

# **NATIONAL WATER RESOURCES BILL, 2016**

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## **A BILL**

### **FOR**

# **AN ACT TO ESTABLISH A REGULATORY FRAMEWORK FOR THE WATER RESOURCES SECTOR IN NIGERIA, PROVIDE FOR THE EQUITABLE AND SUSTAINABLE DEVELOPMENT, MANAGEMENT, USE AND CONSERVATION OF NIGERIA'S SURFACE WATER AND GROUNDWATER RESOURCES AND FOR RELATED MATTERS.**

Commencement[ ]

**ENACTED** by the National Assembly of the Federal Republic of Nigeria -

## **PART I: OBJECTIVE AND ENTITLEMENT TO USE OF WATER**

### **1. Objective of this Act**

- (1) The objective of this Act is to ensure that the nation's water resources are protected, used, developed, conserved, managed and controlled in ways which take into account amongst other factors-
- (a) citizens' right of access to clean water and sanitation;
  - (b) meeting the basic human needs of present and future generations;
  - (c) promoting equitable and affordable access to water and reducing poverty;
  - (d) adopting hydrological boundaries as the basic units for water resources management;
  - (e) protecting the water environment for sustainability of the resource and protection of aquatic ecosystems, and recognizing the polluter pays principle;
  - (f) providing for existing customary uses of water and avoidance of harm to other water users;
  - (g) promoting the efficient, sustainable and beneficial use of water in the public interest;
  - (h) facilitating social development, improved public health and economic development;

- (i) providing for growing demand for water use, promoting conservation of use and recognizing the economic value of water;
  - (j) supporting initiatives to reduce and prevent pollution and degradation of water resources and the aquatic environment;
  - (k) managing floods, desertification, droughts, erosion control and land drainage;
  - (l) encouraging comprehensive and equitable coverage of water supply and sanitation including promoting public-private sector partnerships in delivery of water services;
  - (m) promoting public-private partnerships in the development and management of water resources infrastructure;
  - (n) promoting dams' safety and appropriate reservoir operation and management;
  - (o) meeting international obligations; and
  - (p) recognizing and implementing the principle of water as an economic good and social good, taking into consideration the socio-economic status of the users, particularly affordability.
- (2) The institutions established under this Act shall be guided by the following principles in achieving the objective set out in subsection (1) of this section-
- (a) participation and consultation with States, local governments, communities, women and other stakeholders;
  - (b) management of the water resources sector at the lowest appropriate level;
  - (c) administrative efficiency;
  - (d) transparency;
  - (e) accountability; and
  - (f) Implementing national policies on gender equality and the environment.
- (3) In implementing the principles under subsection (2) of this section, the institutions established under this Act shall promote integrated water resources management (IWRM) and the coordinated management of-
- (a) economic development, social welfare and environmental sustainability;
  - (b) land and water resources;
  - (c) surface water and groundwater resources;
  - (d) the river basins and adjacent marine and coastal environment; and
  - (e) upstream and downstream interests.

## 2. **Public trusteeship of water**

- (1) All surface water and groundwater wherever it occurs is a resource common to all people, the use of which is subject to statutory control.
- (2) There shall be no private ownership of water but the right to use water in accordance with the provisions of this Act.
- (3) The right to the use, management and control of all surface water and ground water affecting more than one State pursuant to item 64 of the Exclusive Legislative list in Part 1 of the Second Schedule to the Constitution of the Federal Republic of Nigeria, 1999 as amended, and as set out in the First Schedule to this Act, together with the beds and banks, is vested in the Government of the Federation to be exercised in accordance with the provisions of this Act.
- (4) As the public trustee of the nation's water resources the Federal Government, acting through the Minister and the institutions created in this Act or pursuant to this Act, shall ensure that the water resources of the nation are protected, used, developed, conserved, managed and controlled in a sustainable and equitable manner, for the benefit of all persons and in accordance with its Constitutional mandate.
- (5) States may make provisions for the management, use and control of water sources occurring solely within the boundaries of the State but shall be guided by the policy and principles of the Federal Government in relation to Integrated Water Resources Management, and this Act.

### **3. Entitlement to use of water**

- (1) Notwithstanding the provisions set out in section 2 of this Act, a person may, without a licence -
  - (a) take water from a water source to which the public has free access for the use of his household or for watering domestic livestock;
  - (b) use water for the purposes of subsistence fishing or for navigation to the extent that such use is not inconsistent with this Act or any other existing law;
  - (c) where a statutory or customary right of occupancy to any land exists, take or use water without charge from the underground water source, or if abutting the bank of any watercourse, from that water course, for reasonable household use, watering livestock and for personal irrigation not for commercial purposes; or
  - (d) store and use runoff water from a roof.

- (2) A person may continue with an existing lawful water use, including a customary use, in accordance with Part X of this Act.
- (3) A person may use water in terms of a general authorisation as defined in section 107 or pursuant to a licence issued under this Act.
- (4) Any entitlement granted to a person by or under this Act supersedes any right to use water which that person might otherwise have been able to enjoy or enforce under any other law to -
  - (a) take or use water;
  - (b) obstruct or divert a flow of water;
  - (c) affect the quality of any water;
  - (d) receive any particular flow of water;
  - (e) receive a flow of water of any particular quality; or
  - (f) construct, operate or maintain any waterworks.

## **PART II- NATIONAL COUNCIL ON WATER RESOURCES**

### **4. Establishment of the Council**

- (1) There is established an advisory standing body to be known as the National Council on Water Resources (in this Act referred to as “the Council”).
- (2) The Council shall meet at least once every year and at other times as directed by the Chairperson.
- (3) The Council shall establish committees and sub-committees as required to investigate and analyse issues tabled for discussion before the Council and to formulate recommendations.
- (4) The Council shall establish rules to govern its proceedings, the workings of its committees and its decision-making processes based on the provisions of this Act and its regulations.
- (5) Annual reports of the Council providing details of its discussions and recommendations shall be made public through publication in the official gazette and transmitted to its Members within one month from the date of the last council meeting.
- (6) All existing directives or procedures relating to the composition and functioning of the existing National Council on Water Resources shall be in accordance with the provisions of this Act.

## **5. Functions of the Council**

For the furtherance of the fundamental principles of water resources management referred to in section 1(1) of this Act, the Council shall perform the following functions, to-

- (a) provide guidance for and review of the formulation of national water-related legislation; water resources, water supply and sanitation policies and strategies; and master plans;
- (b) provide a forum for coordination across water sub-sectors and discussion of issues of national importance;
- (c) provide a forum for mediation of issues on the use or management of water resources arising between sub-sectors or across river-basin boundaries; and
- (d) review performance of the water resources sector in Nigeria as well as the Nation's compliance with obligations of international agreements and commitments on water-related matters.

## **6. Membership of the Council**

The Council shall be made up of the following;

- (a) The Minister, who shall Chair the Council;
- (b) State Commissioners for Water Resources or any other person responsible for water resources in the States.

## **7. Secretariat to the Council**

- (1) A Secretariat shall be established for the Council to act as an administrative body for the purpose of convening meetings of the Council and its committees, administering activities of the Council and coordinating the working of its committees.
- (2) The Permanent Secretary of the Ministry shall be the Secretary to the Council and also the chairperson of the Technical Committee of the Council.

## **8. Representation at the Technical Committees of the Council**

The Council may direct that for the purpose of providing technical expertise and socio-economic advice with respect to any matter to be decided by the Council, relevant representatives and experts from any of the following may be invited to participate in the sessions of the Technical Committees of the Council-

- (a) members of the water resources committee of the National and State Houses of Assemblies);
- (b) professional bodies as well as stakeholders in the water resources sector at Federal, State, and local government levels,
- (c) Federal ministries, departments and agencies responsible for-

- (i) water resources,
- (ii) environment,
- (iii) agriculture,
- (iv) health,
- (v) inland waterways,
- (vi) minerals,
- (vii) forestry,
- (viii) electricity generation, and
- (ix) women affairs;
- (d) State water and environment Agencies;
- (e) water consumers, water users associations, association of local governments, community-based organizations;
- (f) bodies responsible for protected or conservation area;
- (g) the Nigeria Meteorological Agency;
- (h) the National Emergency Management Agency;
- (i) civil society organisations; and
- (j) private sector and resource persons.

#### **9. Financial Provisions**

- (1) Funds of the Council shall comprise such amounts as shall be provided by the President or as may be approved by the National Assembly.
- (2) The cost of participation of Members of the Council and Technical Committees shall be borne by the Organizations that they represent.
- (3) Notwithstanding the provision of subsection (2) of this section, the Council may, at its discretion, subsidize the participation of any participants.

### **PART III- POWERS AND FUNCTIONS OF THE MINISTER RESPONSIBLE FOR WATER RESOURCES**

#### **10. General Powers of the Minister**

- (1) It shall be the duty of the Minister to promote the protection, use, development, conservation, and management of water resources throughout Nigeria and to ensure the effective exercise of powers and performance of duties by institutions and persons identified under this Act and in the constitution.
- (2) The Minister shall have the power to make regulations, policies and strategies for the proper carrying out of the provisions of this Act and functioning of the Ministry in accordance with this Act as well as in accordance with other

directives he may receive from the President and any guidance from the Council.

- (3) The Minister shall have and exercise reasonable powers as are necessary and required in furtherance of the duties and functions conferred pursuant to this Act, the directives of the President, or any other Law.

#### **11. Powers related to trans-boundary waters within Nigeria**

- (1) The Minister shall establish and chair ad-hoc committees for each of the hydrological Basins and for any other situation where development or management of the water resources affects more than one hydrological area as defined in the Second Schedule to this Act.
- (2) The Minister may delegate the power under subsection (1) of this section to any person or Institution as deemed appropriate.

#### **12. Powers related to international agreements, negotiations and meetings**

- (1) The Minister may, in consultation with the Federal Executive Council, by notice in the Gazette, establish a Committee to coordinate implementation of any international agreement entered into by the Federal Republic of Nigeria and a foreign government or any other international body or organisation relating to-
  - (a) investigating, managing, monitoring, and protecting water resources;
  - (b) regional co-operation on water resources;
  - (c) acquiring, constructing, altering, operating or maintaining a waterworks connected to such agreement; or
  - (d) the allocation, use and supply of water according to the principles of equitable and reasonable utilization and avoidance of significant trans-boundary harm.
- (2) The Minister shall consult with all affected States prior to entering into any international agreement on a river basin.

#### **13. Functions of the Minister**

- (1) For the purpose of this Act, the functions of the Minister shall be -
  - (a) to formulate national Policy and water resources Management strategy to guide the integrated planning, management, development, use and conservation of the nation's water resources and provide guidance for formulation of hydrological area resources strategies under section 91 of this Act;
  - (b) The Policy and Strategy referred to in paragraph (a) of this subsection shall be based on basin strategies developed by the Commission, recommendations of the National Council on Water Resources and all

other institutions in the water resources sector and consultations with other stakeholders;

- (c) to provide guidance for policy and standards for water supply and sanitation towards promoting uniform technical and service standards and infrastructure development across the country;
- (d) to facilitate the periodic review and update national water legislation to ensure consistency with national policy under paragraphs (a) and (c) of this sub section;
- (e) to undertake planning for implementation of Sector Policies, Strategies and Master Plans, and in consultation with the Commission, to provide general guidance to relevant Sector institutions on achievement of the objectives.
- (f) based on the performance of existing irrigation systems and considerations of relevant National and basin Policy and strategy on irrigation, as well as economic efficiency and social development, provide guidance to the Authorities responsible for irrigation management and development on criteria to govern decisions on investments for future development of irrigation Programs;
- (g) to provide guidance to institutions in the sector in formulating development plans and projects;
- (h) to monitor the level of service provision for water supply and sanitation across Nigeria with a view to providing and disseminating data for planning, socio-economic development, investments, as well as infrastructure distribution to both Federal and state Governments, National water Council and other Stakeholders;
- (i) to provide technical support for the survey, investigation, planning and design of water resources projects with input from relevant Professional institutions;
- (j) to implement development projects of a multi-purpose nature, and for flood management, that are outside the mandate of individual service delivery Agencies but in collaboration with relevant sector Agencies;
- (k) to support, monitor and evaluate programme sand institutions in the sector;
- (l) to provide technical guidance to the National Council on Water Resources and its committees;
- (m) to liaise with donors and supervise donor and government funded projects;
- (n) to promote all aspects of public-private partnerships in the development of water resources infrastructure;

- (o) to prepare an annual report for the National Assembly within 90 days of the end of each financial year that monitors and evaluates the quantitative and qualitative status of the nation's water resources and report on the Ministry's commitments related to water resources development and service delivery;
  - (p) to represent the Federation in international conferences, meetings and , negotiations on matters related to water;
  - (q) in consultation with relevant Sector institutions, identify areas which, in accordance with the laws of the Federation and Nigeria's international obligations, to be designated as protected areas by the Commission and collaborate with the Commission to achieve this;
  - (r) to undertake such activities and issue such directives as shall be expedient subject to due notification to appropriate Agencies to remediate emergency situations that may threaten any water course within the country; and
  - (s) to receive the reports of the National Council on Water Resources and implement such decisions as they affect the duties of the Minister as identified in such reports.
- (2) The Minister shall perform such other functions as are provided in this Act as well as any other functions as may be directed by the President.
- (3) The Minister may delegate any of his functions in writing to any person, body, institution, agency or authority for the purpose of performing those functions in accordance with this Act.

#### **14. Power to make Regulations**

- (1) The Minister may make Regulations as is expedient for the purpose of giving full effect to the provisions of this Act.
- (2) The contravention of any Regulations issued pursuant to any of the provisions of this Act shall constitute an offence and shall be punishable as prescribed in the Regulations.

## **PART IV- THE NIGERIA WATER RESOURCES REGULATORY COMMISSION**

### **15. Establishment of the Water Resources Regulatory Commission**

**(1) There is established an independent regulatory body to be known as the Nigeria Water Resources Regulatory Commission (in this Act referred to as “the Commission”) charged with the responsibility for the regulation of water resources in Nigeria.**

**(2) The Commission -**

**(a) shall be a body corporate, with perpetual succession and a common seal; and**

**(b) may sue or be sued in its corporate name.**

**(3) The head office of the Commission shall be in the Federal Capital Territory, Abuja or at such other place within Nigeria as may be designated by the President.**

**(4) The Commission shall be structured into various departments as deemed appropriate for the effective discharge of its functions.**

### **16. Objectives of the Commission**

The objectives of the Commission shall be to -

- (a) regulate, protect, conserve and control water resources defined in this Law as the “National water resources” for equitable and sustainable social and economic development and to maintain environmental integrity;**
- (b) regulate the allocation, supply and distribution of water resources for all uses, and to promote equitable, sustainable and efficient best practices and conduct;**
- (c) ensure that licensees or authorized developers and water services providers and users as well as their infrastructure meet the technical, social and commercial obligations specified under this Act in a manner which promotes fairness as well as the wellbeing of all citizens;**
- (d) protect licensees and the public from unfair conduct of providers of water resources services, with regard to the quality of service and the payment of tariffs;**
- (e) ensure that licensees achieve the highest possible level of accountability and responsiveness to customer and community needs;**
- (f) through Licensing, ensure that public water services are supplied as efficiently and economically as possible and at standards which reasonably meet the social, industrial, and commercial needs of the community; and**
- (g) promote the development of other sectors of the Nigerian economy through the efficient and sustainable supply of water services within the framework of this Act.**

## **17. Establishment of the Governing Board of the Commission**

(1) There is established for the Commission a Governing Board (in this Act referred to as "the Board") which shall be responsible for the formulation of policy for the Commission.

(2) The Board shall consist of the following members-

(a) a part time Chairman, who shall be appointed by the President on the recommendation of the Minister;

(b) one representative each, who shall possess at least 10 years cognate experience of the following professional bodies-

(i) Nigerian Bar Association,

(ii) Nigerian Society of Engineers, and

(iii) Institute of Chartered Accountants of Nigeria

(c) one representative each, not below the rank of a Director of the following Federal Ministries and Agencies-

(i) Water resources;

(ii) Environment;

(iii) Agriculture;

(iv) Health; and

(v) Nigeria Hydrological Services Agency; and

(d) the Executive Secretary of the Commission.

(3) The Supplementary provisions set out in the Fourth Schedule to this Act shall have effect with respect to the proceedings of the Board and the other matters contained therein.

## **18. Tenure of office of the Chairman**

(1) The chairman of the Board shall be appointed for a period of four years in the first instance and may be reappointed for another period of four years and no more.

(2) The Chairman may resign his appointment by a letter addressed to the President while any other Member may resign his appointment by a letter addressed to the Chairman of the Board.

## **19. Powers of the Board**

(1) The Board shall have power to—

(a) manage and superintend the affairs of the Commission;

(b) subject to the provisions of this Act, approve rules and regulations for carrying on the functions of the Commission

- (c) fix the terms and conditions of service including remuneration of employees of the Commission;
- (d) do such other things which in the opinion of the Board are necessary to ensure the efficient performance of the functions of the Commission;
- (2) In the absence of a duly constituted Board for the Commission, the Minister shall carry out such functions of the Board as may be required pending the constitution of a new Board.
- (f) Any action taken or decision reached in compliance with the provisions of sub-section (2) of this section shall be valid for all intents and purposes.

## **20. Vacation of office by Members**

- (1) Notwithstanding the provisions of section 18 of this Act, a person shall cease to hold office as a Member of the Board if-
  - (a) he becomes bankrupt, suspends payments or connives with his creditors;
  - (b) he is guilty of a serious misconduct in relation to his duties;
  - (c) he is convicted of a felony or any offence involving dishonesty or fraud;
  - (d) he becomes of unsound mind, or incapable of carrying out duties;
  - (e) in the case of a qualified professional, he is disqualified or suspended, other than at his own request, from practicing his profession in any part of the world by an order of a competent authority; or
  - (f) he resigns his appointment by a letter addressed to the President or the appointing Minister as the case may be.
- (2) If a Member ceases to hold office for any reason whatsoever, before the expiration of the term for which he was appointed, another person representing the same interest as that Member shall be appointed to the Board for his unexpired term.
- (3) A Member may be removed by the President on the recommendation of the Chairman if he is satisfied that it is not in the interest of the Commission or the interest of the public that the Member continues in office or he resigns his appointment by a letter addressed to the President through the Minister; and
- (4) in the case of an *ex – officio* member, he ceases to hold the office on the basis of which he is member of the Board.

## **21. Allowances of Members**

Members of the Board shall be paid such allowances as may be approved by the Federal Government from time to time in accordance with National Salaries and Wages Commission guidelines.

## 22. Functions of the Commission

(1) The Commission shall-

- (a) implement regulatory policies on activities relating to the management of water resources in Nigeria;
- (b) be responsible for economic and technical regulation of all aspect of National water resources exploitation and provision;
- (c) ensure the safety and quality of Water Resources development and public water services by regulating standards for execution and performance;
- (d) liaise with relevant Agencies to conduct studies and surveys for the purpose of establishing water resources balance, catchments management plans and water efficiency strategies (including Basin management strategies);
- (e) interact and consult with approved local and international organizations engaged in Integrated Water Resources Management and liaise with other relevant Agencies to determine Nigeria's input into the setting of international technical standards for Water Resources development within the provisions of this Act;
- (f) promote competition in the water resources sector ;
- (g) protect developers and suppliers of public water resources services or facilities under this Act from unfair practices of other Water Resources developers or services providers which are damaging to competition;
- (h) facilitate the entry into the market by persons wishing to provide water services and facilities;
- (i) protect licensees from misuse of market power by other developers and service providers;
- (j) arbitrate disputes between all stakeholders especially the licensees and other participants in the water resources sector;
- (k) receive and investigate complaints from licensees, developers, consumers and other persons in the water resources sector;
- (l) liaise with relevant national and international Agencies and advise the Minister on ways of promoting cooperation for effective and equitable management of trans-boundary waters within and outside Nigeria.
- (m) Protect the interest of the public by ensuring that the provisions of this Act are carried out with due regard to public interest;
- (n) protect water users and developers, as well as consumers from unfair practices of licensees and other persons in the supply of water resources services and facilities;
- (o) develop performance indices in relation to the quality of Water Resources services and facilities supplied to consumers having regard to international best practices, performance indicators and Nigerian conditions;
- (p) render report to the President annually on the regulation of water resources in Nigeria, including regulations issued by the Commission, tariff charged by

- the Commission, licences and all other matters as have been addressed by the Commission within the year immediately preceding such report;
- (q) issue licences for water resources use in accordance with the provisions of this Act;
  - (r) monitor the conduct of holders of the licences and to enforce the conditions included in the licences;
  - (s) regulate operational rules of dams, barrages weirs, diversion works and other hydraulic works that affect the flow of water in a river taking into account principles of any national policy or strategy on reservoir operations and dams safety;
  - (t) regulate other activities that may affect water quantity or quality including dredging and programs for weed prevention, clearing and containment activities;
  - (u) facilitate technical assistance through research and development in all aspects of Integrated Water Resources Management; and
  - (v) perform such other functions which in the opinion of the Commission are required for the purpose of achieving its objectives under this Act.
- (2) For the purpose of subsection (1) of this section, water resources management includes securing water for the people, food production, job creating activities, protection of vital ecosystem, recreation and hydro power, containment of the variability of water in time and space, management of risks and any other activities that impact the water resources of Nigeria.
  - (3) Without derogating from subsection (1), the Commission shall perform its functions and exercise its powers in such a manner as it considers best in achieving any of its objectives under this Act.
  - (4) The Commission may carry out any of its functions in association with any person or authority as may be considered necessary for the efficient performance of functions under this Act, including delegation of management and administrative functions to the private sector under a contractual arrangement.

### **23. Powers of the Commission**

The Commission shall have power to-

- (a) make rules and Regulations to regulate water use by the issuance of licences in accordance with Part X of this Act;
- (b) to issue Licences in each Hydrological region with respect to water use and allocation through Catchment Management Offices in their respective areas;
- (c) require establishment of effective management systems by water users;
- (d) give written directives to a licensee, authorized developer or other service provider in connection with the functions of the Commission in accordance with the provisions of this Act and the terms and conditions of the License issued to such Licensee;

- (e) consult, where appropriate with the President, commercial and industrial organizations, professional bodies, consumers and standards organizations as well as other relevant bodies;
- (f) delegate any of its powers to a Committee properly constituted in accordance with the provisions of this Act;
- (g) require any person to appear before the Commission or any committee of the Commission to-
  - (i) discuss any matter which the Commission deems necessary for the purpose of effective discharge of the Commission's duties under this Act, and
  - (ii) give evidence or produce any document which is likely to assist the Commission or any of its committees in the discharge of the duties of the Commission under this Act;
- (h) enter into contracts or partnership with any company, firm or person which in the opinion of the Commission, is intended to facilitate the duties specified in this Act-
  - (i) establish and maintain such number of Catchments' Management Offices for the discharge of the functions identified in section 22 of his Act; and
  - (ii) do anything which, in the opinion of the Commission, is calculated to facilitate the carrying out of the functions of the Commission under this Act.

#### **24. Commission not subject to direction**

The Commission shall not be subject to the direction or control of any person in respect of the exercise of its functions, or the issuance of any report, or conduct of any inquiry, but shall be guided by policy approved by the Federal Executive Council and the provisions of this Act.

#### **25. Appointment of the Executive Secretary, Etc.**

- (1) There shall be for the Commission, an Executive Secretary, who shall be appointed by the President on the recommendation of the Minister.
- (2) The Executive Secretary shall be-
  - (a) the Chief Executive and accounting officer of the Commission;
  - (b) responsible for the day-to-day administration of the Commission; and
  - (c) a professional who shall have served in public or private organizations at senior management level for a minimum of five years.
- (3) The Executive Secretary shall hold office on such other terms and conditions as are specified in the letter of appointment.

## **26. Appointment of Secretary**

- (1) The Board shall appoint for the Commission, a Secretary who shall be a legal practitioner and shall have a minimum of ten (10) years post-call experience.
- (2) The Secretary shall –
  - (a) be Secretary to the Board;
  - (b) be the legal adviser to the Commission;
  - (c) be responsible for keeping the books and proper records of proceedings and correspondences of the Board and the upkeep of the records of the Commission;
  - (d) administer and discharge all insurance requirements of the Commission;
  - (e) recommend the engagement of external legal services on behalf of the Commission as may be necessary; and
  - (f) perform such other functions as the Board or the Executive Secretary as the case may be, may from time to time, assign to him.

## **27. Staff of the Commission**

- (1) The Commission shall develop such terms and conditions of service concerning remunerations, fringe benefits, pension scheme and other benefits which would enable it attract and retain high quality manpower and submit for approval of the President as appropriate.
- (2) Notwithstanding the provisions of the Pensions Act, service in the Commission shall be approved service for the purpose of that Act and accordingly, officers and other persons employed in the Commission shall in respect of their service in the Commission be entitled to pensions and other retirement benefits as are enjoyed by persons holding equivalent grades in the public service of the Federation, so however that nothing in this Act shall prevent the appointment of a person to any office on terms which preclude the grant of pension in respect of that office.

## **28. Funds and resources of the Commission**

- (1) The Commission shall establish and maintain a “**fund**” from which shall be defrayed all expenditure incurred by the Commission.
- (2) There shall be paid and credited to the fund established in subsection (1) of this section -
  - (a) allocation to the Commission from the Federation Account;
  - (b) 2% of Nigeria Ecological Fund;
  - (c) such money as may, from time to time, be granted or received from –
    - (i) the organised private sector;

- (ii) international donor Agencies and non-governmental organizations;
- (d) all monies raised for the purposes of the Commission by way of gifts, loans grant-in-aid, testamentary disposition or otherwise;
- (e) proceeds of all fees, charges received from licensees and services rendered other than fines and penalties; and
- (f) all other assets that may, from time to time accrue to the Commission.

### **29. Application of the Fund**

The Commission shall apply the proceeds of the fund established pursuant to section 28 of this Act to –

- (a) the cost of the administration of the Commission;
- (b) the payment of salaries, fees, remunerations allowances and pensions payable to Members and the employees of the Commission;
- (c) the payment for all contracts, including mobilization, fluctuations, variations, legal fees and cost on contract administration;
- (d) the payment for all purchases; and
- (e) undertake such other activity as are connected with all or any of the functions of the Commission under this Act.

### **30. Gifts, etc. to the Commission**

- (1) The Commission may accept gifts of land, money or other property on such terms and conditions as may be specified by the person or organization.
- (2) The Commission shall not accept any gift if the conditions attached by the person or organization making the gift are inconsistent with the functions of the Commission under this Act.

### **31. Borrowing Powers**

The Commission may with the prior consent of the President borrow on such terms and conditions as the Commission may determine, such sums of money as the Commission may require in the exercise of its functions under this Act.

### **32. Budget Provisions**

The Board shall, not later than 30th September each year submit to the President an estimate of the expenditure and income of the Commission during the next succeeding year.

### **33. Annual Report**

The Board shall prepare and submit to the President, not later than 30th June each year, a report in such form as the President may direct on the activities of the Commission during the immediate preceding year, and shall include in the report a

copy of the audited account of the Commission for the financial year and the auditor's report.

#### **34. Additional facilities and Personnel**

- (1) In the exercise of its functions under this Act, the Commission may request from any public organization, available suitable equipment, facility or personnel which may assist the Commission in the efficient and effective regulation of the water resources sector in Nigeria.
- (2) Any Person(s) who wilfully obstructs or impedes the Commission or any person acting under the authority of the Commission in the exercise of any powers or duties under this Act is guilty of an offence and therefore liable on conviction.
- (3) The Commission shall pay adequate compensation for loss or damage arising from the use of any equipment, facility or personnel received under this section of this Act.

#### **35. Acquisition of Land, properties, etc.**

- (1) For the purpose of providing offices and premises necessary for the performance of its functions under this Act, the Commission, may, subject to the Land Use Act-
  - (a) purchase or take on lease any interest in land, or other property; and
  - (b) construct offices and premises and equip and maintain same.
- (2) The Commission may, subject to the Land Use Act and the prior approval of the President, sell or lease any office or premises held by it, which offices or premises is no longer required for the performance of its functions under this Act.

#### **36. Directives on Policy issues**

Subject to the provisions of this Act, the President may, give to the Commission, directives relating generally to matters of policy with regard to the performance by the Commission of its functions which shall be in accordance with the provisions of this Act.

#### **37. Power to make Regulations**

The Commission may with the approval of the Federal Executive Council make regulations generally for the purpose of giving effect to the provisions of this Act and may in particular, without prejudice to the generality of the foregoing provisions make regulations in relation to the following matters -

- (a) technical standards and rules;
- (b) payment of license fees, annual levy on gross turn-over by specified licensees and other charges;

- (c) procedures for obtaining licenses or permits and the conduct of holders of licenses and permits;
- (d) tariff charged by operators;
- (e) customer equipment;
- (f) accreditation of water quantity and quality testing Agencies and borehole drillers;
- (g) piping, canal structures and water conveyance facilities; and
- (h) such other matters as may be necessary for the achievement of the objectives of the Commission or referred to it by the Minister or the President.

### **38. Contravention of Regulations**

- (1) Any person who contravenes any provisions of this Act or any Rules or Regulations made thereunder, is guilty of an offence and liable on conviction, where no specific penalty is prescribed, to-
  - (a) a fine of 50,000 naira or to imprisonment for a term not exceeding 1 year or to both, such fine and imprisonment as a first offender; and
  - (b) a fine 150,000 naira or to imprisonment for a term not exceeding 3 years or to both, such fine and imprisonment for subsequent convictions and for a continuing contravention under Section 97 of this Act, a fine of 100, 000 naira for each day that the offence continues.
- (2) The Commission may make regulations generally to provide for the imposition of a fine and in any proper case, for the payment of compensation or for confiscation of the equipment or facilities as it may deem fit.
- (3) Where an offence against this Act or any rules or regulations made has been committed by a body corporate or a partnership, the body corporate or partnership shall on conviction, be liable to a fine not exceeding 500,000 naira
- (4) Any director or partner found to have been negligent or to have wilfully connived in the commission of the offence shall upon conviction, be liable to a term of imprisonment not exceeding 1 year.

### **39. Establishment of Catchment Management Offices**

- (1) There is established for each Hydrological Area, a Catchment Management Office (in this Act referred to as “**CMO**”)
- (2) The purpose of a Catchment Management Office shall be to regulate, protect, conserve and control water resources and their use within its Hydrological Area or Basin for equitable and sustainable social and economic development and to maintain environmental integrity in accordance with the Policies and Regulations developed by the Commission.
- (3) The CMO shall-
  - (a) comprise sufficient supporting staff of various relevant competencies;

- (b) produce quarterly reports which shall be sent to the office of the Executive Secretary;
- (c) be accountable to the Commission for all funds accruing to it in the course of discharging its functions under this Act; and
- (d) perform other duties as may be assigned by the Executive Secretary

#### **40. Management of the Catchment Management Offices(CMO)**

- (1) Each Catchment Management Office shall be headed by a Catchment Director who shall be at either-
  - (a) At least a Deputy Director in the Service of the Federal Government with experience in water resources management; or
  - (b) a person with a minimum of 10 years' experience in the management of water resources from the private Sector; or
  - (c) a person who has held Management position in a public quoted company for a minimum of 10 years.

#### **41. Functions of the Catchment Management Offices**

##### **The CMO shall -**

- (a) formulate and implement a water resources management strategy for its area of operation or Hydrological Area as defined in section 91 of this Act, including thematic strategies relevant to the situation in its area;
- (b) regulate, protect, conserve, and control water resources and their use within its Basin for equitable and sustainable social and economic development and to maintain environmental integrity, including management and protection of river and lake catchments;
- (c) prepare an indicative basin strategy and plan for its water management area;
- (d) advise interested persons on the protection, use, development, conservation, management and control of the water resources in its Basin;
- (e) with respect to water sources declared to be national water resources, advise the Commission on licence water allocation, wastewater discharge, construction of hydraulic works and other related activities in accordance with Part X of this Act, implement the charging policy for raw water abstractions and monitor water abstraction;
- (f) regulate and monitor operational rules of dams, barrages, weirs, diversion works and other hydraulic works that affect the flow of water in a river taking into account principles of any national policy or strategy on reservoir operations;
- (g) promote improved river quality and control of pollution through a cooperative working arrangement with Federal and State environment Agencies;

- (h) promote community participation in the protection, use, development, conservation, management and control of the water resources in its Basin.
- (i) co-ordinate the related activities of water users and of the other water management institutions within its Basin;
- (j) maintain a database on hydro-meteorological, hydrological, hydro-geological and water quality monitoring networks in its Basin;
- (k) monitor water use and the quality of water sources within its Basin and take action for remediation where water quality is adversely affected under section 95 of this Act;
- (l) facilitate resolution of water-related conflicts relating to its Basin;
- (m) participate in and coordinate with the other CMOs in upstream or downstream basins as provided by section 11(1) of this Act;
- (n) regulate other activities that may affect water quantity or quality including dredging and programs for weed prevention, clearing and containment activities;
- (o) prepare an annual report for the Commission describing the status of the Basin's water resources, major issues, activities and propose related future plans and necessary financial report.
- (p) promote co-ordination with the implementation of any applicable development plan established pursuant to any other law or policy in the water resources sector; and
- (q) Present all strategies, regulations and studies with respect to the matters in (a) to (p) of this section to the Catchment Committee.

#### **42. The Catchment Committee**

- (1) There shall be established for each Hydrological Area, a Catchment Committee comprising the following Members-
  - (a) a Director from the Commission sitting for that purpose as Chairman;
  - (b) a representative of each of the following-
    - (i) Nigeria Hydrological Services Agency,
    - (ii) Ministry responsible for water resources in each of the States within the Hydrological Area or Basin,
    - (iii) The State Water Regulatory Body in each State in the area.
- (2) The Committee may invite any party considered relevant to its deliberations to appear before the Committee and to make contributions to the matters being considered by the Committee as deemed necessary.

#### **43. Functions of the Catchment Committee**

The Catchment Committee shall advise the Catchment Management Office on all matters relating to the following-

- (a) Issuance of Licences for raw water abstraction;
- (b) Setting of tariffs;
- (c) Basin Policies;
- (d) Basin management strategies;
- (e) Conflict resolution within the catchment; and
- (f) water quality control

#### **44. Proceedings of the Catchment Committee**

The meetings of the Catchment Committee shall be on quarterly basis or as deemed necessary in accordance with rules drawn up by the Commission.

### **PART V- ESTABLISHMENT, FUNCTIONS AND POWERS OF RIVER BASIN DEVELOPMENT AUTHORITIES (RBDA)**

#### **45. Establishment of River Basin Development Authorities**

- (1) There are hereby established River Basin Development Authorities to be known by the names specified in column 1 of the Third Schedule to this Act which shall have such powers and exercise such functions as are specified in this Act.
- (2) The objectives of the Authorities shall be to harness, develop and manage available land and surface and underground water resources with a view to improving agriculture and providing raw water for multi-purpose uses.
- (3) Each Authority shall operate within the area specified in column 2 of Schedule 3 to this Act and have its headquarters in the location specified in column 3 of the said schedule.
- (4) Each Authority shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.

#### **46. Membership of each Authority**

- (1) Each Authority shall have a Board appointed by the President upon recommendation of the Minister and consisting of a Chairman and the following other Members-
  - (a) a representative of the Federal Ministry for Water Resources;
  - (b) a representative of the Federal Ministry of Agriculture;
  - (c) One representative of each of the States in the basin; and
  - (d) the Managing Director.

(2) The Board of each Authority shall have power to-

- (a) formulate the general business plans, policies and guidelines relating to the achievement of the objectives of the Authority in accordance with the regulations of the Commission and the Basin and National Water Resources Policies and Strategies;
  - (b) supervise the management of the affairs of the Authority; and
  - (c) subject to the provisions of this Act and the regulations of the Commission, set fees and charges relating to services rendered by the Authority.
- (3) The provisions of the Fifth Schedule to this Act shall have effect with respect to the proceedings of each Authority and the other matters therein mentioned.

#### **47. Tenure of office of Members of each Authority**

- (1) A Member of the Board of an Authority other than the Managing Director shall hold Office for a period of four years and no more.
- (2) The Managing Director shall hold office for the period stated in the Letter of appointment.

#### **48. Remuneration**

Members of the Board of the Authorities shall be paid such remuneration and allowances as may be determined by National Salaries, Income and Wages Commission.

#### **49. Functions of each Authority**

- (1) The functions of each Authority shall be –
  - (a) to undertake comprehensive development of both surface and underground water resources for multipurpose use with particular emphasis on the provision of irrigation infrastructure, control of floods and erosion, for inter basin transfer and for water-shed management;
  - (b) to construct, operate and maintain dams, dykes, polders, wells, boreholes, irrigation and drainage systems, and other works necessary for the achievement of the Authority's functions and hand over all lands allocated to the Authority for cultivation under the irrigation scheme to the farmers;
  - (c) supply raw water from each Authority's reservoirs for irrigation, water supply, recreation as well as other uses under commercially viable arrangements;
  - (d) to construct, operate and maintain infrastructural services such as roads and bridges linking project sites- provided that such infrastructural services are included and form an integral part of the list of approved projects;

- (e) to develop and keep up-to-date a comprehensive water resources Master plan identifying all water resources requirements in the Authority's area of operation, through adequate collection and collation of water resources, water use, socio-economic and environmental data of the River Basin in consultation with the Commission;
  - (f) to procure private investment and Public Private Partnership agreements for the development of infrastructure necessary for the achievement of the Authority's mandate and takeover the operation and maintenance of the works at the end of construction;
  - (g) promote auxiliary developments such as agro-allied industries, fisheries and water tourism in the Authority's area of operation;
  - (h) in cooperation or partnership with power supply companies generate and supply hydroelectric power from dams where feasible; and
  - (i) in cooperation with Federal and State Ministry of Agriculture, support agriculture generally and in particular provide extension services in crop, Livestock and fish farming.
- (2) Projects within the limits of the functions enumerated in subsection (1) of this section shall be executed with the approval of the Minister responsible for water resources.

#### **50. Powers of the Authority**

- (1) An Authority shall have power to prescribe, terms and conditions of service by way of Service Level Agreements with Water Users and other third parties with which it transacts business, including rules for the management of irrigation, drainage and flood management systems and infrastructure by which water is abstracted or transferred to the water Users in accordance with regulations issued by the Commission.
- (2) An Authority may with the prior consent of the Minister borrow money require in the exercise of its functions under this Act on such terms and conditions as the Authority may determine.

#### **51. Restriction on acquisition of land, etc.**

- (1) No River Basin Development Authority may acquire or lease land or take over any existing project without the knowledge and consent of the State Governments in its area of operation in which such is located.
- (2) Subject to the Land Use Act, the control of land development for irrigation by each Authority shall be as provided under sections 28 (2) and (6) of the Land Use Act.

## **52. Appointment of Managing Director and other staff of the Authority**

- (1) Each Authority shall have a Managing Director who shall be the Chief Executive of the Authority and Other Directors including the following-
  - (a) Director (Projects) to be responsible for Planning, Design and Construction of new projects as well as major repairs of facilities;
  - (b) Director (Operations) to be responsible for management of completed dams, irrigation, water supply together with associated infrastructure as well as maintenance of plant and equipment;
  - (c) Director (Agriculture and Commercial Services) to be responsible for agricultural support including extension services;
  - (d) Director (Finance & Administration) to be responsible for all Accounting and Financial matters as well as Human Resources and General Administration;
  - (e) such other directorate as deemed necessary by the Managing Director
- (2) Without prejudice to subsection(1) of this Section, each Authority shall have power-
  - (a) to appoint such other staff and upon such terms as it may determine;
  - (b) to pay its staff such remuneration and allowances as are payable to persons of equivalent grades in the civil service of the Federation;
  - (c) as regards any staff to pay such pension and gratuities as are payable under the Pensions Reform Act; and
  - (d) to give loans to its staff for purposes approved by the Authority.

## **53. Appointment of Secretary**

- (1) The Board of each Authority shall appoint a Secretary who shall be a legal practitioner and shall have a minimum of 10 years post-call experience.
- (2) The Secretary shall-
  - (a) be Secretary to the Board;
  - (b) be the Legal Adviser of the Authority;
  - (c) be responsible for keeping the books and proper records of proceedings and correspondences of the Board and the upkeep of the records of the Authority;
  - (d) administer and discharge all insurance requirements of the Authority;
  - (e) recommend the engagement of external legal services on behalf of the Authority as may be necessary; and
  - (f) perform such other functions as the Board or the Managing Director as the case may be, may from time to time assign to him.

#### **54. Water Users Associations (WUA)**

- (1) Water Users Associations established under the relevant Cooperative Society Laws of States or other State Laws may be registered by the Authority having jurisdiction in their areas of operation in accordance with regulations prepared by the Commission and the Authority may make rules for the purpose of operating and maintaining irrigation and drainage systems or sub-systems to be connected to the infrastructure of the Authorities by the Association Members.
- (2) The objects of a Water Users Association may include-
  - (a) operation and maintenance of an irrigation, erosion control and drainage system or sub-system as determined by an Authority;
  - (b) consultations during the Authority's decision-making processes for the larger irrigation systems;
  - (c) purchasing of bulk water from a watercourse or extracting groundwater from an aquifer and distribution of the water to its Members according to an irrigation plan by the Authority and approved by the Commission;
  - (d) ensuring efficient and economical use of water;
  - (e) collection of irrigation service fees from its Members and management of its fund;
  - (f) optimizing agricultural production;
  - (g) encouraging participatory approaches to irrigation management;
  - (h) protecting the environment and assisting the Authority in its watershed and ecosystem management activities; and
  - (i) facilitating the resolution of conflicts related to the activities of its Members.
- (3) A Water User Association shall provide periodic reports on water use, asset management and performance of its Members to an Authority as may be requested by such Authority.
- (4) In the event of mismanagement of water resources by Members of a WUA or of the funds of the Association by the Executives of a Water User Association, an Authority shall undertake an investigation and recommend actions to be taken by the relevant State Government, including, in appropriate extreme cases, recommendation for disestablishment procedures.

#### **55. Fund of each Authority**

- (1) Each Authority shall maintain an account from which shall be paid all expenditure incurred by the Authority.
- (2) There shall be paid or credited to the fund –

- (a) such sums of money as may be provided by the Federal Government or by the government of any State in the Federation for the purposes of this Act either by way of budgetary allocations, loans or grants; and
- (b) (b) Such other sums of money as may, from time to time, accrue to the Authority. Provided that revenue generated internally by each Authority's fees or charges from operation of dams, irrigation and water supply either directly by itself or through public/private partnership arrangement shall be paid directly into the Federation Account.

#### **56. Annual estimates.**

Each Authority shall submit to the Minister not later than 30<sup>th</sup> September of each year an estimate of its expenditure and income during the next succeeding year.

#### **57. Annual Reports**

- (1) Each Authority shall prepare and submit to the Federal Executive Council through the Minister, once every year, a report in such form as he may direct on the activities of the Authority during the last preceding financial year and shall include in the report a copy of the audited accounts of the Authority for that year and of the auditor's report thereon.
- (2) The Minister shall cause copies of each report made to him under this section to be submitted to the President and shall also send a copy to the Governors of the States in the area of operation of the Authority concerned.

### **PART VI- NIGERIA HYDROLOGICAL SERVICES AGENCY**

#### **58. Establishment of the Nigeria Hydrological Services Agency**

- (1) There is established the Nigeria Hydrological Services Agency (in this Act referred to as "the Agency").
- (2) The Agency-
  - (a) shall be a body corporate with perpetual succession and a common seal;
  - (b) may sue and be sued in its corporate name;
  - (c) may acquire, hold or dispose of property, whether movable or immovable; and
  - (d) shall do all such things as are necessary for or incidental to the carrying out of its functions and duties under this Act.

## **59. Establishment and Membership of the Governing Board**

There is established for the Agency, a Governing Board (in this Act referred to as "the Board") which shall consists of-

- (a) a Chairman;
- (b) one representative each of the Following-
  - (i) Ministry responsible for Water Resources,
  - (ii) Ministry responsible for Environment,
  - (iii) Ministry responsible for Agriculture,
  - (iv) Nigeria Meteorological services Agency,
  - (v) National Water Resources Institute, and
  - (vi) National Association of Hydrologists; and
- (c) the Director-General of the Agency.

## **60. Tenure of office**

A Member of the Board Other than an ex-officio Member, shall hold office-

- (a) for a term of 4 years and no more; and
- (b) on such other terms and conditions as may be specified in the Letter of appointment.

## **61. Cessation of Membership**

- (1) Notwithstanding the provisions of section 60 of this Act, a person shall cease to hold office as a Member of the Board, where he -
  - (a) becomes bankrupt;
  - (b) is convicted of a felony or any offence involving dishonesty or fraud;
  - (c) becomes of unsound mind or is incapable of carrying out his duties;
  - (d) is guilty of a serious misconduct in relation to his duties;
  - (e) possesses a professional qualification and is disqualified or suspended from practicing his profession in any part of the country by an order of a competent authority; or
  - (f) he resigns his appointment by a letter addressed to the President.
- (2) Where a Member of the Board ceases to hold office for any reason before the expiration of the term to which he was appointed, another person representing the same interest as that Member shall be appointed to the Board for the unexpired term.
- (3) A Member may be removed by the President directly or on the recommendation of the Minister if he is satisfied that it is not in the interest of the Agency or public that the Member continues in that office.

## **62. Dissolution and non-constitution of the Board**

Notwithstanding any provisions of this Act-

- (a) the Minister shall exercise all the powers of the Board where the-
  - (i) Board has not been constituted,
  - (ii) Board has been dissolved; and
- (b) any action taken or decision reached in compliance with the provision of this subsection shall be valid.

## **63. Allowances of Members etc.**

A Member of the Board shall be paid such allowances as the President may, from time to time, direct.

## **64. Functions of the Agency.**

- (1) The Agency shall;
  - (a) advise the Federal and States Governments on all aspects of hydrology;
  - (b) project, prepare and interpret Government policy in the field of hydrology;
  - (c) work with local and international meteorological services Agencies and Institutions, to issue forecasts for floods and other water related issues;
  - (d) provide hydrological services in agriculture, draught and desertification activities;
  - (e) provide hydrological services in operational hydrology and water resources activities;
  - (f) collect, process and disseminate hydrological data and information within and outside Nigeria;
  - (g) keep in safe custody all hydrological records in the Agency's archive;
  - (h) promote uniform standards of observation of all hydrological phenomena in Nigeria;
  - (i) promote international standards and best practices in hydrological operations;
  - (j) train, conduct and undertake research particularly in the field of surface and groundwater hydrology and other related areas of hydrology;
  - (k) provide consultancy services to the public on hydrology;
  - (l) monitor hydrology components of the environment, including ground water pollution through industrial, commercial and agricultural activities;
  - (m) establish stations for hydrological observation;

- (n) carry out river training activities to improve conveyance of water in river channels including, monitoring of the sediment road and provide this data to other Sector institutions;
- (o) carry out geo-physical investigations for sitting ground water development projects, for dam foundation and saline water intrusion; and
- (p) carry out other activities as are necessary and expedient for the full discharge of any of its functions under this Act.

(2) Without prejudice to the functions in subsection (1) of the section, the Agency shall, where it is required, prescribe the hydrological requirements for all sector activities, including environmental water way transportation, natural disaster and relief management issues.

### **65. Powers of the Board**

The Board shall have power to-

- (a) formulate the general policies and guidelines relating to the functions of the Agency;
- (b) supervise the management of the affairs of the Agency; and
- (c) formulate policy guidelines which, in the opinion of the Board, are necessary to ensure the efficient performance of the functions of the Agency.

### **66. Appointment, etc., of the Director-General**

- (1) There shall be for the Agency a Director – General who shall be appointed by the President on the recommendation of the Minister.
- (2) The Director – General shall be-
  - (a) the Chief Executive and Accounting Officer of the Agency;
  - (b) responsible to the Board for the day-to-day administration of the Agency; and
  - (c) a sector professional with cognate experience who has held a management position in a public or Private organization for less than 5 years .
- (3) The Director-General shall hold office on such terms and conditions as are specified in his Letter of appointment.

### **67. Appointment of Secretary**

- (1) The Board shall appoint for the Agency a Secretary who shall be a legal practitioner and shall have been so qualified for a period of not less than 10 years.

- (2) The Secretary shall-
- (a) be the Secretary to the Board;
  - (b) be the Legal Adviser;
  - (b) be responsible for keeping the books and proper records of proceedings and correspondences of the Board and the upkeep of the records of the Agency;
  - (c) administer and discharge all legal obligations of the Agency;
  - (d) administer and discharge all insurance requirements of the Agency;
  - (e) retain external legal services on behalf of the Agency as he deems necessary; and
  - (f) perform such other functions as the Board or the Director – General, as the case may be, may, from time to time, assign to him.

#### **68. Appointment of other Staff**

- (1) The Board may deploy or appoint for the Agency other employees, upon such terms and conditions as may be determined by the Board.
- (2) Service in the Agency shall be approved service for the purpose of the Pension Reform Act

#### **69. Funds of the Agency**

There is established for the Agency a Fund into which shall be paid;

- (a) 2% of the Ecological Fund;
- (b) all subventions and budgetary allocations from the Federal government;
- (c) gifts, loans, grants-in-aid from national, bilateral and multilateral Agencies;
- (d) fines payable for violation of hydrological regulations; and
- (e) returns on investments made by the Agency.

#### **70. Expenditure**

- (1) The Agency shall apply the proceeds of the Fund established under section 69 of this Act-
  - (a) to the cost of administration of the Agency;
  - (b) to the payment of emoluments, allowances and benefits of members of the Board, reimbursing members of any committee of the Board and for such expenses as may be expressly authorized by the Board;
  - (c) to the payment of the salaries, fees or other remunerations or allowances, gratuities, pensions and other benefits payable to the officers and other employees of the Agency, provided that no payment of any kind under this paragraph shall be made to any person who is, within the relevant period, in receipt of emoluments from the Federal or State Government, except expressly authorised by the Board;

- (d) for the development and maintenance of any property vested in or owned by the Agency;
  - (e) to publicize and promote the activities of the Agency; and
  - (f) to undertake such other activities in connection with all or any of its functions under this Act.
- (2) Notwithstanding the provisions of subsection (1) of this section, funds generated internally by the Agency through fines, charges, fees and consultancy services shall be paid directly into the Federation Account.

#### **71. Annual estimates and accounts**

- (1) The Agency shall, not later than 30<sup>th</sup> September in each year, submit to the Minister an estimate of its expenditure and income, including payments to the Fund for the next succeeding year.
- (2) The Agency shall keep proper accounts in respect of each year and proper records in relation to those accounts and shall cause its accounts to be audited within 6 months after the end of each year by auditors appointed from the list and in accordance with the guidelines supplied by the Auditor-General of the Federation.

#### **72. Annual reports**

The Agency shall prepare and submit to the Federal Executive Council, through the Minister, not later than 6 months after the end of each year, a report in such form as he may direct on the activities of the Agency during the immediately preceding year, and shall include in the report a copy of the audited accounts of the Agency for that year and the auditor's report on the accounts.

#### **73. Power to accept gifts**

The Agency may accept any gift of land, money or other property on such terms and conditions, if any, as may be specified by the person or organization making the gift, provided that such terms and conditions are not in conflict with the provisions of this Act.

#### **74. Power to borrow**

- (1) The Agency-
- (a) may from time to time, borrow by way of overdraft or otherwise such sums as it may require for the performance of its functions under this Act; and
  - (b) shall not, without the approval of the Board, borrow money which exceeds, at any time, the amount set by the Government as the limit of the authority of the Agency.

- (2) Where the sum to be borrowed is in foreign currency, the Agency shall seek and obtain the approval of the Minister through the Board.

#### **75. Limitations of suits**

- (1) A suit shall not lie or be instituted in any court against the Agency or its employees unless it is commenced-
  - (a) within 3 months after the Act, neglect or default complained of; and
  - (b) in the case of a continuation of damage or injury, within 3 months after the ceasing thereof.
- (2) A suit shall not be commenced against a Member of the Board, Director-General or any other officer or employee of the Agency before the expiration of a period of 1 month after service of a written notice of the intention to commence the suit on the Agency by the intending plaintiff or his agent.
- (3) The notice referred to in subsection (2) of this section shall clearly state the-
  - (a) cause of action;
  - (b) particulars of claim;
  - (c) name and place of abode of the intending plaintiff; and
  - (d) relief sought.

#### **76. Service of documents**

The notice in section 75 (2) of this Act, summons or other document required or authorized to be served on the Agency under the provisions of this Act or any other law or enactment may be served by-

- (a) delivering to the Director-General; or
- (b) sending through registered post, addressed to the Director – General at the principal office of the Agency.

#### **77. Restriction on execution against property**

- (1) In any action or suit against the Agency, no execution or attachment of process in any nature shall be issued against the Agency unless a notice of not less than 3 months of the intention to execute or attach has been given to the Agency.
- (2) Any sum of money awarded against the Agency by the judgment of any court shall, subject to any direction given by the court where notice of appeal against the judgment has been given, be paid from the Fund of the Agency.

## **PART VII- NATIONAL WATER RESOURCES INSTITUTE (NWRI)**

### **78. Establishment and functions of the National Water Resources Institute**

- (1) There is established an institute to be known as the National Water Resources Institute (in this Act referred to as “the Institute”) which shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.
- (2) The Institute shall be responsible for the promotion and development of training courses in water resources and without prejudice to the generality of the foregoing shall-
  - (a) advise the Minister on national water resources training needs and priorities;
  - (b) perform engineering research functions related to such major water resources projects as may be required for flood control, river regulation, reclamation, drainage, irrigation, domestic and industrial water supply, sewage and sewage treatment;
  - (c) perform such ancillary services on planning of water resources management and river basin development and produce necessary codes of practice in water resources engineering, related to and suitable for Nigerian conditions, in consultation with relevant Sector institutions;
  - (d) promote the establishment of a uniform national data collection system relating to surface and subsurface water resources in consultation with  
NWRI;
  - (e) provide for the training of engineers and technicians on short courses and formulate programmes of work in the field of water resources;
  - (f) establish and maintain a water resources library documentation and conference centre;
  - (g) publish or sponsor publication of water resources journals;
  - (h) promote co-operation in water resources development management with similar bodies in other countries and with international bodies connected with water resources management and operation; and
  - (i) carry out such other activities as are necessary or expedient for the full discharge of its functions under this Act.

### **79. Establishment of the Governing Board of the Institute, its functions, etc.**

- (1) There shall be a governing Board of the Institute (in this Act referred to as “the Board”) which shall consist of-

- (a) a part-time Chairman, who shall be a water sector professional;
  - (b) a representative of a-
    - (i) university or other institution of higher learning in Nigeria not below the rank of a senior Lecturer in a water-related discipline,
    - (ii) Federal Ministry of Water Resources not below the rank of a Director
    - (iii) Federal Ministry of Science and Technology,
    - (iv) the Nigeria Society of Engineers, and
    - (v) the Nigeria Hydrological Services Agency; and
  - (c) the Executive Director of the Institute.
- (2) The Chairman and other persons mentioned in of subsection (1) (b) and (c) of this section shall be appointed by the President.
  - (3) The Board shall, in general, outline the policy and decide in broad terms on the programme of work of the Institute and prepare detailed estimates of expenditure which will be required to carry out such programmes.
  - (4) The Chairman and other Members of the Board shall hold office for a term of three years and shall be eligible for re-appointment for another term of 3 years and no more.
  - (5) Notwithstanding the provisions of subsection (4) of this section, the office of a Member of the Board mentioned in subsection (4) of this section shall become vacant if-
    - (a) he resigns his office by notice in writing under his hand, addressed to the Minister, or
    - (b) the President is satisfied that it is not in the interest of the Institute for the person appointed to continue in office and notifies the Member in writing to that effect.
  - (6) Members of the Board may be paid such travelling and other allowances as may, from time to time, be approved by the Minister.
  - (7) The Board may act notwithstanding any vacancy in its Membership or any defect in the appointment of a Member or the absence of a Member.
  - (8) The provisions of Fifth Schedule to this Act shall have effect with respect to matters under this Part.

#### **80. Director-General and other Staff of the Institute**

- (1) There shall be a Director-General of the Institute who shall be appointed by the President.
- (2) Subject to the general control of the Board, the Director-General shall be the chief executive officer of the Institute and shall be responsible for the execution of the policy of the Institute and the day-to-day running of its affairs.

- (3) There shall be a Secretary to the Institute who shall-
  - (a) be appointed by the Board;
  - (b) be the Legal Adviser to the Institute;
  - (c) be the Secretary to the Board
  - (d) perform such other functions as may be assigned to him by the Board or the Director-General.
- (4) The remuneration and the tenure of office of the employees of the Institute, other than the Director-General, shall be determined by the Board in accordance with scales and conditions laid down by government in that behalf.

#### **81. Power to accept gifts, etc.**

- (1) Subject to the provisions of subsection (2) of this section, Institute may accept gifts of land, money or other property upon such terms and conditions, if any, as may be specified by the person making the gift.
- (2) The Institute shall not accept any gift if the conditions attached by the person making the gift are inconsistent with its functions under this Act.

#### **82. Pensions**

- (1) Service in the Institute shall be public service for the purpose of the Pension Act and, accordingly, officers and other staff of the Institute shall in respect of their service in the Institute be entitled to such pensions, gratuities and other retirement benefits as are prescribed thereunder, provided that nothing in this Act shall prevent the appointment of a person to any office on terms which preclude the grant of pension and gratuity in respect of that office.
- (2) For the purposes of providing for the application of the provisions of the Pensions Act, any power exercisable thereunder by a Minister or other authority of the Government of the Federation not being power to make regulations are hereby vested in and shall be exercisable by the Board and not by any other person or authority.

#### **83. Offices and premises**

- (1) For the purpose of providing offices and premises necessary for the performance of the functions of the Institute under this Act, the Board may-
  - (a) purchase or take on lease any land; and
  - (b) build, equip and maintain offices and premises.

- (2) The Board may, with the approval of the Minister, give out on lease any land, office or premises held by the Institute and no longer required for the performance of the functions of the Institute under this Act.

#### **84. Financial provisions**

- (1) The Institute shall establish and maintain a fund (in this Act referred to as “the fund of the Institute”) from which there shall be defrayed all expenditure incurred by the Institute.
- (2) There shall be paid and credited to the fund of the Institute established under subsection (2) of this section-
  - (a) such sums as may, from time to time, be appropriated to it by the Federal Government;
  - (b) all monies raised for the purposes of the Institute by way of gifts, grant-in-aid, testamentary dispositions and sales of publications;
  - (c) all subscriptions, fees and chargers for services rendered by the Institute; and
  - (d) all other sums that may accrue to the Institute from time to time.

#### **85. Accounts and audit**

- (1) The Board shall keep proper accounts and proper records in relation to the fund and shall prepare in respect of each financial year a statement of accounts in such form as the Minister may direct.
- (2) The Board shall ensure that the accounts of the Institute shall be audited annually by auditors appointed from the list and in accordance with guidelines issued by the Auditor-General for the Federation.

#### **86. Annual report**

- (1) The Board shall prepare and submit to the Minister, not later than 6 months before the end of any financial year an estimate of its revenue and expenditure for the following financial year.**
- (2) The Board shall prepare and submit to the Minister not later than the end of each financial year a report in such form as the Minister may direct on the activities of the Institute during the immediately preceding financial year, and shall include in the report a copy of the audited accounts of the Institute for that year and of the auditors’ report on the accounts.
- (3) The Minister shall submit the report and recommendations made by him to the President.

### **87. Procedure in respect of suits against the Institute**

- (1) No suit shall be commenced against the Institute before the expiration of a period of 1 month after the service of a written notice of intention to commence on the Institute by the intending plaintiff or his agent.
- (2) The notice shall clearly state the-
  - (a) cause of action;
  - (b) particulars of the claim;
  - (c) name and place of abode of the intending plaintiff; and
  - (d) relief which he claims.

### **88. Service of documents**

The notice referred to in section 87 of this Act and any summons, notice or other document required or authorized to be served upon the Institute under the provisions of this Act or any other enactment or law may be served by delivering the same to the Chairman of the Board or the Director-General of the Institute, or by sending it by registered post, addressed to the Director-General at the principal office of the Institute.

### **89. Restriction on execution against the property of the Institute**

In any action or suit against the Institute, no execution or attachment or process shall be issued against the Institute, provided that where any sum of money awarded against the Institute by the judgment of a court shall, subject to any directions given by the Institute, be paid from the fund of the Institute.

### **90. Power to give direction**

The Minister may give the Board directions of a general character or relating generally to particular matters with regard to the exercise by the Board of its functions under this Act, and it shall be the duty of the Board to comply with such direction.

## **PART VIII- WATER RESOURCES PLANNING AND MANAGEMENT**

### **91. National Water Resources Strategy**

- (1) The Minister shall, after public consultation and discussion by the National Council on Water Resources, formulate and publish in the Gazette, a national water resources strategy in accordance with which the water resources of Nigeria shall be protected, used, conserved, managed,

developed, and controlled in line with the provisions of section 13(1) (a) of this Act.

- (2) The National Water Resources Strategy set out pursuant to the provisions of sub-section (1) of this section shall prescribe the principles, objectives, procedures and institutional arrangements for the protection, development, conservation, management and control of the nation's water resources and provide the framework within which hydrological areas resources strategies will be formulated under section 92 of this Act.
- (3) The Minister and all public bodies shall, when exercising any statutory power or performing any statutory function, take into account and give effect to the national water resources management strategy.

## **92. Hydrological Areas Resources Strategy and Plans**

- (1) The Commission, in consultation with Nigeria Hydrological Services Agency and other stakeholders, through its Catchment Management Offices shall formulate a comprehensive cross-sector Hydrological Area water resources strategy for the protection, development, use, conservation, management, control and administration of all surface water and groundwater resources in the Hydrological Areas specified in the Second Schedule to this Act by reference to-
  - (a) national water resources policy and strategy;
  - (b) prevailing social, economic, financial, technological and environmental conditions; and
  - (c) the activities, plans and proposals of State, local government, community and private sector bodies in respect of water resources.
- (2) A Hydrological Area water resources strategy shall provide guidance on the priority of water use within a water management area for consideration in the licensing of water use under Part IX of this Act.
- (3) A Hydrological Area water resources strategy shall be subject to public consultation under section 122 of this Act and be published in the Gazette.
- (4) A Hydrological Area water resources strategy may be prepared in a phased and progressive manner over time and shall be reviewed every 10 years or earlier as the Minister may deem expedient but in any event not later than a 10 year period.
- (5) A Hydrological Area water resources strategy referred to in sub-section ((1) of this section shall prescribe principles, objectives, procedures and institutional arrangements for management, protection, use, development, conservation, control and administration of the water resources in the Hydrological Area and in particular, for-
  - (a) classifying water resources and determining resource quality objectives;

- (b) setting out principles for allocating water; and
  - (c) defining mechanisms and facilities for stakeholder participation in development of the Hydrological Area strategy and activities related to management of the water resources of the Hydrological Area.
- (6) A Hydrological Area water resources strategy shall-
- (a) be consistent with the provisions of this Act and the national water resources strategy;
  - (b) comprise an inventory and assessment of water resources projects in the Hydrological Area;
  - (c) present an assessment of water resources availability and use in the Hydrological Area, and, as required by the type of water resources issues experienced in the hydrological area; and
  - (d) incorporate thematic strategies, including-
    - (i) water conservation, efficiency of use, and demand-side management;
    - (ii) watershed and erosion management and protection,
    - (iii) upgrading of existing assets,
    - (iv) flood management,
    - (v) drought management,
    - (vi) groundwater management; and
    - (vii) water quality management.
- (7) All public and private sector bodies and community organizations within the Hydrological Area shall submit their water-related development and management plans to the CMO for consideration in respect of the Hydrological Area's water resources and consolidation into a Hydrological Area development and management plan.
- (8) The CMO shall, based on the Hydrological Area water resources strategy, formulate and publish short to medium term management and development plans as a basis for its financial plan.
- (9) The Minister, Commission, and any public authority shall, when exercising any statutory power or performing any statutory function, take into account and give effect to any Hydrological Area water resources strategy in force under this section.

### **93. Classification of water resources and resource quality objectives**

- (1) The Minister shall introduce a system of classifying all significant watercourses and aquifers which shall be used by the Commission as the basis for determining license applications and for developing plans for the progressive improvement of water quality in watercourses and aquifers.

- (2) The Minister, in consultation with relevant stakeholders at Federal and State levels, shall prescribe a system for classifying water resources for the purpose of determining resource quality objectives for each class of water resources and guiding decisions on water allocation, including procedures for -
  - (a) determining an interim classification;
  - (b) preparing a classification recommendation;
  - (c) public consultation; and
  - (d) approval and publication in the Gazette.
- (3) The Commission shall implement the procedures of the prescribed classification system and prepare a recommendation for the approval of the Minister for -
  - (a) the classification of each water resource within its basin;
  - (b) resource quality objectives for a water resource; and
  - (c) specifying the requirements for achieving the objectives and the dates from which the objectives will apply.
- (4) The Minister, the Commission, and any public authority shall, when exercising any statutory power or performing any statutory function, take into account and give effect to the resource quality objectives determined under this section in respect of a water resource.

#### **94. Determination of reserve**

- (1) As soon as reasonably practicable after classifying a water resource, the Commission shall after consultation with the Minister, and by notice in the Gazette, determine the reserve for the whole or part of each of that water resource.
- (2) The reserve set out in sub-section (1) of this section shall comprise the quantity and quality of water required to-
  - (a) satisfy basic human needs by securing a basic water supply, as prescribed in regulations made pursuant to this Act, for people to rely upon, take water from, or be supplied from the relevant water resource; and
  - (b) maintain significant environmental services of the water resource including protection of aquatic ecosystems in order to ensure ecologically sustainable development and use of the water resource.
- (3) The Minister, the Commission, and any public authority shall, when exercising any statutory power or performing any statutory function, take into account and give effect to the requirements of the reserve.
- (4) Until a system for classifying water resources has been prescribed or a class of a water resource has been determined, the Commission-

- (a) may for all or part of a water resource; and
  - (b) shall before licensing or authorizing the use of water under Part IX of this Act,  
make a preliminary determination of the reserve.
- (5) A determination in terms of sub-section (1) of this section supersedes a preliminary determination.

## 95. Pollution prevention

- (1) A person or institution established under this Act shall promote and observe the policy of the Federal Government on point and non-point sources of pollution of the water resources of the Federation.
- (2) Any such person or institution shall promptly notify both the relevant environmental standards enforcement agency in charge of pollution control in the area and the relevant Catchment Management Office of any actual or threatened infringement whereupon such environment agency shall take appropriate steps pursuant to the law establishing it.
- States shall take all appropriate legal, economic and social measures to control non – point source pollution including promoting -
- (a) sustainable forestry practices, agro- forestry, reforestation and good pasture husbandry;
  - (b) appropriate agricultural land use methods, soil conservation, control and minimization of the use of agricultural chemical inputs;
  - (c) general land use planning and enforcement of urban planning laws; and
  - (d) hygiene and sanitation.
- (3) In cases of emergencies or threat of imminent serious pollution, the Minister or other relevant sector institution shall take appropriate steps to rectify the problem and as soon as practicable thereafter to notify the appropriate enforcement agency.
- (4) Where the pollution continues for a period of two days after notification to the enforcement agency, the Commission in consultation with the enforcement agency shall take further appropriate steps to abate such pollution, including prosecution of the polluters and suspension of a licence for wastewater discharge or related water supply.
- (5) Upon a notification of a point or non-point source of pollution to the enforcement agency by any person, the Catchment Management Office shall continue to monitor and ensure actual abatement of such pollution occurring within the Basin.
- (6) Where the Minister or the Commission takes such steps as are contemplated in this section, such costs as are incurred shall be

recovered from the parties directly or indirectly responsible in accordance with section 131 of this Act.

## **PART IX- LICENSING**

### **96. Considerations for issue of licences and general authorizations**

- (1) Subject to the provisions of sections 3 and 107 of this Act, the use of water shall be subject to licensing provisions under this Part and relevant regulations.
- (2) In considering an application for water use or waste water discharge licence or a general authorisation and in stipulating any conditions to be imposed thereon, the CMO shall take into account such factors as it considers relevant while advising the Commission, including-
  - (a) national water policy and strategy;
  - (b) existing lawful uses of the water; including customary use to the extent that such use does not conflict with the provisions of the Act, or water resources policy of the Government or Hydrological Area Water Resources Strategy;
  - (c) efficient and beneficial use of water in the public interest;
  - (d) any basin management strategy applicable to the relevant water resource including consideration of water conservation measures;
  - (e) the likely effect of the water use to be authorised on the water resource and on other water users, including avoidance of significant harm to customary users;
  - (f) the class and resource quality objectives of the water resource;
  - (g) the investments already made and to be made by the water user in respect of the water use;
  - (h) the strategic importance of the water use to be authorized;
  - (i) the quality of the water in the water resources which may be required for the reserve and for meeting international obligations; and
  - (j) the probable duration, if any, undertaking for which a water use is to be authorized.

### **97. Licencing categories**

Any person who, undertakes the following activities (in this section referred to as “**prescribed activities**”) in relation to water sources listed in the First Schedule to this Act, shall be licensed by the Commission-

- (a) abstraction of surface water and groundwater;
- (b) diversion, pumping, storage or use on a commercial scale of any water;

- (c) the construction of boreholes for commercial purposes;
- (d) construction and operation of hydraulic structures for rivers, dams, water intake barrages, groynes, bed and bank stabilisation, dykes, polders, wells;
- (e) public and private irrigation and drainage systems;
- (f) diversion or impoundment of water for the purposes of mining and discharge of waste water from mining into any water course;
- (g) discharging industrial or agricultural waste or wastewater into a water body through a pipe, canal, sewer, sea outfall or other conduit according to environmental standards;
- (h) disposing in any manner of water which contains waste from, or which has been heated in, any industrial or power generation process according to standards defined by the relevant environment standards enforcement agency;
- (i) undertaking drainage and land reclamation;
- (j) removing, discharging or disposing of water found underground if it is necessary for the efficient continuation of an activity or for the safety of people;
- (k) leachate containment activities according to environmental standards;
- (l) capital dredging;
- (m) sand dredging, rock blasting and rock removal in rivers;
- (n) construction of infrastructure, roads or bridges across rivers and streams;
- (o) any works affecting the banks and beds of water courses;
- (p) carrying out commercial inland fisheries;
- (q) transportation of "Specified Substances" over the watercourse;
- (r) activities which reduce stream flow; and
- (s) using reservoirs for recreational purposes.

#### **98. Existing lawful use**

- (1) An existing lawful water use means a water use which -
  - (a) has taken place at any time during a period of two years immediately before the date of commencement of this Act; and
  - (b) was authorized by or under any law which was in force immediately before the date of commencement of this Act.
- (2) A person or the person's successor-in-title, may continue with an existing lawful use, subject to-
  - (a) any existing conditions or obligations attach to that use;

- (b) its replacement by a licence within the specified period in accordance with regulations made pursuant to this Act; and
  - (c) any other limitation or prohibition by or under this Act.
- (3) The Commission may, subject to any regulation made under this Act, require the registration of an existing lawful water use.

### **99. Application for a licence**

- (1) No person shall undertake any of the prescribed activities defined in section 97 of this Act except in accordance with a license issued by the Commission or a general authorization pursuant to this Act.
  - (2) Where a person has made an application for an authorization to use water under another law, and that application has not been finalized when this Act takes effect, the application shall be regarded as being an application for a water use under this Act.
  - (3) An application shall be in a form approved by the Commission and shall be accompanied by such documents as shall be prescribed by the Commission.
  - (4) An application shall be accompanied by the required application fee as may be fixed by the Commission from time to time.
  - (5) The Commission-
    - (a) may, where necessary, require the applicant, at the applicant's expense, to obtain and provide it by a given date with -
      - (i) other information, in addition to the information contained in the application,
      - (ii) an assessment by a competent person of the likely effect of the proposed licence on the resource quantity and quality, or
      - (iii) an independent review of the assessment furnished under subparagraph (ii) of this paragraph, by a person acceptable to the Commission;
    - (b) may conduct its own investigation on the likely effect of the proposed licence on the protection, use, development, conservation, management and control of the water;
    - (c) may invite written comments from any organ of state which or person who has an interest in the matter; and
    - (d) shall afford the applicant an opportunity to make representations on any aspect of the licence application.
- (6) An applicant is responsible for-

- (a) demonstrating compliance and consistency with the respective basin water resources strategy, resource quality objectives or reserve determination as appropriate to the type of licence being applied for; and
- (b) complying with the requirements of other Acts including for environmental assessment and management.
- (6) The Commission may, at any stage of the application process, require the applicant to -
  - (a) give suitable notice in newspapers and other media in a form and with content prescribed by the Commission-
    - (i) describing the licence applied for;
    - (ii) stating that not less than 60 days written objections may be lodged against the application after the last publication of the notice;
    - (iii) giving an address where written objections must be lodged; and
    - (iv) containing such other particulars as the Commission may require;
  - (b) take such other steps as it may direct to bring the application to the attention of relevant organs of state, interested persons and the general public; and
  - (c) satisfy the Commission that the interests of any other person having an interest in the land will not be affected.

#### **100. Essential contents of licences**

- 1) A licence contemplated in this Part shall specify the -
  - (a) water use or uses or activity for which it is issued;
  - (b) property or area in respect of which it is issued;
  - (c) person to whom it is issued;
  - (d) conditions subject to which it is issued;
  - (e) licence period, which shall not exceed 25 years for hydro Power generation Projects and 10 years for other Projects, provided that licences for discharges shall be treated on a case by case basis; and
  - (f) the periods during which the licence may be reviewed.
- 2) Subject to the provisions of subsection (3) of this section, and notwithstanding the provisions of subsection (1) of this section, the Commission may extend the licence period of a licence if this is done as part of a general review of licences.
- 3) An extension of a licence period contemplated under subsection (2) of this section may only be made after the Commission has considered the factors specified in section 103 of this Act, and all other relevant factors, including new applications for water use, and has concluded that there are no substantial grounds not to grant an extension.

- 4) If the validity period of a licence is extended in pursuant to the provisions of subsection (3) of this section, the licence may in respect of the period for which it is extended, be issued subject to different conditions which may include a lesser permitted water use.

#### **101. Determination of application**

- (2) The Commission may grant or refuse to grant an application for the issue of a license for any reason the Commission considers appropriate having regard to the objectives specified in section 1 of this Act.
- (2) In determining whether to grant an application or not the Commission shall -
  - (a) follow the procedure for notification and consultation as stipulated in regulations issued by the Commission from time to time pursuant to section 122 of this Act; and
  - (b) be satisfied that harm will not be caused to existing lawful uses, including customary uses, subject to provisions to vary the terms of existing licenses under this Act.
- (3) The Commission shall notify the applicant for a license, and any person who has objected to the application in writing of its decision to grant or refuse to grant the application and in the case of a decision to refuse to grant the application, of the reasons for its decision.
- (4) The Commission shall keep a register of licences issued with respect to water sources within its area of authority which register shall be available for the inspection of the public in accordance with the rules of the Commission in respect thereof.
- (5) The issue of a licence to use water does not imply a guarantee relating to the -
  - (a) statistical probability of supply;
  - (b) availability of water; or
  - (c) quality of water.

#### **102. Emergency powers in case of shortage of water**

- 1) Where the Commission is satisfied that, by reason of an actual or anticipated exceptional shortage of water in a hydrological area, or by reason of accident or other unforeseen circumstance, a serious deficiency of water for essential domestic purposes or damage to the environment exists, or is threatened in any area, the Commission may -
  - (a) declare that an emergency exists; and
  - (b) direct a person who has a supply of water in excess of his needs for domestic purposes to reduce the amount he is permitted to abstract under the terms of any licence or general authorization.
- 2) Any person who fails to comply with the directive of the Commission issued pursuant to the provisions of subsection (2) of this section commits of an offence.

- 3) An order under this section may require or authorize-
  - (a) the laying of pipes and the construction of works on any land;
  - (b) the entry on to any land by officers or agents of the Commission; and
  - (c) such other measures as the Commission may consider necessary to overcome the shortage of water or effects of any accident.
- 4) If a person to whom such an order under this section is directed fails to comply with the order, the Commission or any person deputed by it-
  - (a) may take possession of the water supply and operate any works of the person concerned for the drawing, diversion, or use of water; and
  - (b) shall have and may exercise the person's rights in connection with them during the period of the order.
- 5) It shall be the duty of any person exercising any powers under this section to do so with reasonable care and in such a manner as to cause as little damage as possible in so doing.
- 6) A person who, without lawful authority, hinders or obstructs any person acting in pursuance of an order under this section, or interferes with any works constructed or under construction in pursuance of such an order, commits an offence.
- 7) Any person who contravenes any provision of this section commits an offence and liable, on first conviction to a minimum fine of 50,000 naira or imprisonment for a period not exceeding 2 years, or to both such fine and imprisonment and in the case of a second or subsequent conviction to a minimum fine of 100,000naira or imprisonment for a period not exceeding 5 years or to both such fine and imprisonment

### **103. Conditions of licences**

- 1) The Commission may attach conditions to every general authorization or licence -
  - (a) relating to the protection of-
    - (i) the water resource in question,
    - (ii) the stream flow regime, or
    - (iii) other existing and potential users;
  - (b) relating to water management by -
    - (i) specifying practices and general requirements for any water use, including water conservation,
    - (ii) requiring the monitoring, analysis and reporting on water use or water quality,
    - (iii) requiring the preparation, approval and adherence of a water management plan,

- (iv) requiring the payment of water charges as provided for in section 104 of this Act;
  - (v) requiring the licensee to provide or make water available to a person specified in the licence, and
  - (vi) in the case of a general authorization, requiring the registration of the water use with the responsible authority and the payment of a registration fee as a pre-condition of that use;
- (c) relating to a return flow and discharge or disposal of waste -
- (i) specifying a water resource to which it must be returned or disposed of,
  - (ii) specifying permissible levels for some or all of its chemical and physical properties in accordance with standards and guidelines issued by the Federal Ministry responsible for Environment,
  - (iii) specifying treatment to which it must be subjected before it is discharged, and
  - (iv) specifying the volume which may be returned;
- (d) in the case of taking or storing of water -
- (i) setting out the specific quantity or percentage of water which may be taken,
  - (ii) setting out the rate of abstraction,
  - (iii) setting out the method of construction of a borehole,
  - (iv) specifying the place from where water may be taken,
  - (v) specifying the times when water may be taken,
  - (vi) identifying or limiting the area of land on which any water taken from a resource may be used,
  - (vii) limiting the quantity of water that may be stored, and
  - (viii) specifying locations where water may be stored;
- (e) in the case of a licence -
- (i) specifying times when water may or may not be used,
  - (ii) containing provisions for its termination if an authorized use of water is not implemented or not fully implemented, or
  - (iii) designating water for future or contingent use which have been agreed to by the licensee; and
- (f) which are necessary or desirable to achieve-
- (i) the purpose for which the licence was issued; and
  - (ii) compliance with the provisions of this Act.

#### **104. Charges for water use**

- 1) The use of prescribed water abstracted from a water resource shall be subject to a water charge that reflects -
  - (a) the available water and resource quality objectives;
  - (b) the costs of water resources development and management;
  - (c) the affordability of water among water users;
  - (d) the equitable, efficient and sustainable allocation of water; and
  - (e) protection and conservation of the water resource and water related environment.
- 2) The water charge shall form a source of income for the Commission.
- 3) The pricing structure for water use adopted by the Commission shall be approved by the National Council and may -
  - (a) differentiate on an equitable basis between different-
    - (i) types of geographic areas,
    - (ii) categories of water use, and
    - (iii) water users.
  - (b) include subsidies to promote equitable allocation;
  - (c) provide a transparent mechanism for establishing charges; and
  - (d) define any circumstances under which water charges may be subject to waiver.
- 4) The pricing structure for waste water discharges shall be approved by the National Council and may provide a differential rate taking into account the -
  - (a) context in the area concerned;
  - (b) characteristics of the waste discharged;
  - (c) amount and quality of the waste discharged;
  - (d) nature and extent of an impact on a water resource caused by the waste discharged;
  - (e) extent of permitted deviation from prescribed waste standards or management practices; and
  - (f) required extent and nature of monitoring the water discharge.
- 5) The pricing structure shall prescribe procedures for recovery of water charges.
- 6) In preparing the pricing structure the Commission shall follow procedures for public consultation set out in section 122 of this Act.

#### **105. Renewal, review, variation and cancellation**

- 1) A licensee may, before the expiration of a licence, apply to the Commission for the renewal or amendment of the licence in a form and containing such information as may be required by the Commission.

- 2) A licence may, at the request of the licensee, be varied by the Commission if the Commission is satisfied that the variation is not contrary to the public interest or the rights of others, so as to-
  - (a) vary the point of abstraction or diversion;
  - (b) vary the use of water authorized by the licence;
  - (c) to remedy any defect whereby the licence is incomplete or indefinite in its terms and conditions; or
  - (d) to reflect one or more successors-in-title as new licensees
- 3) A variation relating to the use of water or terms and conditions of a licence shall not be made without public consultation.
- 4) The Commission may vary a licence or its conditions where, it is shown to the satisfaction of the Commission, that owing to changes in hydrological conditions, prolonged drought, increased demand or other cause, the use of water under a licence, or the method or point of abstraction or other manner in which the water is so used, causes -
  - (a) inequity;
  - (b) a deterioration in the quality of water;
  - (c) a shortage of water for domestic purposes; or
  - (d) a shortage of water for any other purpose which in the opinion of the Commission should have priority.
- 5) A variation contemplated in sub-section (4) of this section may only be made if the conditions of other licences for similar water use from the same water resource in the same vicinity, as determined by the Commission, are also being amended in an equitable manner through a general review process.
- 6) Notwithstanding the provisions of sub-section (4) of this section, a Commission may review the terms of a licence, other than the time period, only at the periods stipulated in a licence for that purpose
- 7) A licensee whose license is varied under subsections (4) or (5) of this section and, as a result of which the economic viability of any undertaking is severely prejudiced, shall be paid compensation in such an amount as shall be agreed between the permit holder and the Commission, or in default of agreement, as may be determined by mediation or appeals procedures under this Act.
- 8) A licensee may, before the expiration of a licence, apply to the Commission for the renewal or amendment of a licence which shall be dealt with according to the same procedures and considerations as application for a new licence.
- 9) A licence may be cancelled, suspended or varied by the Commission if the licensee -
  - (a) contravenes any conditions of the licence; or
  - (b) fails to make beneficial use of the water or any part thereof.

- 10) No licence shall be varied, suspended or cancelled under this section unless notice of the proposed variation, suspension or cancellation has been served on the licensee and the licensee has been afforded a reasonable opportunity to show cause to the Commission why the licence should not be varied or cancelled.

#### **106. Groundwater conservation areas**

- 1) The Commission may, following public consultation, by order published in the Gazette, declare an area to be a groundwater conservation area in cases where the Commission is satisfied that, in the public interest in such area, special measures for the conservation of groundwater are necessary for the protection -
  - (a) of public water supplies;
  - (b) of the environment; or
  - (c) for water supplies used for agriculture, industry or other private purposes.
- 2) The Commission may impose such requirements, and regulate or prohibit such conduct or activities, in or in relation to groundwater conservation areas such as the Commission may deem necessary to protect the area and its groundwater.

#### **107. General authorizations**

- 1) The Commission may, subject to regulations made under this Act and conditions imposed, authorize all or any category of persons to use water by notice in the Gazette -
  - (a) generally;
  - (b) in relation to a specific water resource; or
  - (c) within an area specified in the notice,
- 2) The notice referred to in subsection (1) of this section -
  - (a) shall state the geographical area in respect of which the general authorization will apply and the date upon which the general authorization will come into force; and
  - (b) may state the date on which the general authorisation will lapse.
- 3) A water use may be authorized under subsection (1) of this section on condition that the user obtains any permission or authority required by any other specified law.
- 4) Before issuing a general authorization, the Commission shall-
  - (a) publish a notice in the Gazette setting out the proposed general authorisation and an address to which and date before which comments are to be submitted;

- (b) consider what further steps, if any, are appropriate to bring the contents to the attention of interested persons and, take those steps which it considers appropriate; and
  - (c) consider all comments received on or before the date specified.
- 5) Any authorization to use water under this section does not replace or limit any entitlement to use water which a person may otherwise have under this Act.

#### **108. Contravention of licence provisions**

- 1) Any person who contravenes the provisions of section 99((1) commits an offence and is liable on conviction to a fine of not less than 100, 000 naira or to imprisonment for a period of 2 years or to both such fine and imprisonment.
- 2) The Commission shall have the authority to order any person who contravenes section 99 (1) of this Act to cease such activities and to make such other orders as may be deemed necessary to prevent continuation or reoccurrence of the contravention.
- 3) The Commission shall have the authority to penalize a licensee for violation of the terms and conditions of his license or to cancel or suspend such license in accordance with the provisions of this Act.

### **PART X- MONITORING, REPORTING AND INFORMATION SYSTEMS**

#### **109. Monitoring Systems**

- 1) The Minister shall, through NWRI, establish and maintain national monitoring systems on water resources.
- 2) The systems shall provide for the collection of appropriate data and information necessary to assess, among other matters -
  - (a) the quantity of water in the various water sources;
  - (b) the quality of water resources;
  - (c) the use of water resources; and
  - (d) the state of the aquatic environment.

#### **110. National information systems on water resources**

The Minister shall, through NWRI, establish national information systems regarding water resources, for the following-

- (a) hydrological and hydro-geological monitoring networks;
- (b) hydro-meteorological monitoring network;
- (c) databases and information systems that summarize the information systems maintained at catchment level under section 111 of this Act; and

- (d) information on water resources of international river basins of which Nigeria is a party.

#### **111. Establishment of Catchment information systems**

- 1) The Commission shall in collaboration with the Nigeria Hydrological Services Agency, establish and maintain catchment-level information systems on water resources.
- 2) The catchment level information systems shall provide for the collection of appropriate data and information necessary to assess, among other matters-
  - (a) the quantity of water in the various water sources;
  - (b) the status of groundwater aquifers;
  - (c) the quality of water resources and state of the aquatic environment;
  - (d) the use of water resources, including a register of water use authorizations for irrigation, municipal and industrial use and other uses;
  - (e) the extent and quality of coverage of water supply and sanitation services; and
  - (f) compliance with water resource quality objectives.
- 3) The Commission shall submit necessary information and reports to the Minister for the purposes of compilation into the national information systems.

#### **112. Information on floods and droughts**

- 1) The Ministry, NWRI, the Commission, and any other water sector institutions shall, make information at their disposal available to the public in an appropriate manner in respect of -
  - (a) a flood which has occurred or is likely to occur;
  - (b) an impending drought or drought which has occurred;
  - (c) a waterworks that might fail or has failed;
  - (d) any risk posed by a dam or other water resources infrastructure;
  - (e) levels likely to be reached by floodwaters from time to time;
  - (f) any risk posed by the quality of any water to life, health or property; and
  - (g) any matter connected with water or water resources which the public needs to know.
- 2) The institutions specified in sub-section (1) of this section, shall where reasonably practicable, establish an early warning system in relation to the events contemplated in that section.
- 3) For the purposes of ensuring that all persons who might be affected have access to information regarding potential flood hazards, no person shall establish a housing project unless the layout plan shows, in a form acceptable

to the local authority concerned, lines indicating the maximum level likely to be reached by floodwater on average once in every 100 years.

### **113.Objectives of national and hydrological area information systems**

The objectives of the national information systems are to -

- (a) store and provide data and information for the protection, sustainable use and management of water resources;
- (b) provide information for the development and implementation of the national water resources strategy; and
- (c) provide information to government, water management institutions, water users and the public on the status of water resources for the purpose of
  - (i) research and development,
  - (ii) planning and environmental management,
  - (iii) determining licence applications; ,
  - (iv) public safety and disaster management, and
  - (v) international cooperation.

### **114.Provision of information**

The institutions specified in S.112 (1) of this Act may require that any person shall, within a reasonable given time or on a regular basis, provide any data, information, documents, samples or materials required for the-

- (a) purposes of respective national or hydrological area monitoring networks or information systems; and
- (b) management and protection of water resources.

### **115.Access to information**

Information contained in any national or hydrological area information system established under this Part shall be made available to the public within a reasonable time frame, subject to any limitations imposed by law and the payment of a reasonable fee.

### **116.Regulations for monitoring, assessment and information**

The Commission and the Nigeria Hydrological Services Agency shall jointly develop guidelines prescribing -

- (a) procedures, standards and methods for monitoring; and
- (b) the nature, type, time period and format of data to be submitted in accordance with this Part of this Act.

## **PART XI- BOREHOLE DRILLING**

### **117. Drilling of borehole**

No person shall commence or carry on any kind of borehole drilling business in Nigeria except a-

- (a) company duly incorporated as a limited liability company or a registered business name under the Companies and Allied Matters Act; or
- (b) body or individual duly authorized by or pursuant to any other Enactment to carry on the business of borehole drilling.

### **118. Issuance of drillers' licence**

Subject to the provisions of this Act, no borehole driller, whether corporate or individual shall commence borehole drilling business in Nigeria unless such driller has issued a Water Well Driller's Licence issued by the Commission.

### **119. Commercial borehole**

- (1) The owner of a borehole constructed for commercial purpose shall obtain a Permit for such Borehole from the commission, the permit shall prescribe the terms and conditions to be observed by the Owner.
- (2) The Commission shall by Regulations determine matters to be considered and provided by the owner in the application for a permit including information on proposed location, use, depth, and other geo-physical details of the borehole which shall be in compliance with the Code of Practice for water well drilling issued by the Commission on the recommendation of the NWRI and the SON.
- (3) A commercial borehole Permit shall be renewable every five years or such other period as the Commission may prescribe.

### **120. Drilling permit**

A drilling permit shall-

- (a) authorize the construction of one or multiple wells in specified location(s) in compliance with the conditions of approval specified for the purpose; and
- (b) be given at the catchment level by the CMO subject to licensing provisions under PART IX of this Act and any regulations made pursuant to this Act.

### **121. Non-compliance**

Any driller who fails to comply with the provisions of this Part of this Act commits an offence and is liable to a fine of 500,000 naira or to imprisonment for a term of 1 year.

## PART XII- GENERAL

### 122. Public Consultation

- 1) A requirement under this Act for a person, in this section called the “**designated person**”, to undertake public consultation in relation to any strategy developed, reserve determined, or other action to be taken, except licensing covered under section 94, that involves notification of the public or a restricted set of water stakeholders, or action proposed to be taken, under this Act shall be construed as a requirement to ensure that this section is complied with in relation to that action.
- 2) The designated person shall publish notice, in relation to the application or proposed action-
  - (a) in the Gazette
  - (b) in at least one national newspaper circulating in the locality to which the application or proposed action relates;
  - (c) at local government offices or other location(s) accessible to those affected by the proposed action; and
  - (d) if the designated person is an institution, on its website.
- 3) The notice shall in each case -
  - (a) set out a summary of the application or proposed action;
  - (b) state the premises at which details of the application or proposed action may be inspected;
  - (c) invite written comments on or objections to the application or proposed action;
  - (d) specify the person or body to which any such comments are to be submitted; and
  - (e) specify a date by which any such comments are required to be received not being a date earlier than 30 days after publication of the notice.
- 4) The designated person shall make arrangements for the public to obtain copies, at reasonable cost, of documents relating to the application or proposed action.
- 5) The designated person shall-
  - (a) consider any written comments received on or before the date specified under subsection (3)(e) of this section;
  - (b) consider any comments whether in writing or not, received at any public meeting held in relation to the application or proposed action or pursuant to any other invitation to comment; and
  - (c) acknowledge receipt of all written comments, prepare a summary of the comments received and publish a consolidated response indicating how the comments have been considered.

- 6) The designated person shall publish, through the same media employed in subsection (2) of this section, notice of the fact that a copy of the decision in writing of the designated person in relation to the application or proposed action, and of the reasons there for, is available for public inspection at the same premises as were notified under subsection (3)(b) of this section.
- 7) Where regulations made under this Act so require, the designated person shall cause a public meeting to be held in relation to the application or proposed action.

### **123. Entry onto land in furtherance of duties**

- 1) The Minister, Executive Secretary of the Commission, Managing Director of an Authority may in writing, appoint any suitable person as an authorized person to perform the functions of this section subject to the limitations of their powers and functions under this Act.
- 2) An authorized person may, at any reasonable time and on production of their identity card or other instrument or certificate of designation if so required, enter a property with the necessary persons, vehicles, equipment and material in order to carry out routine inspections of the use of water or disposal of waste water under any authorization.
- 3) An authorized person, may, at any reasonable time and on production of their identity card or other instrument or certificate of designation if so required, and after giving reasonable notice to the owner or occupier of the property, which notice must state the purpose of the proposed entry, enter a property with the necessary persons, vehicles, equipment and material in order to -
  - (a) clean, repair, maintain, remove or demolish any government waterworks operated by any water management institution;
  - (b) undertake any work necessary for cleaning, clearing, stabilizing and repairing the water resource and protecting the resource quality;
  - (c) establish the suitability of any water resource or site for constructing a waterworks;
  - (d) undertake any work necessary to comply with an obligation imposed on any person under this Act;
  - (e) erect any structure and to install and operate any equipment on a temporary basis for monitoring and gathering information on water resources; or
  - (f) bring heavy equipment on to a property or occupy a property for any length of time.

- 4) An authorized person may, at any reasonable time and without prior notice, enter a property that is not a dwelling under subsection (7) of this section with the necessary persons, vehicles, equipment and material, and perform any action necessary to -
  - (a) investigate whether under this Act, or other law related to the quality of water, any condition attached to any authorized water use by or under this Act or any notice or directive is being contravened;
  - (b) investigate whether any information supplied in connection with the use of water is being contravened;
  - (c) inspect any works including hydraulic works, boreholes, dams dykes or any other apparatus which appears to the water management institution to be one to which this Act or the regulations thereunder apply and which may be capable of being used in contravention of the provisions of this Act or regulations made pursuant thereto;
  - (d) inspect any works or water body poses an imminent or potential threat of pollution of water bodies and take necessary samples for analysis;
  - (e) take a sample, specimen or other permanent evidence of any works or other article to which this Act or the regulations apply or which an authorized person has power to examine;
  - (f) examine any book, document or other record which he reasonably believes may, contain any information relevant to the enforcement of this Act or the Regulations and make copies thereof or extracts therefrom;
  - (g) revoke a licence issued under this Act;
  - (h) support action taken by the environment enforcement agency in obtaining an order of the court to suspend activities that are in contravention of this Act.
- 5) The owner or person in-charge of any premises or other structure whatsoever, entered by an authorized person in pursuance of their duties under this section, shall give all reasonable assistance in their power to the authorised person and shall make available all such information as may be reasonably required for the purpose of this Act.
- 6) The results of any investigation carried out upon any premises shall be notified to the owners of the premises within a reasonable time.
- 7) Notwithstanding any provision of this section an authorized person shall not, under any circumstances, enter a dwelling without the consent of the occupier or without a warrant authorizing entry.

#### **124. Power to acquire land**

Any of the institutions established pursuant to this Act may acquire for its use in furtherance of its duties under this Act and Regulations made pursuant to this Act such land within its area of operation as it shall deem necessary subject to the provisions of the Land Use Act.

#### **125. Appointment of Auditors**

- 1) The Institutions established under this Act shall keep proper accounts in respect of each financial year and shall appoint an Auditor in accordance with the general guidelines for the appointment of auditors issued by the Auditor General for the Federation.
- 2) The accounts kept by the Institution referred to in subsection (1) shall be examined by the Auditors.
- 3) The Auditor shall, within six months after the end of each financial year of each such institution, make a report to the relevant Institution and the President on the statement of account prepared by such Institution and such report shall state, whether or not in the opinion of the Auditor, the statement of account gives an accurate and fair view of the state of the Institution's financial affairs.
- 4) The Auditor General of the Federation may require that an Institution instruct its Auditors to prepare and submit such other reports as he may deem necessary.
- 5) Every institution shall publish its audited statement of accounts in a national daily newspaper or in any other manner as shall be approved by the President within one month of such audited accounts being approved by the Auditor General as final.

#### **126. Powers of the Auditors**

- 1) The Auditor shall be entitled at reasonable hours to require to be produced to him all accounts and other records relating to such accounts kept by the Institution appointing such Auditor or its agents and to require from any Member of the governing or apex body or employee or agent of such Institution, information and explanation as in the opinion of the Auditor are necessary for the purpose of their audit.
- 2) Any of the persons referred to in subsection (1) who fails to comply with any request by the Auditors pursuant to the same subsection commits an offence and is liable on conviction to a fine of not less than 25, 000 naira or to imprisonment for a period not exceeding 3 months or to such fine and imprisonment.

#### **127. Exemption from Liability**

No liability shall attach to the Commission an Authority or any Member or employee of these institutions for any loss or damage sustained by any person as a result of the

bona fide exercise or performance of any function which by or in terms of this Act is conferred or imposed upon the Commission or Authority.

### **PART XIII- OFFENCES**

#### **128.False declaration**

Any person who, in any declaration required to be made under this Act, makes any statement which he knows to be false or does not have reasonable grounds to believe it to be true, commits an offence and is liable on conviction to a fine of 50,000 naira or to imprisonment for a period not exceeding 6 months or to both.

#### **129.Non-compliance**

- 1) No person shall-
  - (a) use water otherwise than as permitted under this Act;
  - (b) fail or refuse to provide -
    - (i) access to any books, accounts, documents or assets; and
    - (ii) data or information,when required to do so under this Act;
  - (c) fail to comply with any condition attached to a license issued or deemed issued under this Act;
  - (d) fail to comply with a directive issued by the Commission;
  - (e) unlawfully and intentionally or negligently tamper or interfere with any waterworks or any seal or measuring device attached to a waterworks;
  - (f) fail to procure a licence or other approval required under this Act upon the expiration of an existing right to use water recognised upon the commencement of this Act;
  - (g) intentionally refuse to perform a duty, or obstruct any other person in the exercise of any power or performance of any duty under this Act;
  - (h) unlawfully and intentionally or negligently commit any act or omission which pollutes or is likely to pollute a water resource;
  - (i) unlawfully and intentionally or negligently commit any act or omission which detrimentally affects or is likely to affect a water resource;
  - (j) fail to comply with a temporary restriction on the use of water in terms of section 97 of this Act; and
  - (k) undertake any prohibited activity in a watershed;

- 2) Any person who contravenes any provision of subsection (1) of this section commits an offence and is liable, on-
  - (a) first conviction, to a fine of 50,000 naira or imprisonment for a term not exceeding 5 years, or both ;
  - (b) second or subsequent conviction, to a fine of 100,000 naira or imprisonment for a period not exceeding 10 years or both.
- 3) Any person who violates the provisions of any regulations made pursuant to this Act, commits an offence and shall on conviction, where no penalty is provided in the Regulations, be liable to a fine of 50,000 naira or to imprisonment for a term not exceeding 2 years or both and an additional fine of 10,000 naira for every day the offence subsists.
- 4) Where an offence under subsection (1) of this section is committed by a body corporate, it shall on conviction, be liable to a minimum fine of 100,000 naira and an additional fine of 20,000 naira for every day the offence subsists.
- 5) The scale of fines specified in this Act shall be reviewed after every 5 years by the National Law Reform Commission in collaboration with the Institutions created under the Act at the instance of the Ministry.

### **130. Enquiry in respect of compensation for harm, loss or damage suffered**

Where a person is convicted of an offence under this Act and another person has suffered harm or loss as a result of the act or omission constituting the offence or damage has been caused to a water resource, the Court may, in the same proceedings on the application of the -

- (a) person who suffered the harm or loss; or
- (b) Commission in respect of the damage caused to a water resource  
in the presence of the convicted person, enquire without pleadings into the harm, loss or damage and determine the extent thereof and consider the award of damages under section 131 of this Act.

### **131. Award of damages**

The Court may after making a determination in accordance with section 130 of this Act-

- (a) award damages for the loss or harm suffered by the person referred to against the accused;
- (b) order the accused to pay for the cost of any remedial measures implemented or to be implemented; and
- (c) order that any remedial measures, be undertaken either by the accused or the Commission.

## **PART XIV- MISCELLANEOUS**

### **132. Adaptation of certain laws**

- (1) The provisions of the Utilities Charges Commission Act 1992, as amended shall not apply with respect to any of the activities for which provision is made under this Act nor to any of the institutions and authorities created pursuant to this Act.
- (2) The provisions of the National Inland Waterways Act, Cap N83 Laws of the Federation of Nigeria, 2004 shall read with such modifications as are necessary to bring it into conformity with the provisions of this Act.
- (3) Where the provisions of National Inland Waterways Act are inconsistent with the provisions of this Act, the provisions of this Act shall prevail and the provisions of National Inland Waterways Act shall to the extent of the inconsistency be void in relation to matters provided for under this Act.

### **133. Repeal of laws**

The following laws are repealed-

- (a) Water Resources Act Cap W2 LFN 2004;
- (b) River Basin Development Authority Act, Cap R9 LFN 2004;
- (c) Nigeria Hydrological Services Agency (Establishment) Act, 2010; and
- (d) National Water Resources Institute Act, Cap N83 LFN 2004.

### **134. Transitional Provisions**

- (1) All licences, permits, approvals, or certificates, issued in respect of the activities specified in Part IX of this Act and, which had effect immediately prior to the commencement of this Act shall continue to have effect for the remainder of its period of validity as if it had been issued under this Act.
- (2) Without prejudice to the generality of subsection ((3) of this section, any licenced, permit, approval or certificate that is in conflict with a Hydrological Area Water Resources Strategy developed under PART VIII of this Act shall be subject to notification by the Commission and shall be varied in accordance with procedures under section 105 (4) of this Act.
- (3) Any tariff, price, levy, or surcharge which, immediately before the commencement of this Act, was chargeable with respect to any activity for which provision is made under this Act shall, after the commencement of this Act and until further provision is made pursuant to this Act by the relevant

authority, continue to be chargeable in respect of the activities and services provided by the relevant authorities.

- (4) Subject to this Act, any right, obligations, or duty accruing to any person or authority by virtue of any licences, permits, approvals or agreements with respect to any of the activities for which provision is made under this Act, in addition to any rights in any land or water vested in any person pursuant to the Water Resources Act, Cap W2 LFN, 2004 and the River Basin Development Authority Act, Cap 396 LFN 1990, shall continue to vest in such person or authority as if it had accrued, vested or been acquired pursuant to this Act.
- (5) Subject to this Act, anything whatsoever made or done under the Water Resources Act Nigeria Hydrological Services Agency, National Water Resources Regulatory Institute Act and the River Basin Development Act shall, after the commencement of this Act continue to have effect as if it had been made or done under this Act.
- (6) Any existing agreement) for the management of water resources in a hydrological area existing at the time this Act enters into force, shall, provided it is generally consistent with the principles of this Act, continue to be effective until it is incorporated into a Hydrological Area Water Resources Strategy.

### 135. Interpretation

In this Act-

**“approved professional person”** means a person registered as a professional engineer in Nigeria by the Council for Regulation of Engineering in Nigeria (COREN), Council for Mining Engineers and Geo-scientists (COMEG) or of another country having at least similar standards for registration and who meets the requirements for inspection of dams as laid down by the Minister in regulations.

**“Authority”** means River Basin Development Authority established under this Act;

**“basic human needs”** means the prescribed minimum quantity and quality of water to households to support life and personal hygiene as quantified in the regulations;

**“basic sanitation”** means the prescribed minimum standards of services necessary for the safe, hygienic and adequate collection, removal, disposal or purification of human excreta, domestic waste-water and sewage from households, including informal households;

**“Basin”** means the land area formed by drainage boundaries of the major river and lake systems as delineated by natural topographical features and international borders, and which may be subdivided into a number of constituent parts, as defined in Second Schedule to this Act, and which includes both surface water and groundwater resources.

**“Basin Strategy”** means a water resources strategy for a Basin under this Act;

**“Borehole”** means any hole that is driven, drilled, dug or bored either cased or uncased by any method into the ground, for the purpose of obtaining water or knowledge of water bearing or soil formation, or for the disposal of surface water drainage.

**“catchment area”** means the area from which any rainfall will drain into the watercourse or watercourses or part of a watercourse, through surface flow to a common point or common points;

**“Catchment Management Office”** means a body established by the Commission in each hydrological zone and headed by a Catchment Management Officer

**“Commission”** means Nigeria Water Resources Regulatory Commission

**“Council”** means the National Council on Water Resources established under this Act;

**“designated person”** means a person nominated under this Act to undertake public consultations in accordance with this Act and its associated rules;

**“drinking water standards”** mean standards for safe drinking water adopted by the Federal Republic of Nigeria.

**“Federation”** means the Federal Republic of Nigeria;

**“groundwater”** means water from aquifers or other underground sources;

**“hydrological zone”** means area defined in Schedule 2

**“hydraulic works”** means all reservoirs, dams, barrages, weirs, canals, channels, tunnels, pipelines, aqueducts, sluices, structures, embankments constructed for the storage, conveyance, supply, measurement, regulation of water and protection from the effects of floods;

**“large dam”** means a structure, whether constructed or proposed to be constructed, which together with its abutments, appurtenant works and foundation, is capable of diverting or storing water and which-

- (a) has a vertical height of fifteen metres or more measured from the non-overflow crest of the wall of the structure to the lowest point on the downstream face of the wall;
- (b) is capable of storing one million or more cubic metres of water at full supply level;
- (c) has foundations which, in the opinion of the Inspectorate as notified to the owner of the structure, may or does cause special or unexpected difficulties; or
- (d) in the opinion of the Inspectorate as notified to the owner of such structure, is a small dam of unusual design.

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

“**licensee**” means the holder of a licence under this Act;

“**Minister**” means the Federal Minister responsible for water resources;

“**Ministry**” means the Federal Ministry responsible for water resources;

“**Nigeria Water Resources Regulatory Commission**” means the body established under this Act with the Responsibility for the Regulation and Management of Water in Nigeria ;

“**person**” includes an individual, company, government agency, partnership or any other association of individuals, whether incorporated or not;

“**owner of a dam**” means the person entitled to divert or store water by means of the large dam or small dam and includes the person in charge of that dam;

“**personal irrigation**” means the use of water for subsistence agriculture and in no case exceeding 0.5 ha.

“**pollution**” means man-made or man-induced alteration of the chemical, physical, biological and radiological integrity of water;

“**prescribed activity**” means any activity requiring a licence under section 97 of this Act;

“**reasonable domestic use**” means an amount needed by a household for drinking, cooking, washing, sanitation and domestic livestock that is set out in the regulations;

“**Reserve**” in relation to a water resource means that quantity of water required under this Act -

- (a) to satisfy basic human needs for all people who are or may be supplied from the water resource; and
- (b) to maintain significant environmental services of the water resource including protection of aquatic ecosystems.

**“safe drinking water”** means water that does not represent any significant risk to health over a lifetime of consumption including different sensitivities that may occur between life stages;

**“Secretary”** means the Secretary to the Government of the Federation;

**“small dam”** means a structure, whether constructed or proposed to be constructed, which, together with its abutments, appurtenant works and foundations, is capable of diverting or storing water and which-

- (a) has a vertical height of more than eight metres but less than fifteen metres measured from the non-overflow crest of the wall of such structure to the lowest point on the downstream face of such wall; or
- (b) is capable of storing more than five hundred thousand but less than one million cubic metres of water at full supply level;

**“State”** means one of the 36 States of the Federal Republic of Nigeria;

**“State water”** means water that comes under the jurisdiction of a State in terms of the Constitution of the Federal Republic of Nigeria.

**“State water agency”** means an agency established by the Government of a State for the delivery of water supply and sanitation services or management of State Water;

**“State regulatory water Commission”** means a body established by a State for the regulation of the provision of water services in urban and semi-urban areas.

**“stream flow reduction activity”** means any activity that reduces runoff from a catchments to a river system;

**“surface water”** means any natural or man-made body of water, flowing or standing, on the surface of the land including rivers, streams, lakes, reservoirs, lagoons, wetlands, swamps, creeks, deltas and estuaries;

**“task”** includes a task relating to designing, constructing, altering, repairing, impounding water in, operating, evaluating the safety of, maintaining, monitoring, abandoning or de-Commissioning a dam;

**“waste”** means any material that is suspended, dissolved or transported in water (including sediment) and which is spilled or deposited on land or into water resources in such volume, composition, or manner as to cause , or be reasonably likely to cause, the water resource to be polluted;

**“water bodies”** means groundwater or surface water;

**“water course”** means any natural channel or depression in which water flows regularly or intermittently;

**“water management area”** means an area over which a water management institution has jurisdiction under this Act;

**“water management institution”** means the National Council on Water Resources, Federal Ministry of Water Resources, Nigeria Water Regulatory Resources Commission, a body established for an international basin, a River Basin Development Authority, a Water User Association, a State Water Agency, or other person who fulfils the functions of a water management institution under this Act;

**“water well”** means borehole;

**“water services”** means any service of or incidental to the supply of water, or the provision of sewerage, sanitation or irrigation;and

**“water users association”** means an association of water users with a common use of water and involved in the local management thereof, either registered under State legislation or recognised as an effective community based organisation.

### **136. Short title**

This Act may be cited as the National Water Resources Act, 2016.

## SCHEDULES

### FIRST SCHEDULE

[Sections 2 (3) and 97]

#### DESIGNATION OF WATER BODIES

Designation of Water Bodies declared as affecting more than one State pursuant to item 64 of the Exclusive Legislative list in Part 1 of the Second Schedule to the Constitution of the Federal Republic of Nigeria, 1999.

All water, whether surface or underground, from time to time contained within or flowing or percolating through such sources, and the tributaries and catchment areas thereof-

- 1) Source 1 – The River Niger from the border between the Federal Republic of Nigeria and the Niger Republic to the outlet of the Kainji reservoir, including –
  - (a) the Sokoto Rima River from the border with the Federal Republic of Nigeria;
  - (b) all the tributaries of the River Niger crossing the border to the Benin Republic; and
  - (c) the Sokoto sedimentary (western) hydro-geological area.
- 2) Source 2 - The River Niger from the outlet of the Kainji reservoir to the point of confluence of the River Niger and the Benue River, including -
  - (a) The Kaduna River with the tributaries;
  - (b) the Gurara River ;
  - (c) all the tributaries of the River Niger crossing the border to the Benin Republic; and
  - (d) the upper Niger sedimentary (Niger) hydro-geological area.
- 3) Source 3 - The Benue River from the border between the Federal Republic of Nigeria and the Republic of Cameroon to the point of confluence of the Benue River and the River Niger, including;
  - (a) the Gongola River ;
  - (b) the Pai-yul River;
  - (c) the Wase River;
  - (d) the Shemankar River;
  - (e) the Dep River;
  - (f) the Mada River
  - (g) all the tributaries of the Benue crossing the international border to the Republic of Cameroon, and
  - (h) the Benue sedimentary (Benue) hydro-geological area.
- 4) Source 4 - The River Niger from the confluence thereof and of the Benue River, including the Delta of the River Niger and all water tributaries or influent thereto or diffluent therefrom, including,
  - (a) the Anambra River ;

- (b) the Imo River;
  - (c) the Akwa Ibom River; and
  - (d) the Aboine River
- 5) Source 5 - All water courses directly or indirectly influent to the Lagoon and other littoral Lagoons and water courses from the border with the Republic of Benin to the mouth of the Forcados River , including;
- (a) the Oshun River
  - (b) the Ogun River
  - (c) the Shasha River;
  - (d) the Owena River; and
  - (e) the Ogun/Oshun sedimentary (south-western) hydro geological area.
- 6) Source 6 - All water rising or situated in the Federal Republic of Nigeria which are directly or indirectly influent into the Lake Chad, including the Chad sedimentary (north-eastern) hydro geological area.
- 7) Source 7 - The Cross River from the boundary between the Federal Republic of Nigeria and the Republic of Cameroon and all water tributaries or influent thereto or diffluent therefrom including the Cross River sedimentary (south-eastern) hydro-geological area.

## SECOND SCHEDULE

[Section 92]

### LIST OF HYDROLOGICAL AREAS

<b>Name of Zone</b>	<b>Member States</b>
HA-I	Katsina, Zamfara, Sokoto, Kebbi, Niger, Kano
HA-II	Niger, Kaduna, Plateau, Kogi, FCT
HA-III	Adamawa , Bauchi, Gombe, Plateau, Taraba, Yobe.
HA-IV	Benue, Nasarawa, Plateau, Taraba
HA-V	Anambra, , Bayelsa, Delta, Imo, Kogi, Rivers
HA-VI	Edo, Ekiti, Lagos, Ogun, Ondo, Osun, Oyo.
HA-VII	Abia, Akwa-Ibom, Cross River, Ebonyi, Enugu, Imo.
HA-VIII	Bauchi, Borno, Gombe, Jigawa, Kano, Yobe.

THIRD SCHEDULE

SECTIONS 45(1)

<b>LIST OF RIVER BASIN DEVELOPMENT AUTHORITIES</b>			
<b>S/N</b>	<b>Column 1 Name of Authority</b>	<b>Column 2 States of Operation</b>	<b>Column 3 Headquarters</b>
1	Anambra-Imo River Basin Development Authority	Comprising Abia, Ebonyi, Enugu, Imo, Anambra States	OWERRI
2	Benin-Owena River Basin Development Authority	Comprising Edo and part of Ekiti States	BENIN-CITY
3	Chad River Basin Development Authority	Comprising Borno, Yobe and part of Adamawa States	MAIDUGURI
4	Cross River Basin Development Authority	Comprising Akwa-Ibom, Cross-River States	CALABAR
5	Hadejia-Jamare River Basin Development Authority	Comprising Kano, Jigawa and part of Bauchi States	KANO
6	Lower Benue River Basin Development Authority	Comprising Benue, Nasarawa, Plateau and part of Kogi States	MAKURDI
7	Lower Niger River Basin Development Authority	Comprising Kwara and part of Kogi States	ILORIN
8	Niger Delta River Basin Development Authority	Comprising Bayelsa, Rivers and part of Delta States	P/HARCOURT
9	Ogun-Oshun River Basin Development Authority	Comprising Lagos, Oyo, Ogun, Osun and part of Ekiti States	ABEOKUTA
10	Sokoto-Rima River Basin Development Authority.	Comprising Kebbi, Sokoto, Katsina and Zamfara States	SOKOTO
11	Upper Benue River Basin Development Authority	Comprising Adamawa, Gombe, Taraba and part of Bauchi States	YOLA

12	Upper Niger River Basin Development Authority	Comprising Niger, FCT and Kaduna States	MINNA
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## FOURTH SCHEDULE

[Section 17 (3)]

### SUPPLEMENTARY PROVISIONS RELATING TO THE BOARD OF NIGERIA WATER REGULATORY RESOURCES COMMISSION, ETC.

1. Subject to this Act the Board may make standing orders to regulate proceedings or those of any of its committees.
2. The quorum of the Board shall be the Chairman or the person presiding at the meeting and 5 other Members of the Board, and the quorum of any Committee of the Board shall be as determined by the Board.
3. The Board shall meet at least four times a year or whenever it is summoned by the Chairman or if the Chairman is required to do so by written notice to him by not less than 4 other Members, he shall summon a meeting of the Board to be held within 14 days of the written notice.
4. At any meeting of the Board, the Chairman shall preside but if he is absent, the Members present at the meeting shall appoint one of their Members to preside.
5. Where the Board desires to obtain the advice of a person on a particular matter, the Board may co-opt him to the Board for such period as it deems fit, but a person who is in attendance by virtue of this sub-paragraph shall not be entitled to vote at any meeting of the Board and shall not count in determining quorum.

#### **Committees**

6. (1) The Board may appoint one or more committees to carry out, on behalf of the Board, such functions as the Board may determine.  
(2) A committee constituted under this paragraph shall, consist of such number of persons as may be determined by the Board and a person shall hold office on the Committee in accordance with the terms of his appointment.  
(3) A decision of a committee of the Board shall be of no effect until it is confirmed by the Board.
7. At any time when the office of the Chairman is vacant or the Chairman is in the opinion of the Board temporarily or permanently unable to perform the functions of his

office, a Member of the Board duly appointed by the Minister shall perform those functions and references in this Schedule to the Chairman shall be construed accordingly.

8. The fixing of the seal of the Commission shall be authenticated by the signature of the Chairman or of some other Member authorized generally or specially by the board to act for that purpose for the Commission.

## **FIFTH SCHEDULE**

[Section 46 (3),]

### **PROCEEDINGS OF THE BOARDS OF AGENCIES ESTABLISHED UNDER PARTS V, VI AND VII**

#### **Board Meetings**

1. The Board of an Agency established under Part V, VI or VII of this Act shall meet at least four times a year or whenever it is summoned by the Chairman or if the Chairman is required to do so by written notice to him by not less than 4 other Members, he shall summon a meeting of the Board to be held within 14 days of the written notice.
2. At any meeting of a Board, the Chairman shall preside but if he is absent, the Members present at the meeting shall appoint one of their Members to preside.
3. Subject to the provisions of this Act, a Board may make standing orders with respect to the holding of meetings, the nature of notice to be given, the proceedings thereat, the keeping of minutes of such proceedings and the custody and production for inspection of such minutes.
4. Where the Board desires to obtain the advice of a person on a particular matter, the Board may co-opt him to the Board for such period as it deems fit, but a person who is in attendance by virtue of this sub-paragraph shall not be entitled to vote at any meeting of the Board and shall not count in determining quorum.
5. Any Member of the Board or any of its Committees having a personal interest in any contract or arrangement entered into or proposed to be entered into by the Agency or any of its Committees shall declare his interest to the Board or Committee and shall not vote on any question relating to the contract or arrangement. Such declaration shall be recorded in the minutes of meeting.
6. The validity of any proceeding of the Board or of any of its committee shall not be affected;
  - (a) by any vacancy in the Membership of the Board or any such committees;

- (b) by any defect in the appointment of any Member;
  - (c) by reason of the fact that any person not entitled to do so took part in the proceedings.
7. Questions
    - 1) Every question put before the Board at a meeting shall be decided by a majority of the votes of the Members present and voting.
    - 2) The chairman shall, at any meeting have a vote, and in the case of an equality of votes, may exercise a casting vote.
  8. Committees
    - 1) The Board may appoint one or more committees to carry out, on behalf of the Board, such functions as the Board may determine.
    - 2) A committee constituted under this paragraph shall, consist of such number of persons as may be determined by the Board and a person shall hold office on the Committee in accordance with the terms of his appointment.
    - 3) A decision of a committee of the Board shall be of no effect until it is confirmed by the Board.
  9. Subject to this Act the Board may make standing orders to regulate proceedings or those of any of its committees.
  10. At any time when the office of the Chairman is vacant or the Chairman is in the opinion of the Board temporarily or permanently unable to perform the functions of his office, a Member of the Board duly appointed by the Minister shall perform those functions and references in this Schedule to the Chairman shall be construed accordingly.
  11. The fixing of the seal of the Commission shall be authenticated by the signature of the Chairman or of some other Member authorized generally or specially by the board to act for that purpose for the Commission.

### **EXPLANATORY MEMORANDUM**

*(This Memorandum does not form part of the above Act  
but is intended to explain its purport)*

This Act repeals the Water Resources Act, Cap W2 LFN 2004, River Basin Development Act, Cap R9 LFN 2004, National Water Resources Institute Act, Cap N83 LFN 2004, Nigeria Hydrological Services Agency (Establishment) Act, 2010 and establish the National Council on Water Resources, Nigeria Water Resources Regulatory Commission, River Basin Development Authorities, Nigeria Hydrological Services Agency and National Water

Resources Institute to provide for the regulation equitable and sustainable development, management, use and conservation of Nigeria's surface water and groundwater resources.