

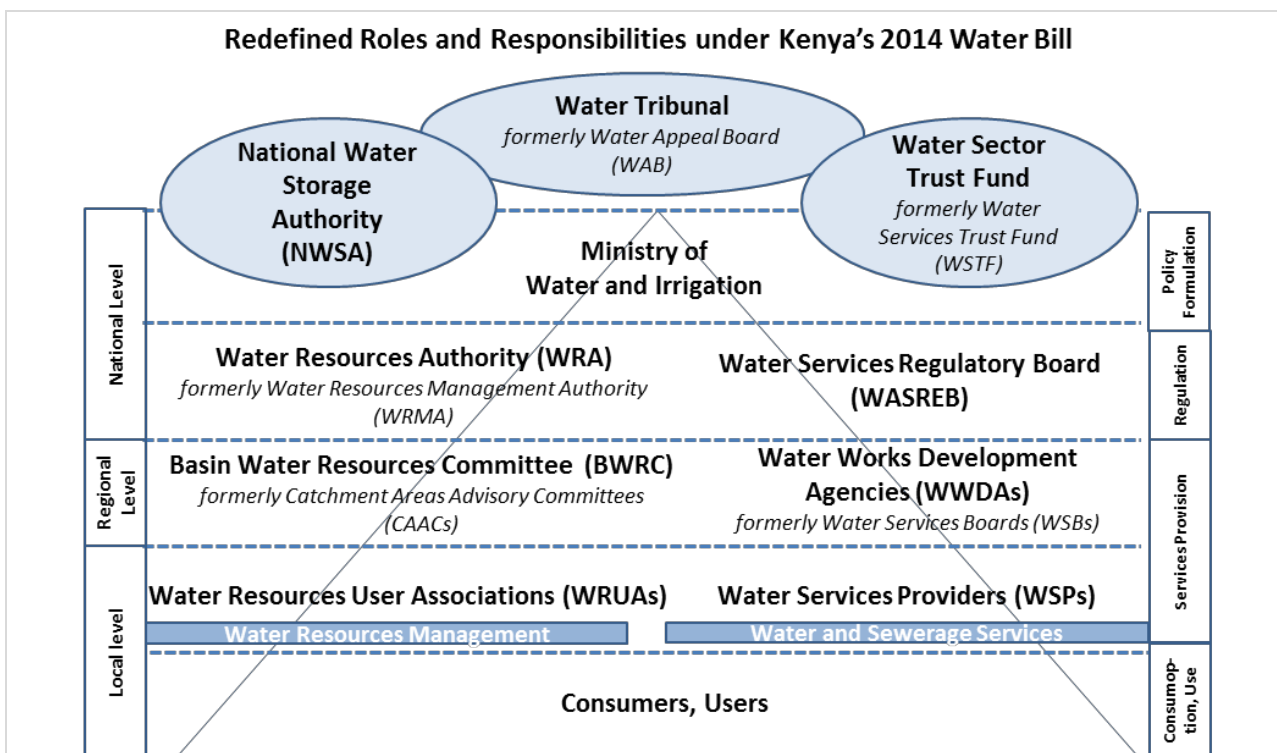
## Understanding the Kenya 2016 Water Act

*Redefined roles and responsibilities for the management, development and regulation of water resources and water services*

The passage of Kenya's 2010 Constitution has had a wide set of implications for the water sector. Primarily, the Constitution acknowledges access to clean and safe water as a basic human right and assigns the responsibility for water supply and sanitation service provision to 47 newly established counties. The purpose of the 2016 Water Act is to align the water sector with the Constitution's primary objective of devolution. The act recognizes that water related functions are a shared responsibility between the national government and the county government. It also gives priority to use of abstracted water for domestic purposes over irrigation and other uses.

Other key provisions in the Constitution that touch upon water include: affirmative action programs to ensure water for marginalized groups; the responsibility of the national government for management of the use of international waters and water resources and definition of national versus county public works.

As a result, the following institutions have been established and their roles and responsibilities defined and discussed below.



The 2014 Water Act established the:

### Water Tribunal

The new Water Tribunal includes more members and is present in more locations to deal with disputes.

### Water Sector Trust Fund

Source of funds for the WSTF mandate have been expanded to include funds from national budget, county government, equalization fund, donations and grants, among others.

### National Water Storage Authority

The NWSA is responsible for development and management of national public water works for water resource management and flood control.

## Water Resource Management

### Water Resources Authority (WRA)

The objective of the new WRA is to protect, conserve, control and regulate use of water resources through the establishment of a national water resource strategy. In addition, the WRA is responsible for:

- formulation and enforcement of standards, procedures and regulation for the management and use of water resources;
- policy development;
- planning and issuing of water abstraction permits; and
- setting and collecting permits and water use fees.

### Basin Water Resource Committee (BWRC)

Catchment Areas Advisory Committees, which previously played a regulatory function at the regional level, have been replaced with BWRCs. The latter will be committees of WRA whose members will be drawn from stakeholders within the basin and aim to achieve wide stakeholder participation in the management of water resources at the basin level. The new BWRCs will retain the same regional functions as the former CAACs, which is: to manage catchments, to facilitate establishment of Water Resource User Associations and to play an advisory role to the WRA.

The county government will have a representative in the BWRC whose water resources rest within the county government's geographical jurisdiction.

### Water Resource User Associations (WRUAs)

The act provides for establishment of WRUAs, which are community based associations for collective management of water resources and resolution of conflicts concerning the use of water resources. The BWRC may contract WRUAs as agents to perform certain duties in water resource management.

#### Implications for the private sector

The act has established several institutions such as BWRCs and WRUAs that provide different fora for private sector participation in issues of water resource management.

Devolution of water service provision to the county government will have a huge implication to commercial financing of WSPs. This may have an impact on the risk profile of WSPs leading to either lack of access to commercial finance or high costs of borrowing.

By increasing the mandate of the WRA to include flood mitigation, the act strengthens the WRA's regulatory role. This will impact major water abstractors such as large agriculture water users.

The new law has made provision for Public-Private-Partnerships (PPPs) such that Water Service Providers shall be able to engage in partnerships with either public or private entities subject to approval by the regulatory board. The Act has also clarified mandates of county and national governments which were required for PPPs to take off.

## Water Supply and Sewerage Services

### Water Services Regulatory Board (WASREB)

The constitutionally guaranteed right to water and the need to protect consumers provides a strong basis for the national regulation and monitoring of water and sewerage services. This is critical to protect the interests and rights of consumers from exploitation and to set minimum national standards. As such, the functions of WASREB have been maintained in the 2016 act. WASREB holds the mandate to approve tariffs, monitor and enforce water services standards and issue licenses to Water Service Providers.

### Water Works Development Agencies (WWDAs)

The 2016 Water act defines national public water works as water works whose water resource is: cross county in nature, financed out of the national government share of national revenue and intended to serve a function of the national government. These may include assets such as water storage and water works for the bulk distribution of water services. Furthermore, it specifies that development and management of national public works will be undertaken by the WWDAs whilst county public works will be a responsibility of the respective county.

The 2016 Water Act provides for handing over of national public works upon commissioning from WWDAs to the county government, joint committee or authority of the county governments if the water works' assets exclusively rest geographically within their jurisdiction.

The national government has the responsibility of supporting county governments to perform their respective duties. As such, upon commissioning of cross county assets, in a case where several county governments collectively want to transfer these assets from WWDA, the Act makes provision for establishment of an authority of county governments or a joint committee. Transfer of the ownership and management of these assets from the WWDA can then be done to the authority of the county governments or joint committee.

WWDAs are responsible for the:

- development, maintenance and management of national public works;
- operation of the national public waterworks and provision of water services as a water service provider, until the responsibility for the operation and management of the waterworks is handed over to the county government, joint committee or CCA;
- provision of technical services and capacity building to county governments and water service providers within its region.

### Water Services Providers (WSPs)

WSPs are now the responsibility of county governments who have the mandate to provide water services. WSPs are responsible for provision of water services within the area specified in their licenses and development of county assets. Currently, WSBs sign service level agreements with WSPs and the regulator issues licenses to WSB. Under the new Water Act 2016, WSPs must apply again for new licenses to WASREB.

## Frequently asked questions

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**Q: Who owns the water companies?**

A: Water Service Providers will be the responsibility of County Government on behalf of the public. The Constitution of Kenya mandates service provision to the County Government.

**Q: Will the unit cost of water go up?**

A: Cost will not increase arbitrarily. Water tariffs are utility based however, WASREB will have the power to evaluate, recommend and approve imposition of tariffs in line with consumer protection standards. Should a utility make plans to change the tariff, they have to make the application to WASREB for review and approval and part of the process involves informing the public.

**Q: Who should I contact if there are water shortages and sewerage challenges in my community?**

A: Every WSP will establish a mechanism for handling customer complaints which meets the standards set by the regulatory board. Some utilities already have mechanisms such as hotlines and SMS codes.

**Q: The Act covers water services and water resource management. What about irrigation?**

A: The Irrigation Bill is currently underway.