not be considered if the Permit Holder is in arrears regarding any payments.

PART IX - CONSERVATION OF RIPARIAN AND CATCHMENT AREAS

116 Determination of the Riparian Land

116.(1) "Riparian land", as defined in Part I of these rules does not imply a change of ownership but imposes management controls on land use for water resource quality as defined in these rules.

116.(2) Unless otherwise determined by a Water Resources Inspector, the riparian land on each side of a watercourse is defined as a minimum of six metres or equal to the full width of the watercourse up to a maximum of thirty metres on either side of the bank.

116.(3) The width of the watercourse shall be equal to the distance between the top edges of its banks.

116.(4) The riparian land shall be measured from the top edge of the bank of the watercourse and this will apply to seasonal and perennial watercourses.

116.(5) Unless otherwise determined by a Water Resources Inspector, the riparian land adjacent to a lake, reservoir or stagnant body of water is defined as a minimum of two metres vertical height or thirty metres horizontal distance, whichever is less, from the highest recorded water level.

116.(6) Unless otherwise determined by a Water Resources Inspector, the riparian land adjacent to the eye of a spring shall be a minimum radius of three metres to a maximum radius of fifteen metres, as measured from around the edge of the spring.

116.(7) Unless otherwise determined by a Water Resources Inspector, the riparian land adjacent to the ocean is defined as a minimum of two metres vertical height or thirty metres horizontal distance from the high water mark, whichever is less.

117 Demarcation of the Riparian Land

117.(1) The Authority may with good cause demarcate the riparian boundary of any water course or body on any land.

117.(2) A riparian land owner may request the Authority to demarcate the riparian boundary on his or her land, at the cost of the Authority.

117.(3) In demarcating the riparian boundary, the Authority shall require the land owner to place permanent recognisable beacons at his or her cost at sufficient interval to adequately represent the line of the riparian boundary.

118 Proscribed Activities on Riparian Land

118.(1) Unless authorised by the Authority in consultation with other relevant stakeholders, no person shall undertake the activities listed in the Seventh Schedule on riparian land.

118.(2) A riparian land owner or user may, showing good cause, request the Authority in writing to undertake a proscribed activity.

118.(3) The Authority shall respond in writing within 30 days stating its decision.

118.(4) Any person who undertakes any of the proscribed activities on riparian land without approval by the Authority shall be guilty of an offence.

119 Orders related to Riparian Land

119.(1) The Authority may instruct by means of an Order, a riparian land owner or user, at his or her cost, to develop and implement a Soil and Water Conservation Plan.

119.(2) The Authority may instruct by Order a riparian land owner or user, to desist from any proscribed activity or to improve the condition of the riparian land in the interests of meeting the water resource quality objectives.

119.(3) In requiring a riparian land owner or user to improve the condition of the riparian land, the Authority may facilitate support to undertake the required activities.

119.(4) If the riparian landowner or user fails to comply with an order to develop a Soil and Water Conservation Plan, the Authority may cause such a plan to be developed.

119.(5) The Authority may recover the cost of developing such a plan from the person or persons who have failed to comply with the order.

120 Soil and Water Conservation Plan

120.(1) For the purposes of conserving the catchments and riparian areas, the Authority may by Order or state as a condition on an Authorisation or Permit, require a person to prepare and conform to a Soil and Water Conservation Plan.

120.(2) In requiring a Soil and Water Conservation Plan, the Authority will be guided by the criteria shown in the Seventh Schedule.

120.(3) The Soil and Water Conservation Plan may be developed by the Authority, land owner, land user, or Water Resource Users Association in consultation with the officer(s) in charge of agricultural and or environmental activities for the area.

120.(4) The Soil and Water Conservation Plan shall substantially follow the format laid out in the Second Schedule.

120.(5) If in the opinion of the Authority the land owner or user fails to comply with an approved Soil and Water Conservation Plan, the Authority may cause to be rectified, constructed or maintained sufficient soil and water conservation measures for the purposes of conserving water resource quality conditions.

120.(6) The Authority may recover the cost of these measures from the person or persons who have failed to comply with the Soil and Water Conservation Plan.

120.(7) Failure to comply with an approved Soil and Water Conservation Plan may be considered by the Authority as a basis for rejecting, suspending, cancelling or varying a water use permit.

120.(8) Any person who fails to comply with the Soil and Water Conservation Plan shall be guilty of an offence.

PART X - CATCHMENT MANAGEMENT STRATEGIES

121 Establishment of Catchment Management Strategies

Pursuant to Section 15 of the Act, the Authority shall formulate Catchment Management Strategies which shall substantially follow the format laid out in the Second Schedule.

122 Guiding Principles for Catchment Management Strategies

In establishing the Catchment Management Strategy, the Authority shall be guided by the Act and the National Water Resources Management Strategy currently in force.

PART XI - PROTECTED AREAS AND GROUNDWATER CONSERVATION AREAS

123 Process of Identifying Areas to be Protected or Designated as Groundwater Conservation Areas

123.(1) Pursuant to Sections 17 and 44 of the Act, the Authority may identify a catchment area, part of a catchment area or water resource to be identified as areas to be Protected or designated as Groundwater Conservation Areas if the Authority is satisfied that doing so is necessary for the protection of the water resource and its multiple uses.

123.(2) In identifying a Protected Area or Groundwater Conservation Area, the Authority shall be guided by the criteria shown in the Seventh Schedule:

123.(3) The Authority shall, in conjunction with relevant institutions and stakeholders, describe the boundaries of the proposed Protected Area or Ground Water Conservation Area for gazettelement.

124 Management Rules related to a Protected Area or Groundwater Conservation Area

124.(1) The Authority shall, in conjunction with relevant institutions and stakeholders, establish management rules or plans that shall apply to each Protected Area or Groundwater Conservation Area;

124.(2) The management rules or plans shall cover the items listed in the Seventh Schedule.

125 Public Consultation regarding areas to be Protected or designated as Groundwater Conservation Areas

The Authority shall undertake Public Consultation with respect to the establishment of areas to be Protected or designated as Groundwater Conservation Areas and the management rules or plans that shall apply with respect to these Areas.

126 Failure to comply with the Management Rules for a Protected Area or Groundwater Conservation Area

A person who fails to comply with the gazetted management rules or plans shall be guilty of an offence.

PART XII - THE RESERVE

127 Composition of the Reserve

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

128 Reserve Quantity

128.(1) In all instances where water resource records are available, the Authority shall establish the Reserve and shall be guided by:

- (a) For streams and rivers, the Reserve Quantity shall not be less than the flow value that is exceeded 95% of the time as measured by a naturalised flow duration curve at any point along the water course;
- (b) For lakes and naturally occurring stagnant waters, the Reserve Quantity shall not be less than the water volume that is exceeded 95% of the time as measured by a naturalised volume duration curve or failing bathymetric data a naturalised level duration curve;
- (c) For aquifers, the Reserve Quantity shall be 40% of the mean annual aquifer recharge in the case of aquifers whose recharge rate has been determined by the Authority.
- (d) For aquifers whose recharge rate has not been determined by the Authority, the Reserve Quantity for each point of abstraction shall be 40% of the tested yield expressed in cubic metres per day as determined by test pumping analysis;

128.(2) In all instances where water resource records are not available or where there are significant ambiguities, the Authority shall establish the Reserve and shall be guided by:

- (a) Ecological vulnerability;
- (b) Vulnerability of local populations dependant on that water resource;
- (c) Local observations with respect to the naturalised flows or water levels of minimum values observed during periods of prolonged droughts;
- (d) In all instances where water flow is known to be normally perennial, then the Reserve Quantity shall be sufficient to ensure perennial flow;
- (e) Consultations with the water resource users associations if such exists;

129 Information on and Protection of the Reserve

129.(1) The Authority shall make the Reserve information on water resources accessible to the public.

129.(2) Any person may make a verbal or written report or complaint to any office of the Authority within the relevant catchment or to the Chief Executive Officer if:

- (a) He or she is unable to obtain sufficient water from the water resource for basic human needs as a result of the Reserve being violated;
- (b) As a result of his or her observations, she or he considers that the ecology is threatened as a result of the Reserve being violated;

129.(3) Each complaint or report registered with the Authority in regard to a violation of the Reserve Quantity or Quality, shall be given a Complaint Number by the Authority which shall be used for purposes of monitoring the response to the complaint or report.

129.(4) In any instance where a complaint or report has been registered with the Authority in regard to a violation of the Reserve Quantity or Quality, the Authority shall take measures within forty eight hours to respond to the complaint or report. Measures that the Authority may take include but are not limited to activities listed in the Eighth Schedule.

129.(5) Within thirty days after each report of a Reserve violation, the Authority shall prepare a report detailing the nature of the reserve violation and the measures taken to restore the Reserve.

129.(6) If the Authority considers that the Reserve Quantity and or Quality is threatened, it shall cause to be placed in or near the water resource or in a public place frequented by the water users of a particular resource a legible signboard displaying the current condition of the resource and action required by the water users to safeguard the Reserve.

PART XIII - MISCELLANEOUS

130 Categories of Qualified Water Resource Professionals

The categories of Qualified Water Resource Professional shall be as shown in the Ninth Schedule.

131 Registration and Regulation of Qualified Water Resource Professional and Qualified Contractor

131.(1) No person shall carry out the work of a qualified water resource professional or qualified contractor under these Rules unless he, she or it has been licensed by the Ministry.

131.(2) The Ministry shall establish and maintain a Ministerial Technical Advisory Committee at all times for the registration and determination of all matters regarding the conduct of Qualified Water Resources Professionals and Qualified Contractors under these rules.

131.(3) The Ministerial Technical Advisory Committee shall comprise of not more than eight members including the Chairperson all of whom shall be appointed by the Permanent Secretary of the Ministry.

131.(4) Membership to the Ministerial Technical Advisory Committee shall comprise of a representative from the Authority, Water Services Regulatory Board, National Water Conservation and Pipeline Corporation, and National Irrigation Board.

131.(5) The Ministry shall set out administrative guidelines to govern the conduct of business of the Ministerial Technical Advisory Committee, and such guidelines may be revised from time to time as need arises.

131.(6) No final decision on the application for registration or conduct of a Qualified Contractor or Qualified Water Resources Professional under these rules shall be made except through a resolution of the Ministerial Technical Advisory Committee.

131.(7) A final decision of the Ministerial Technical Advisory Committee on the application for registration or conduct of a contractor or Qualified Water Resources Professional under these rules shall be communicated to the concerned party within fourteen days from the date of the decision.

131.(8) Any Qualified Contractor or Qualified Water Resources Professional aggrieved by the final decision of the Ministerial Technical Advisory Committee shall appeal to the Water Appeals Board.

132 Criteria for Qualified Water Resource Professional

The following persons only shall be entitled to apply for a qualified water resource professional licence:-

A person who has graduated with a degree from any recognized university and who has had at least five years practical experience in the relevant profession; and

A person who is a registered member of the relevant professional institution of that profession;

133 Application to be Licensed as a Qualified Water Resource Professional

133.(1) Any individual who provides or is proposing to provide professional services related to water resources shall apply for a license as a Qualified Water Resource Professional under the appropriate area of specialisation to the Ministry in the Form WRP 001 in the Thirteenth Schedule to these Rules.

133.(2) Conditions for licensing with the Ministry and information required by the Ministry may change from time to time.

134 Need for Professional Interview

The Ministry, after receipt of an application for a qualified water resource professional licence, may require the attendance before it of the applicant, and may examine or question him or her on any matter relevant to his or her application.

135 Issuance of Professional Water Resource License

135.(1) If the Ministry is satisfied that the applicant is a qualified person to be licensed, it shall issue a licence for such period and on such conditions, as it may deem desirable.

135.(2) A Qualified Water Resource Professional is required to pay an annual license fee as set out in the First Schedule. Payments shall be made to the Ministry no later than the end of the third month in each year.

135.(3) Failure to renew the license fee is a breach of the conditions of the license and shall result in the license being suspended in which case the person may not practise as a Qualified Water Resource Professional.

135.(4) A suspended license may be reinstated after payment of all outstanding fees.

135.(5) Failure to renew the license for a consecutive period of three years shall result in the license being revoked.

136 Compliance with Professional Codes of Practice

136.(1) The Codes of Practice shall be introduced to bring industry practices in line with best practices.

136.(2) All Qualified Water Resource Professionals shall comply with Codes of Practice that may be released from time to time by the Ministry.

136.(3) Such Codes will be developed in consultation with the relevant professional bodies. .

137 Register of Qualified Water Resource Professionals

137.(1) The Ministry shall keep a register as set out in the Thirteenth Schedule of all Qualified Water Resource Professional licenses issued under these Rules.

137.(2) The Ministry shall, once in every year and not later than the 30th April, publish in the Gazette a list containing the names and addresses of all licensed qualified water resource professionals.

137.(3) Every name deleted from the register shall be Gazetted.

137.(4) It is the obligation of each Qualified Water Resource Professional to inform the Ministry in writing within twenty eight (28) days of changes in particulars associated with his or her license.

137.(5) Failure to notify the Ministry of any changes may result in disciplinary action, including suspension of the license.

138 Complaint made against a Qualified Water Resource Professional

138.(1) A complaint will be made to the Ministry against any person licensed as a qualified water resource professional under these Rules if he or she:-

- (a) has become incapable of carrying out the work of a qualified water resource professional; or
- (b) has become unfit, through any reason, to practise as a qualified water resource professional; or

- (c) has failed to comply with the conditions of his or her licence or any provisions of the Act, or of these Rules.

138.(2) The Ministry shall hold an inquiry within 30 days of the complaint being lodged, and if after such inquiry the Ministry is satisfied that the complaint has been justified it shall take disciplinary action which may include cancellation of the licence of the person and his or her name shall then be deleted from the register of qualified water resource professionals.

138.(3) The person against whom a complaint has been made shall be entitled to appear and be heard at such inquiry, before his or her case has been determined.

138.(4) Any person whose licence has been cancelled and whose name has been deleted from the register of qualified water resource professionals under paragraph (1) of this rule may, within thirty days of the date of notification of such cancellation and deletion, appeal to the Water Appeal Board.

139 Requirement of a Qualified Water Resource Professional to Approve Designs and Drawings

139.(1) No certificate, document or plan required by the Act or these Rules to be signed by a qualified water resource professional shall be valid unless signed by a person whose name is in the register referred to in these Rules.

139.(2) Provided that, for the purposes of this rule, an officer of the Authority, if he or she is authorized so to sign by his or her Chief Executive Officer, is deemed to be a person whose name is in the said register.

140 Misrepresentation as a Qualified Water Resource Professional

Any person who wilfully and falsely takes or uses any name, title or addition implying that he or she is a qualified water resource professional licensed under these Rules shall be guilty of an offence.

141 Categories of Qualified Contractors

The categories of Qualified Contractors shall be as shown in the Ninth Schedule.

142 Criteria for Qualified Contractor

142.(1) The Ministry shall develop detailed criteria for different categories of Qualified Contractor.

142.(2) The detailed criteria which shall be provided to any person upon request. The criteria shall be based on the following:

- (a) Plant and equipment;
- (b) Qualifications and experience of professional staff;
- (c) Past experience and performance;
- (d) Any other criteria that the Ministry considers to be relevant;

143 Application to Register as a Qualified Contractor

143.(1) Any individual, corporate entity, non-governmental or charitable organisation, or public body that constructs or is proposing to construct, modify, rehabilitate or service water works shall apply for registration under the appropriate category as a Qualified Contractor with the Ministry, in the Form WRC 001 in the Thirteenth Schedule to these Rules.

143.(2) Conditions of Registration with the Ministry and information required by the Authority may change from time to time.

144 Issuance of Qualified Contractor License

144.(1) The Ministry shall verify the details of the application by visiting the premises and reviewing the state of the equipment and reviewing the experience and qualifications of the applicant and his, her or its staff.

144.(2) If the Ministry is satisfied that the applicant is a person qualified to be licensed, it shall issue a licence for such period and on such conditions, as it may deem desirable.

144.(3) A Qualified Contractor is required to pay an annual license fee as set out in the First Schedule and payments shall be made to the Ministry no later than the end of the third month in each calendar year.

144.(4) Failure to renew the license fee is a breach of the conditions of the license and results in the license being suspended in which case the person may not practise as a Qualified Contractor.

144.(5) A suspended license may be reinstated after payment of all outstanding fees.

144.(6) Failure to renew the license for a consecutive period of three years shall result in the license being revoked.

145 Verification of Necessary Authorisations

145.(1) The contractor engaged to undertake any works shall verify that all necessary and valid authorisations have been obtained by the client in regard to the proposed works prior to commencement of the works.

145.(2) Commencement of works by the contractor without having verified the availability of the required authorisations may be used as a basis by the Ministry to take disciplinary action, which may include the deregistration of the contractor.

146 Compliance with Codes of Practice

146.(1) All Qualified Contractors shall comply with Codes of Practice that may be released from time to time by the Ministry.

146.(2) Such guidelines will be developed in consultation with the relevant professional bodies.

147 Complaint made against a Qualified Contractor

147.(1) A complaint will be made to the Ministry against any person licensed as a qualified contractor under these Rules if he, she or it:-

- (a) has become incapable of carrying out the work of a qualified contractor; or
- (b) has become unfit, through any reason, to practise as a qualified contractor; or
- (c) has failed to comply with the conditions of his or her licence or any provisions of the Act, or of these Rules.

147.(2) The Ministry shall hold an inquiry within thirty days of the complaint being lodged, and if after such inquiry the Ministry is satisfied that the complaint has been justified it shall take disciplinary action which may include cancellation of the licence of the contractor and the name shall then be deleted from the register of qualified contractors.

147.(3) The contractor against whom a complaint has been made shall be entitled to appear and be heard at such inquiry, before the case has been determined.

147.(4) Any contractor whose licence has been cancelled and whose name has been deleted from the register of qualified contractors under paragraph (1) of this rule may, within thirty days of the date of notification of such cancellation and deletion, appeal to the Water Appeal Board.

148 Register of Qualified Contractors

148.(1) The Ministry shall keep a register as set out in the Thirteenth Schedule of all Qualified Contractor licenses issued under these Rules.

148.(2) The Ministry shall, once in every year and not later than the 30th April, publish in the Gazette a list containing the names of all licensed qualified contractors.

148.(3) Every name deleted from the register shall be Gazetted.

148.(4) It is the obligation of each Qualified Contractor to inform the Ministry in writing within twenty eight (28) days of changes in particulars associated with the license.

148.(5) Failure to notify the Ministry of any changes may result in disciplinary action, including suspension of the license.

149 Misrepresentation as a Qualified Contractor

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

150 Recognised Water Quality Laboratories

Any water quality laboratory which is registered by the National Environment Management Authority, Accredited, or Gazetted shall be recognised by the Authority.

151 Measures during Emergencies

151.(1) In the event of unusual climatic, accidental or hydrological events, the Minister may impose by Public Notification an Emergency Order as per Section 108 of the Act in the interests of maintaining the Reserve and domestic water supplies.

151.(2) The Emergency Order will provide details as listed in the Tenth Schedule.

151.(3) An Emergency Order will be lifted or varied by Public Notification.

151.(4) Any person who fails to comply with an Emergency Order shall be guilty of an offence.

152 Terms and Conditions of the Authority's CAAC Members

Pursuant to Item 5 of the First Schedule of the Act, the Governing Board of the Authority will determine and periodically review the terms and conditions of remuneration, travelling and other expenses to which CAAC members are entitled and will be guided by the terms and conditions for State Corporations.

153 Penalties for Offences

Any person who is guilty of an offence under these Rules shall, if no other penalty is prescribed in respect of the offence as set out in the Third Schedule, be liable to a fine not exceeding one hundred thousand or a term of imprisonment not exceeding twelve months or both.

SCHEDULES

FIRST SCHEDULE

(Rules 13,26,37,39,45,70,80,90,104,135,144)

FEES AND CHARGES

PART A FEES

1. Fees for assessment and issuance of water use permits

Relevant Form (if applicable)	Description of Activity	Relevant Rule(s)	Fees K.shs
WRMA 001	Application for Water Permit	23,24,71,72	See second schedule, section 2
WRMA 002	Application for Easement	96	2000
WRMA 003	Comments by WRUA on Application for Water Permit	28	Nil
WRMA 004	Authorisation to Construct Works	33	Nil
WRMA 005	Application for Extension of Time of Authorisation	36	2000
WRMA 006	Issuance of Extension of Authorisation to Construct Works	36	Nil
WRMA 007	Inspection Report	38	None
WRMA 008	Completion Certificate	38	None
WRMA 009	Borehole Completion Record	76,77	None
WRMA 010	Water Permit	38	See second schedule, section 2
WRMA 011	Renewal of Permit	44	See second schedule, section 2
WRMA 012	Variation of Permit	42	2000
WRMA 013	Transfer of Permit	41	2000
WRMA 014	Search of Water permit	47	1000
WRMA 015	Assessment of Water Use and Charges	106	None
WRMA 016	WRMA Order	8	None
WRMA 017	Authority to Enter Land	11	2000
WRMA 018	WRUA Registration	10	None
WRMA 019	Certificate of Registration of WRUA	10	None
WRMA 020	Supplement to Water Permit/Authorisation	21	3000
WRP 001	Application for Qualified Water Resource Professional	133	3000
WRP 002	Issuance of License as Qualified Water Resource Professional	134	3000
WRC 001	Application for registration as Qualified Contractor	143	5000
WRC 002	Issuance of License as Qualified Contractor	144	5000

	Annual License Fee for Qualified Water Resource Professional	135	2000
	Annual License Fee for Qualified Contractor	145	2000
	For re-issue of or alteration to Authorizations, Permits, and Licences		2000

2. Fees for assessment and issuance of water use permits

Applications	Assessment of Application (K.shs)	Issue and Renewal of Permit (K.shs) (for 5 years)
Water Use Category A	1,000	Nil
Water Use Category B	5,000	7,500
Water Use Category C	20,000	25,000
Water Use Category D	40,000	50,000

Note:

- a) For permits issued for less than 5 years, the cost of the permit will be charged on a pro rata basis.

3. Fees for Data, investigations, laboratory analysis and related services

	Type	Unit	Rate (K.shs)
Groundwater Data	Basic data (WSL, WRL, Yield, Depth) up to a maximum of 10 boreholes	Per request	2,000
	Borehole or Well Completion Record (Form 009A or 009B) including test pumping and water quality data	Per borehole	2,000
Hydro-meteorological Data	Rainfall (daily, monthly, or annual)	Per station record	2,000
	Climatic parameter	Per station record	2,000
	Water level and rating equations	Per station record	2,000
	discharge	Per station record	2,000
	lake/ reservoir level	Per station record	2,000
	sediment load	Per station record	2,000
Water Apportionment	Copy of Authorisation or Permit	Per copy	250
Water Quality Data	All parameters (up to a maximum of 20 data sets)	Per request	2,000

Investigations			
Groundwater	Hydrogeological Assessment or surveys including borehole siting	Per site	20,000/- plus staff days based on contracted consultancy day rate and AA rates for mileage exclusive of lab analysis costs
Surface water	Hydrological Assessment or surveys	Per request	Ditto
WQ & pollution Control	Water Quality Assessment or surveys	Per request	Ditto
Surface water	Flow measurement	Per site	10,000/- plus staff days based on contracted consultancy day rate and AA rates for mileage
Thematic maps & reports	blue prints	Per copy	1,000
	coloured prints	Per A1 copy	2,500
		Per A0 copy	5,000
	coloured prints	Per A4 copy	250
		Per A3 copy	500
	Digital Maps	Per Theme	10,000
	Reports	Per page	5
Equipment Hire		Per day	As per prevailing schedule of rates issued by WRMA from time to time
Copy of Register of WRUAs		Per region	500
Copy of Register of Water Bodies		Per region	500
Copy of Register of Authorisations or Permits		Per 100 or part thereof	500
Copy of Register of Qualified Water Resources Professionals or Qualified Contractors		Per copy	500

PART B WATER USE CHARGES

Rates for water use charges for Permit Categories B, C and D.

Type of Water Use	Criteria	Rate
DOMESTIC, PUBLIC, LIVESTOCK	Domestic, public, and livestock purposes	50 cents/m ³
HYDROPOWER GENERATION	Amount of energy generated	
	First 1 MW	No charge
	Over 1 MW	5 cents per kWh
IRRIGATION	First 300 m ³ /day	50 cents/m ³
	Over 300 m ³ /day	75 cents/m ³
FISH FARMING	Amount supplied	5 cents/m ³
COMMERCIAL / INDUSTRIAL	First 300 m ³ /day	50 cents/ m ³
	Over 300 m ³ /day	75cents/ m ³
EFFLUENT DISCHARGE		Nil

NOTE:

- A) All water use under category a does not attract any water use charges
- B) Water use charges apply to water abstracted, diverted, stored, and or used for hydropower generation

SECOND SCHEDULE

(Rules 27,64,66,68,72,85,120,121)

TECHNICAL REPORTS

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

Format of Reports

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

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

Format of Drawings

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

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

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

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

CERTIFICATE

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

.....
Qualified Professional(s)

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

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

Format of Maps and Drawings

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

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

Site Assessment Report

A Site Assessment Report shall substantially provide the following details:

1. Name and details of Applicant;
2. Description of Proposed Activity
3. Confirmation of Site details;
4. Relevant hydrological features;
5. Relevant riparian and catchment features;
6. Recommendations;

Technical Report

The following technical reports shall substantially provide the details required.

Hydrological Assessment Report

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

Hydrogeological Assessment Report

1. Name and details of applicant
2. Location and description of proposed Activity
3. Details of climate
4. Details of geology and hydrogeology
5. Details of neighbouring boreholes, including location, distance from proposed borehole or boreholes, number and construction details, age, current status and use, current abstraction and use.
6. Description and details (including raw and processed data) of prospecting methods adopted, e.g. remote sensing, geophysics, geological and or hydrogeological cross sections Hydrogeological characteristics and analysis, to include but not necessarily be limited to, the following:

- a. Aquifer transmissivity
- b. Borehole specific capacities
- c. Storage coefficient and or specific yield
- d. Hydraulic conductivity
- e. Groundwater flux
- f. Estimated mean annual recharge, and sensitivity to external factors
7. Assessment of water quality and potential infringement of National standards
8. Assessment of availability of groundwater;
9. Analysis of the reserve
10. Impact of proposed activity on aquifer, water quality, other abstractors, including likelihood of coalescing cones of depression and implications for other groundwater users in any potentially impacted areas.
11. Recommendations for borehole development, to include but not limited to, the following:
 - a. Locations of recommended borehole(s) expressed as a coordinate(s) and indicated on a sketch map
 - b. Recommendations regarding borehole or well density and minimum spacing in the project area
 - c. Recommended depth and maximum diameter
 - d. Recommended construction characteristics, e.g. wire-wound screen, grouting depth
 - e. Anticipated yield
12. Any other relevant information (e.g. need to monitor neighbouring boreholes during tests)

Effluent Discharge Control Plan

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

Water Quality and Pollution Control Assessment Report

1. Name and details of applicant;
2. Location and description of activity or proposed activity;
3. Details of river or water body (name, nearest Regular Gauging Station, Sub-catchment);
4. Details of flow regime;
5. Nature and characteristics of effluent;
6. Impact of effluent upon water resource and other water users;
7. Other sources of pollution in the project area:
8. Conclusions and recommendations.

Technical Design Report

1. Name and details of Applicant;
2. Description of Proposed Activity;

3. Analysis of Demand;
4. Details of Hydrological Assessment
5. Details of Structures to be built;
6. Details of Equipment to be installed;
7. Details of Controlling Device;
8. Details of Measuring Device;
9. Details of operating procedures;
10. Details of safety devices

Dam Design Report (for Class A, B and C Dams)

1. Details of Location
2. Details of Hydrological Assessment
3. Details of design flood and return period
4. Details of Embankment
5. Details of Reservoir
6. Details of Drawoff and Compensation Works
7. Details of Spillway(s)
8. Details of Ancillary Structures
9. Details of Construction Materials
10. Details of Construction Schedule
11. Details of Operational Rules;
12. Procedures to notify and protect downstream inhabitants, infrastructure and environments;
13. Schedule of Inspection and Maintenance
14. Assessment of Impacts and Risks

Dam Operation Report

1. Basic Summary of Technical Details
2. Details of Management Structure for Dam Operations
3. Details of Operational and Release Rules
4. Details of Operation and Maintenance Systems
5. Procedures to notify and protect downstream inhabitants, infrastructure and environments;
6. Schedule of Inspection and Maintenance;

Dam Completion Report

1. Changes and explanation for differences between As-Constructed and design details
2. As-constructed Drawings
3. Summary of As-Constructed Details

Dam Inspection Report

1. Current condition of dam with respect to approved design and “as-constructed” condition
2. Any action required to restore the functional and structural integrity of the dam to the required state
3. Any changes with regard to the risk of or impact in the event of dam failure
4. Review appropriateness of the action plan in event of dam failure

Dam Damage or Failure Report

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

Progress Report

1. Name and details of applicant;
2. Description of proposed Activity;
3. Details of Authorisation including the time frame;
4. Cause of delay;
5. Revised timeframe for completion;

Soil and Water Conservation Plan

1. Existing Soil and Water Conservation structures and practises;
2. Potential sources of sediment and other pollutants to the water course;
3. Slope of land;
4. Land use;
5. Condition of the riparian land;
6. Proposed Measures and Targets for Improved Soil and Water Conservation;
7. Targets and timeframe for adoption and implementation of proposed Soil and Water Conservation structures and practises;
8. Schedule of Inspection of the Soil and Water Conservation Plan;
9. Site sketch showing:-
 - a. Demarcation of boundaries of land covered under the Soil and Water Conservation Plan;
 - b. Identification of significant features;

Catchment Management Strategy

A description of the institutional framework for water resource management detailing institutional roles and responsibilities;

A strategy for the conservation of the catchment and riparian areas;

A water resource development strategy capturing the need for improved water resource reliability and availability to meet current and future demands and to address poverty alleviation targets;

A stakeholder participation strategy that will include mechanisms for encouraging the formation and establishment of Water Resource Users Associations and strengthening them once established;

A communication strategy that will capture the communication needs and mechanisms for the catchment;

A water resource monitoring strategy that will capture the resource monitoring network and flow prediction targets;

A compliance strategy that will detail the timeframe, approaches and requirements to bring water users into compliance with water management rules;

A water demand management strategy that will capture approaches and targets for improving water allocation and use efficiencies;

A Water allocation plan detailing:

1. A description of the class of resources and their resource quality objectives;
2. An analysis of current and future water demands;
3. Allocation of the resource to the Reserve and to different types of uses;
4. Measures to be taken to ensure that water use approvals remain true to the allocations;
5. Measures to be taken when resource availability is limited;
6. A compliance plan;
7. An enforcement plan;
8. Mechanisms for reviewing the allocation plan from time to time as the need arises;

THIRD SCHEDULE

(Rule 153)

PENALTIES FOR SPECIFIED OFFENCES

Relevant Rules	Offence	Minimum Penalty	Maximum Penalty
8(3)	Failure to comply with an Order	Ksh 25,000/- or 2 months imprisonment and compliance with the order at his or her cost	Pay a maximum of Ksh 50,000/- and or 3 months imprisonment and compliance with the order at his or her cost
9(2)	Damage to Water Resources monitoring network	Ksh 25,000/- or 2 months imprisonment and repair damage at his or her cost	Pay a maximum of Ksh 50,000/- and or 3 months imprisonment and repair damage at his or her cost
23(5) 82(3)	Failure to Apply for Water Use Permit	Ksh 5,000/- or 1 month imprisonment	Pay a maximum of Ksh 10,000/- and or 3 months imprisonment
42(4)	Failure to apply for Variation of Permit	Ksh 5,000/- or 1 month imprisonment	Pay a maximum of Ksh 10,000/- and or 3 months imprisonment
67(3)	Failure to Follow Notification Procedure with respect Dam releases	Ksh 25,000/- or 2 months imprisonment	Pay a maximum of Ksh 50,000/- and or 6 months imprisonment
68(2)	Failure to submit dam damage or failure report	Ksh 25,000/- or 2 months imprisonment	Pay a maximum of Ksh 50,000/- and or 3 months imprisonment
72(8)	Failure to submit a Borehole or Well Completion Record	Ksh 5,000/- or 1 month imprisonment	Pay a maximum of Ksh 10,000/- and or 3 months imprisonment
78(3)	Failure to apply for approval to undertake artificial groundwater recharge	Ksh 5,000/- or 1 month imprisonment	Pay a maximum of Ksh 10,000/- and or 3 months imprisonment
81(3)	Unapproved Effluent Discharge	Ksh 35,000/- or 2 months imprisonment	Pay a maximum of Ksh 50,000/- and or 3 months imprisonment
88(6)	Failure to Inform with Respect to spillage	Ksh 25,000/- or 2 months imprisonment	Pay a maximum of Ksh 50,000/- and or 3 months imprisonment
89(3)	Obstructing a Water Resources Inspector	Ksh 5,000/- or 1 months imprisonment	Pay a maximum of Ksh 10,000/- and or 3 months imprisonment
94(5) 95(3)	Failure to remove or make safe Temporary or Abandoned Works	Ksh 25,000/- or 2 months imprisonment	Pay a maximum of Ksh 50,000/- and or 3 months imprisonment
118(4)	Undertaking a proscribed activity on a riparian land	Ksh 10,000/- or 2 months imprisonment	Pay a maximum of Ksh 50,000/- and or 3 months imprisonment
120(8)	Failure to comply with Soil and Water Conservation Plan	Ksh 5,000/- or 1 months imprisonment	Pay a maximum of Ksh 10,000/- and or 3 imprisonment

126	Failure to comply with Management Rules for Protected Area or Groundwater Conservation Area	Ksh 10,000/- or 2 months imprisonment	Pay a maximum of Ksh 50,000/- and or 3 months imprisonment
140 149	Misrepresentation as a Qualified Water Resource Professional or Qualified Contractor	Ksh 25,000/- or 2 months imprisonment	Pay a maximum of Ksh 50,000/- and or 3 months imprisonment
151	Failure to Comply with an Emergency Order	Ksh 10,000/- or 2 months imprisonment	Pay a maximum of Ksh 50,000/- and or 6 months imprisonment

FOURTH SCHEDULE

(Rules)

GUIDELINE STANDARDS FOR EFFLUENT DISCHARGE

1). Guidelines for Effluent Discharge into surface water resources

Parameter	Max Allowable (Limits)
Arsenic as As (mg/l)	0.1
Biochemical Oxygen Demand (BOD 5days at 20 °C) (mg/l)	30
Cadmium as Cd (mg/l)	1.0
Chemical Oxygen Demand (COD) (mg/l)	100
Chromium as Cr (mg/l)	Less than 0.01
Lead as Pb (mg/l)	Less than 0.01
Oil and grease	Absent
pH (Hydrogen ion activity)	5.0-9.0
Phenols total (mg/l)	0.05
Sulphide as S (mg/l)	2.0
Total Suspended Solids (mg/l)	30
Temperature (in degrees Celsius) based on ambient temperature	+ 5
Cyanides as CN (mg/l)	Less than 0.2
Nickel as Ni (mg/l)	Less than 2.0
Detergents (ABS) (mg/l)	Less than 5.0
Mercury as Hg (mg/l)	Less than 0.01
Total Phosphorus as P (mg/l)	2
Total Nitrogen as N (mg/l)	10
Total pesticide residues	Absent

Remarks

The Authority may issue industry-specific Guidelines for effluent discharge based on the water quality objectives, the Reserve water quality and dry weather stream flow for individual water courses or water bodies..

2). Guidelines for Discharge of Effluent onto Land

Parameter	Maximum	Permissible
pH	5.5-9.0	
Boron(mg/l)	2.0	
BOD(mg/l)	500	
Chloride(mg/l)	600	
Total Dissolved Solids(mg/l)	2100	
Oils and grease(mg/l)	30	
Sulphates(mg/l)	1000	
Sodium (as percentage of total cation concentration)	60	

FIFTH SCHEDULE

(Rules 56,57,58,59,61)

DETAILS FOR STORAGE DAMS

Table 1: *Classification of Dams*

Class of Dam	Maximum Depth of Water at NWL (m)	Impoundment at NWL (m³)	Catchment Area (km²)
A (Low Risk)	0 – 4.99	< 100,000	< 100
B (Medium Risk)	5.00 – 14.99	100,000 to 1,000,000	100 to 1,000
C (High Risk)	> 15.00	> 1,000,000	> 1,000

NWL = Normal Water Level

Table 2: *Design and Supervision of Dam*

Class of Dam	Category of Qualified Water Resource Professional
A (Low Risk)	Panel II C, Panel I C1 & Panel I C2
B (Medium Risk)	Panel I C1 & Panel I C2
C (High Risk)	Panel I C2

Table 3: *Category of Dam Contractor*

Class of Dam	Category of Dam Contractor
A (Low Risk)	C1, C2
B (Medium Risk)	C1, C2
C (High Risk)	C1

Table 4: *Dam safety Inspection Schedule*

Class of Dam	Frequency of inspection	Inspection by
A (Low Risk)	Once in 5 years	Panel I C1, Panel I C2, Panel II C
B (Medium Risk)	Once in 3 years	Panel I C2, Panel I C1
C (High Risk)	Once every 2 years	Panel I C2

Table 5: *Minimum Spillway Design Flood for Dams*

Class of Dam	Minimum Return Period for Design of Spillway
A (Low Risk)	1 in 50 years
B (Medium Risk)	1 in 100 years
C (High Risk)	1 in 500 years

SIXTH SCHEDULE

(Rules 16,22,24,42,77)

WATER USE AND PERMIT DETAILS

1) Water use activities that require approval by authority:

- (a) Temporary abstraction for construction;
- (b) Diversion of water from a water course;
- (c) Abstraction from surface water;
- (d) Diversion of a water course
- (e) Abstraction from groundwater, either by a borehole or a shallow well;
- (f) Groundwater recharge augmentation;
- (g) Water storage in dams and pans;
- (h) Effluent discharge being the disposal of waste into a water resource,;
- (i) Swamp, marsh or wetland drainage;
- (j) Obstruction of water;
- (k) In-stream works;
- (l) Mixing of waters from different water resources;
- (m) Hydropower generation;
- (n) Any other use determined from time to time by the Authority;

2) Category of water resource use activities:

Category	Description
A	Water use activity deemed by virtue of its scale to have a low risk of impacting the water resource. Applications in this category will be determined by Regional Offices
B	Water use activity deemed by virtue of its scale to have the potential to make a significant impact on the water resource. Permit applications in this category will be determined by Regional Offices.
C	Water use activity deemed by virtue of its scale to have a significant impact on the water resource. Permit applications in this category will be determined by Regional Offices in consultation with the Catchment Area Advisory Committees.
D	Water use activity which involves either two different catchment areas, or is of a large scale or complexity and which is deemed by virtue of its scale to have a measurable impact on the water resource. Permit applications in this category will be determined by Regional Offices in consultation with the Catchment Area Advisory Committees and approval by Authority Headquarters.

3) Activities for which application for variation of permit shall be made:

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

SEVENTH SCHEDULE

(Rules 118,120,123)

PROTECTION AND CONSERVATION OF RIPARIAN AND CATCHMENT AREAS

1) Activities proscribed on riparian land are:

- (a) Tillage or cultivation;
- (b) Clearing of indigenous trees or vegetation;
- (c) Building of permanent structures;
- (d) Disposal of any form of waste within the riparian land;
- (e) Excavation of soil or development of quarries;
- (f) Planting of exotic species that may have adverse effect to the water resource
- (g) or any other activity that in the opinion of the Authority and other relevant stakeholders may degrade the water resource;

2) The criteria for requiring a soil and water conservation plan are:

- (a) Existing condition of the riparian area and the risk of river bank erosion, sources of direct runoff into the water course and sediment sources within the riparian and catchment areas;
- (b) Slope of the land;
- (c) Land use and land management practices and the risk of soil erosion and destruction from excessive direct runoff;
- (d) Presence or otherwise of soil and water conservation structures;
- (e) Potential water resource pollution arising from the land use;
- (f) Any other criteria that the Authority considers to be significant;

3) The criteria for identifying a protected area or groundwater conservation area are:

- (a) Catchment characteristics;
- (b) The vulnerability of the water resource;
- (c) The water resource quality objectives and the current status of the water resource;
- (d) The class of the water resource;
- (e) Water demands, present and projected, on the water resources;
- (f) Land uses and their potential impact on the water resources;
- (g) Any other criterion that the Authority considers relevant;

4) Contents of management rules or plans related to a protected area or groundwater conservation area may include:

- (a) Procedures to be applied for the management of the Protected Area or Groundwater Conservation Area;
- (b) Prohibited activities;
- (c) Any measures required to be undertaken for water resource conservation and protection;
- (d) The timeframe for implementation of required measures;
- (e) Any other conditions that the Authority may consider relevant;

EIGHTH SCHEDULE

(Rules 129)

VIOLATIONS OF THE RESERVE

Measures that the authority may take in relation to a report on violation of the reserve include:

- (a) Investigating the cause of the Reserve violation;
- (b) Advise the Minister that an emergency situation exists and the Reserve is being violated by virtue of natural and or anthropogenic events;
- (c) Enforcing any conditions on any approvals, authorisations or permits that may rectify the situation;
- (d) Temporarily suspending or varying permits;
- (e) Hydrographic and abstraction surveys;
- (f) Establishing or revising a water allocation plan or a effluent discharge control plan;
- (g) Informing the public on the condition of the Reserve and any actions that are needed to restore the Reserve;
- (h) Any other measures considered appropriate by the Authority;

NINTH SCHEDULE

(Rules 130,141)

QUALIFIED WATER RESOURCES PROFESSIONALS AND QUALIFIED CONTRACTORS

*Categories of qualified water resources professionals***Panel I - Water Engineer**

- A Water Supply Works (exceeding 1,000 m³/day)
- B Effluent Treatment Works (exceeding 1,000 m³/day)
- C Dams
 - 1) Class A and B Dams
 - 2) Class A, B and C Dams
- D Irrigation Works (exceeding 7,500 m³/day)

Panel II - Water Engineer

- A Water Supply Works (less than 1,000 m³/day)
- B Effluent Treatment Works (less than 1,000 m³/day)
- C Class A Dams
- D Irrigation Works (less than 7,500 m³/day)

Panel III

- A Hydrologists
- B Hydrogeologists
- C Hydrometeorologists
- D Chemists
- E Biologists
- F Ecologists

*Categories of qualified contractors*Category 1

- A Water Supply Works (exceeding 1,000 m³/day)
- B Effluent Treatment Works (exceeding 1,000 m³/day)
- C Dams for Class C Dams
- D Irrigation Works (exceeding 7,500 m³/day)
- E Borehole Drilling (Eligible to drill boreholes);
 - Class 1: Able to drill less than depth of 150 metres
 - Class 2: Able to drill in excess of 150 metres

Category 2

- A Water Supply Works (less than 1,000 m³/day)
- B Effluent Treatment Works (less than 1,000 m³/day)
- C Dams for Class A and B Dams
- D Irrigation Works (less than 7,500 m³/day)
- E Borehole Servicing (Eligible to service or rehabilitate boreholes).

TENTH SCHEDULE

(Rules 151)

EMERGENCY ORDERS

1) Contents of an emergency order include:

- (a) that an emergency exists;
- (b) start date of the Emergency Order;
- (c) the factors that have caused the emergency
- (d) what area or water resource(s) are affected
- (e) what action or activities are restricted or prohibited
- (f) what action or activities will be undertaken;
- (g) conditions that need to be fulfilled for the Emergency Order to be lifted;

ELEVENTH SCHEDULE

(Rule 5)

COMPLAINTS

1) Information to be given by complainant under these rules

- (a) Name of Complainant;
- (b) Contact address, telephone number, email address (if any);
- (c) Nature and location of the problem;
- (d) Date that problem occurred;
- (e) Name and if available the contact details of all parties to the dispute or complaint;
- (f) Any other relevant details.
- (g) Signature of the complainant

TWELFTH SCHEDULE

(Rules 91)

WATER QUALITY SAMPLING PROCEDURES

1) Procedures to be followed where water quality sample is taken for prosecution purposes

- (a) The presence of the alleged polluter at the place and time of sampling;
- (b) Where the intended analysis is to determine compliance with physical and chemical parameters, then a sample shall be taken and divided into three portions, each contained in an appropriate capacity container and preserved according to standard practice.
- (c) Where the intended analysis is to determine compliance with microbiological parameters, then a sample shall be taken and divided into three portions, each contained in a sterile glass bottle;
- (d) All three portions will be sealed in the presence of the alleged polluter who is required to sign an acknowledgement that he has witnessed the sampling;
- (e) One portion will be provided to the alleged polluter who may obtain his or her own independent analysis from a gazetted laboratory of his or her choice;
- (f) One portion shall be sent by the Authority to a gazetted laboratory for analysis;
- (g) One portion shall be retained by the Authority for future reference provided that the storage of the sample is safe enough and the period of storage does not result in the deterioration of the sample.

THIRTEENTH SCHEDULE

LIST OF FORMS AND REGISTERS

Form Number	Description	Relevant Rule(s)
WRMA001	Application for Water Permit	23,24,71,72
WRMA 002	Application for Easement	96
WRMA 003	Comments by WRUA on Application for Water Permit	28
WRMA 004	Authorisation to Construct Works	33
WRMA 005	Application for Extension of Time of Authorisation	36
WRMA 006	Extension of Authorisation to Construct Works	36
WRMA 007	Inspection Report	38
WRMA 008	Completion Certificate	38
WRMA 009	Borehole or Well Completion Record	76,77
WRMA 010	Water Permit	38
WRMA 011	Renewal of Permit	44
WRMA 012	Variation of Permit	42
WRMA 013	Transfer of Permit	41
WRMA 014	Search of Water permit	47
WRMA 015	Assessment of Water Use and Charges	106
WRMA 016	WRMA Order	8
WRMA 017	Authority to Enter Land	11
WRMA 018	WRUA Registration	10
WRMA 019	Certificate of Registration of WRUA	10
WRMA 020	Supplement to Authorisation/Permit	21
WRP 001	Application for registration as Qualified Water Resource Professional	133
WRP 002	License for Qualified Water resource Professional	135
WRC 001	Application for registration as for Qualified Contractor	143
WRC 002	License for Qualified Contractor	144

Official Registers

Register number	Official registers	Relevant Rule(s)
R 001	Register of WRUAs	10
R 002	Register of Water Bodies	14
R 003	Register of Authorisations	37
R 004	Register of Approved Water Users, Uses and Permits	37
R 005	Register of Qualified Water Resource Professionals	137
R 006	Register of Qualified Contractors	148