

NIGERIA: WATER RESOURCES DECREE 1993

Decree No.101

Commencement

[23rd August 1993]

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THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows-

Vesting of rights and control of water in the Federal Government

1.-(1) The right to the use and control of all surface and groundwater and of all water in any water-course affecting more than one State as described in Schedule to this Decree, together with the bed and banks thereof, are by virtue of this Decree and without further assurance vested in the Government of the Federation for the purpose of-

- (a) promoting the optimum planning, development and use of the Nigeria's water resources;
- (b) ensuring the co-ordination of such activities as are likely to influence the quality, quantity; distribution, use and management of water;
- (c) ensuring the application of appropriate standards and techniques for the investigation, use, control, protection, management and administration of water resources; and
- (d) facilitating technical assistance and rehabilitation for water supplies.

(2) The provisions of subsection (1) of this section, shall not be construed as infringing or constituting a compulsory acquisition of any right over, or interest in property.

Rights to take and use of water.

2. Notwithstanding the provisions of section 1 of this Decree-

- (a) any person -
 - (i) may take water without charge for his domestic purpose or for watering his livestock from any water course to which the public has free access; or
 - (ii) may use water for the purpose of fishing or for navigation to the extent that such use is not inconsistent with any other law for the time being in force; or
 - (iii) who, has a statutory or customary right of occupancy to any land, may take and use water from the underground water source or if abutting

on the bank of any water course, from that water course, without charge for domestic purposes, for watering livestock and for personal irrigation schemes.

Acquisition for rights to use or take water

3. Any person or any public authority may acquire a right to use or take water from any water-course or any groundwater described in the Schedule to this Decree for any purpose in accordance with the provisions of this Decree and any regulations made pursuant thereto.

Control of groundwater

4. Notwithstanding the provisions of section 2 of this Decree, the Secretary shall have power to -

- (a) define the places from which or the manner in which and the times at which such water may be taken or used ;
- (b) fix, in times of actual or anticipated shortage of water, the amount which may be taken by any person for such purposes ;
- (c) prohibit temporarily or permanently, the taking or use of water from any source for such purposes, when in his opinion, the taking or use of such water would be hazardous to health ;
- (d) revoke a right to use or take water when such a right is likely to override the public interest ;
- (e) require to be examined or licensed, any person undertaking the work of drilling for water ;
- (f) regulate the place, depth, manner of construction or mode of operation of any bore-hole or well; and
- (g) define the times at which water may be taken from such bore-hole or well.

Administration of provisions of Decree

5. The Secretary shall in the discharge of his duties under this Decree have regard to the need to make proper provision for -

- (a) the adequate supplies of suitable water for -
 - (i) the watering of animals, irrigation, agricultural purposes, domestic, and non domestic use, and
 - (ii) the generation of hydro-electric energy for navigation, fisheries and recreation ;

- (b) the supply of water for the drainage, the safe disposal of sewage, effluent and water-borne wastes and the control and prevention of pollution ;
- (c) the control and prevention of flooding, soil erosion and of damage to watershed areas ;
- (d) the reclamation of land ;
- (e) the protection of inland and estuarine fisheries, flora and fauna ;
- (f) ensuring that the possible consequences of particular development proposals on the environment are properly investigated and considered before each proposal is approved ;
- (g) the procedures to facilitate and -
 - (i) ensure the co-ordination of all detailed planning for the investigation, use, control, protection, management and administration of water resources,
 - (ii) direct the co-ordinated execution of approved plans and projects by public authorities; and
- (h) the procedures for technical assistance and rehabilitation and improvement support to public authorities having responsibility for public water supply.

Master plan

6. It shall be the duty of the Secretary to draw up from time to time, an up-to-date comprehensive master plan for the development, use, control, protection, management and administration of all water resources and to periodically review in the light of prevailing economic, financial or technological conditions, activities, plans and proposals of public authorities exercising powers relating to water resources.

Power to withhold release of fund

7. The President, Commander-in-Chief of the Armed Forces may direct a Ministry or appropriate agency not to release any fund for a water project that has not been included in the master plan prepared by the Secretary pursuant to section 6 of this Decree.

Powers of the Secretary

- 8. In the discharge of his duties under this Decree, the Secretary shall have power to-
 - (a) ask for and obtain from any authority or person, plan or proposals relating to the investigation, use, control, protection, management or administration of water projects;

(b) prohibit the storage, diversion, pumping or use of any water or the construction, maintenance, operation, repair or alteration of any bore-hole or any hydraulic works;

(c) require information, relating to water-samples or core-samples by any person who constructs, uses, alters, operates, maintains or repairs any bore hole or any hydraulic works or who has a statutory or customary right of occupancy to any area of land on which such bore-hole or hydraulic work is situated or who is in actual occupation of such land, in such form and at such times as the Secretary may require;

(d) prohibit or regulate the carrying out of any activities on land or water which is likely to interfere with the quantity or quality of any water in any water course or groundwater;

(e) require any person who has a statutory or customary right of occupancy to, or is in actual occupation of any land to construct and maintain on such land such works for the conservation of land or water resources as are specified by the Secretary;

(f) authorise, control or undertake construction, operation, maintenance, repair or alteration of such hydraulic works as may be specified by the Secretary;

(g) supply or sell raw water to any person or public authority on such terms or conditions as the Secretary may determine.

Unlawful diversion of water, etc.

9.-(1) As from the commencement of this Decree, the diversion, storage, pumping or use on a commercial scale of any water or the construction, maintenance, operation, repair of any bore-hole or any hydraulic works shall be carried out only in accordance with a licence issued pursuant to this Decree or regulations made thereunder.

(2) A person in breach of the provisions of subsection (1) of this section commits an offence under this Decree.

Application for licence

10. An application for the grant of a licence for the purposes mentioned in section 9 of this Decree shall be made to the Secretary in such form and manner and shall contain or be accompanied by such information and documents as the Secretary may, from time to time, prescribe.

Issuing of licence

11. The Secretary shall before issuing a licence consider the allocation of usable water in the water course or groundwater in the particular area, the anticipated shortage of water and may -

- (a) refuse to issue a licence for carrying out of any activity on water which in his opinion is likely to interfere with the quantity or quality of water in a water course or groundwater; or
- (b) cancel or modify any licence for the diversion and use of water for the purpose of accommodating the needs of another user of water to which that licence relates; or
- (c) modify, suspend or cancel any licence granted under this Decree on account of non - use of a licence for such terms as he may determine.

Power to order removal of hydraulic work

12. The Secretary may require any person who has a statutory or customary right of occupancy over any land served by any hydraulic works, which has been constructed, maintained, operated, repaired or altered without, or in breach of the provisions of any licence either to remove such hydraulic works or to modify its construction, operation or maintenance within a specified time.

Licence fee

13. The Secretary shall have power to imposed a fee at such rates as may be determined on the issue of a licence to-

- (a) divert, store, pump, use or impound raw water for any purposes other than the purposes referred to in section 2 of this Decree; or
- (b) any person or public authority seeking to construct, operate, maintain, repair or alter any hydraulic works in or adjacent to any water source.

Power to impose fees, rates and charges

14. The Secretary may by regulations or otherwise, and subject to such terms and conditions as he may prescribe, authorise any authority to impose charges in connection with the provision of any service prescribed pursuant to this Decree or regulations made thereunder including any charge by way of contribution to the costs of any works associated with the provision of such services paid for from public funds.

Power to fix and levy rates

15.-(1) The Secretary may, by regulations or otherwise, fix the maximum rates which may be levied in connection with the abstraction and use of water and may authorise any authority to assess, levy and recover any rate so prescribed.

- (2) A water abstraction rate levied under this section, shall not be levied in respect of water abstracted from a water related work paid for from public funds if the charges are levied on such water for the recovery of the cost of the works made pursuant to section 14 of this Decree.

Recovery of unpaid money

16. Whenever any charge or rate imposed or levied pursuant to this Decree remains unpaid for a period of thirty days from the due date thereof the Secretary may -

- (a) issue proceedings in any court of competent jurisdiction for its recovery together with any costs incurred in connection therewith; and
- (b) suspend any licence to which the unpaid charges or rates relates until such time as they are paid or recovered.

Delegation of power

17. The Secretary may, delegate in writing to any person such of his powers or functions under this Decree, as he may deem appropriate, but the delegation effected under this section, shall not prevent the exercise by the Secretary of the power so delegated.

Penalties

18.-(1) Any person who contravenes or fails to comply with any provisions of this Decree, or any regulation, made thereunder commits an offence and is liable upon conviction to a fine not exceeding ₦2,000 or to a term of imprisonment not exceeding six months or to both such fine and imprisonment, and, in the case of a continuing offence to an additional fine not exceeding ₦ 100 for every day or part of a day that the offence continues.

(2) Where an offence under this Decree has been committed by a body corporate or firm or other association of individuals, a person who at the time of the commission of the offence was any officer thereof or was purporting to act in such capacity is severally guilty of that offence and liable to be prosecuted against and punished for the offence in like manner as if he had himself committed the offence, unless he proves that the act or omission constituting the offence took place without his knowledge, consent or connivance.

Regulations

19. The Secretary may make regulations generally for the due administration of the provisions of this Decree.

Interpretation

20. In this Decree, unless the context otherwise requires -

“authority” means any person or body appointed or constituted to exercise any power or functions or to whom any power has been delegated pursuant to this Decree or any regulations made thereunder;

“bed and bank” with reference to any water-course as defined in this Decree includes the land usually or occasionally inundated by the water thereof, together with such soil, rock or any other material immediately adjacent thereto which in the opinion of the Secretary is necessary to support the proper maintenance thereof but does not include any land beyond the above mentioned land, soil, rock or other materials, which is occasionally covered by the flood waters of such water-course;

“bank” means the relatively steep portions of the first mentioned land ;

“bed” means the relatively flat land;

“bore” means a bore, well, gallery, drive or excavation or any artificially constructed or improved underground cavity;

“charge” includes any fee, rate, or charge imposed, levied or made pursuant to this Decree;

“domestic use” means the use for drinking, washing, bathing, cooling, gardening or for any other domestic purpose in any residential premises utilised for non profit motives;

“environment” includes all aspects of the surroundings of man whether affecting him as an individual or in his social and aesthetic factors of those surroundings;

“groundwater” means any water occurring in or obtained from any geological structure or formation or artificial land-fill, permeated or capable of being permeated occasionally with water and includes any matter dissolved or suspended in such water;

“non-domestic use” means the use of water from any water works for profit or gain;

“pollution” means any direct or indirect alteration of the physical, thermal, chemical, biological or radioactive properties of any water or groundwater so as to render such water or groundwater less fit for any beneficial purpose for which it is, or may reasonably be used, or to cause a condition which is hazardous or potentially hazardous to public health, safety, welfare to animals, birds, wildlife, fish or aquatic life, or to plants;

“public authority” includes the Secretary or any member of the civil service of the Federation, State or Local Government or of any commission, authority or statutory corporation established by the Government of the Federation, State or Local Government;

“public use” means any non-domestic or agricultural use from any water works provided through any fountain, standpipe, valve, tap or appliance used by the public;

“Secretary” means the Secretary charged with responsibility for matters relating to water resources;

“small irrigation schemes” means irrigation infrastructural development covering not more than thirty hectares;

“water course” includes any river, creek, stream, spring, lake, lagoon, swamp, marsh or any other course for water in which water flows or is contained either usually or occasionally and includes any natural channel artificially imposed, or any artificial channel artificially improved, or any artificial channel of work which has changed the course or boundaries of any river, creek, stream, water-course, spring, lake, lagoon, swamp, marsh or any other course for water;

“waterworks” means reservoir, dam, tank, cistern, tunnel, treatment plant, conduit, main, pipe, fountain, valve, pump, engine or other source of supply and such structures or appliances as are used or constructed for the storage, conveyance, supply, measurement or regulation of water.

Citation

21. This Decree may be cited as the Water Resources Decree 1993.

SCHEDULE

Sections 1 and 3

Waters-Sources declared as affecting more than one State.

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:

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) hydrogeological area.

SOURCE 2 - The River Niger from the outlet of the Kainji reservoir to the point of confluence of the River Niger and of 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;
- (d) the Upper Niger Sedimentary (Niger) hydrogeological area.

SOURCE 3 - The Benue River from the border between the Federal Republic of Nigeria and the Republic of Cameroons to the point or confidence 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 River - [text omitted as unreadable]
- (h) the Benue Sedimentary (Benue - [text omitted as unreadable])

SOURCE 4 - The River Niger from the - [text omitted as unreadable] Benue River, including the - [text omitted as unreadable] all water tributaries or - [text omitted as unreadable] including

- (a) the Anambra River;
- (b) the Imo River;
- (c) the Akwa-Ibom River; and
- (d) the Aboine River;

SOURCE 5 - All water-courses directly or indirectly influent to the Lagoon and other littoral lagoons and water-course 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) hydrogeological area.

SOURCE 6 - All water-courses rising or situated in the Federal Republic of Nigeria which are directly or indirectly influent to the Lake Chad, including the Chad Sedimentary (North-Eastern) hydrogeological area.

SOURCE 7- The Cross River from the boundary between the Federal Republic of Nigeria and the Republic of Cameroons and all water tributaries or influent thereto or diffluent therefrom, including the Cross River Sedimentary (South-Eastern) hydrogeological area.

MADE at Abuja this 23rd day of August 1993

GENERAL I. B. BABANGIDA
President, Commander-in-Chief
of the Armed Forces,
Federal Republic of Nigeria.

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