

THE WATER ACT, 2002

No. 8 of 2002

*Date of Assent: 17th October, 2002**Date of Commencement: By Notice***ARRANGEMENT OF SECTIONS***Sections***PART I—PRELIMINARY**

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An Act of Parliament to provide for the management, conservation, use and control of water resources and for the acquisition and regulation of rights to use water; to provide for the regulation and management of water supply and sewerage services; to repeal the Water Act (Cap. 372) and certain provisions of the Local Government Act; and for related purposes

ENACTED by the Parliament of Kenya as follows:—

PART I—PRELIMINARY

Short title and commencement

1. This Act may be cited as the *Water Act, 2002* and shall come into operation on such date as the Minister may, by notice in the *Gazette*, appoint, and different days may be appointed for the coming into operation of different provisions.

Interpretation.

2.(1) In this Act, unless the context otherwise requires—

“Authority” means the Water Resources Management Authority established by this Act;

“authorised” means authorised by or under this Act;

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

“catchment area” means an area designated under section 14;

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

"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 authorised, or the exercise of rights conferred, by a permit;

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

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

"ground water" 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;

"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, custom or 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;

"licence" means a licence in force under this Act;

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

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

“pollution”, in relation to a water resource, means any direct or indirect alteration of the physical, thermal, chemical or 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;

“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;

“regional office” means an office of the Authority established under section 10;

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

“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;

“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;

“Regulatory Board” means the Water Services Regulatory Board established by this Act;

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

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

“supply of water in bulk” means a supply of water to a licensee for distribution by or on behalf of the licensee taking the supply;

“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;

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

- (a) abstraction, obstruction or diversion of the water;
- (b) discharge of materials or substances into the water; or
- (c) any activity, of a kind prescribed by rules under this Act, in relation to the water;

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

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

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

“water service provider” means a company, non-governmental organization or other person or body providing water services under and in accordance with an agreement with the licensee within whose limits of supply the services are provided;

- (k) to develop guidelines on regulations for the provision of water services to be adopted by licensees;
- (l) to disseminate information about water services;
- (m) to promote water conservation and demand management measures;
- (n) to monitor, and from time to time re-assess, the national water services strategy;
- (o) in accordance with the national water services strategy, to determine fees, levies, premiums and other charges to be imposed for water services;
- (q) to gather and maintain information on water services and from time to time publish forecasts, projections and information on water services;
- (r) to liaise with other bodies for the better regulation and management of water services;
- (s) to advise the Minister concerning any matter in connection with water services.

(2) The Regulatory Board may, with the consent of the Attorney-General given under the Criminal Procedure Code, undertake the prosecution of any offences arising under this Act or in connection with the performance of its functions..

(3) The Regulatory Board shall have such other powers and functions as may be conferred on the Regulatory Board by or under this or any other Act, or as may be reasonably incidental to the exercise or performance of any power or function so conferred.

