SUMMARY OF THE WATER ACT, 2016

I. Introduction

The Water Act provides for the regulation, management and development of water resources and water and sewerage services. The Act gives effect to the devolution of the water sector. The roles of the National government are to regulate the management and use of water resources and the development of National Water Works, that is, the cross-county water fixtures financed out of the national budget (Sections 6 & 8). County governments are responsible for water supply, the provision of sanitation services and the development of County water works (Section 77 & 69).

The Act gives priority to the use of water for domestic use and allows access without a permit in this case (Section 8, 3 & 37, 1, a). Citizens also have a right to clean and safe water in adequate quantities (Section 63) as stipulated in Article 43 (d) of the Constitution. Further, the Act provides for affirmative action programmes to ensure that minorities and marginalized groups have reasonable access to water in line Article 56 of the Constitution (Section 114).

The Act provides for the formulation of a National Water Resource Strategy (Article 10) which will be reviewed every three years and revised every five years. The purpose of the strategy is to provide for the protection, conservation, control and management of water resources (Article 10, 2). Other strategies provided for are the Basin area water resources management strategy (Section 28) and National Water Service Strategy (Section 64).

II. Institutions established under the Act

National Level (Regulation)

a) Water Resources Authority (Part 3): This authority replaces the Water Resources Management Authority (WRMA). It is established to regulate the management and use of water resources as well as issue water abstraction permits among other functions.

b) National Water Harvesting and Storage Authority (Section 30): The Authority is responsible for the development and management of National public water works for water resources storage and flood control.

c) Water Tribunal (Section 119): The tribunal is established to hear appeals and disputes concerning water resources. A person aggrieved by the decision of the tribunal may appeal
to the Land and Environment Court established under Article 162 (2) of the constitution (Section 55, 1).

d) **Water Sector Trust Fund (Part V):** The object of the Trust fund is to provide grants to counties to assist in the development and management of water services in marginalized and underserved areas. The funds will consist of monies from national budgetary allocations, County government, the Equalization Fund, donations and grants among others. The fund will also contribute in providing incentive programmes for water resources management including disaster management, climate change adaptation and mitigation (Section 116, 1, i).

e) **Water Services Regulatory Board (Section 70):** The Board is responsible for the protection of the interests and rights of consumers in the provision of water services. The board is expected to set national standards for the provision of water services, approve water and sewerage tariffs, set license standards and issue licenses to Water Service Providers among other functions.

**Regional Level (Service Provision)**

a) **Basin Water Resources Committee (Section 25):** These committees are responsible for the management and regulation of water resources within a respective basin area. They also facilitate the establishment of Water Resource Users associations (WRUAs). The committee membership constitutes a representative of each County government which falls within the basin area.

b) **Water Works Development Agencies (Section 65):** The agencies are responsible for the development of the national public water works. They operate the water works until they are taken over by a County government, joint committee, and authority of County governments or water services provider within the area of jurisdiction.

**Local level (Service Provision)**

a) **Water Resource Users Associations (WRUAs):** The Act provides for the establishment of WRUAs at the sub-basin level which are community based associations (Section 29). They are established for collaborative management of water resources and resolution of conflicts concerning the use of water resources.

b) **Water Services Providers (Section 77):** Water Service providers are commissioned by County governments. They may be public companies or other bodies providing water
services as may be approved by the regulatory board. Their responsibility is the provision of water services within the area specified in the license and development of County assets for water service provision.

III. Provisions of the Act relevant to forestry

a) Protection of catchment areas

Section 22 (1) of the Act provides for the protection of water catchments to protect vulnerable water resources. Section 104 also provides that a licensee of water abstraction or use may enter into an agreement with any person for the protection of catchment areas, drainage of land, carrying out soil conservation measures, the control of vegetation and preservation of the quality and quantity of water.

b) Protection of ground water

Section 23, 1 of the Act provides for the conservation of ground water for public interest, the recharge of aquifers and ecological stability. The Act also provides control measures for the loss of ground water through wastage and excessive abstraction in the fourth schedule. It also provides preventive measures against contamination and pollution of ground water.

c) Environmental Conservation

The Act aligns with the Environmental Management and Conservation (Amendment) Act, 2015 in Section 40 (4) which provides for an Environmental Impact Assessment before issuance of a water abstraction or use permit where applicable. Section 107 provides that a licensee may construct and maintain drains, sewers and other works for intercepting, treating or disposing of any foul water arising or flowing upon the land to prevent pollution. Section 108 (1) also provides that a licensee receiving trade effluent into its sewerage system should put in place measures to prevent pollution of the environment. The source of water supply is also protected from pollution or other degradation (Section 110, 2). Section 143 provides for the protection of water resources from obstruction and pollution.