

Draft

Review of Grenada's Water Legislation

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Acronyms and Abbreviations

| | | | |
|---------|---|--------|--|
| CARPHA | Caribbean Public Health Agency | MoH | Ministry of Health |
| CBO | Community-based Organisation | NAWASA | National Water and Sewerage Authority |
| CCCCC | Caribbean Community Climate Change Centre | NGO | Non-Governmental Organisation |
| C&PM | Carriacou and Petite Martinique | NWP | National Water Policy |
| G-CREWS | Climate-Resilient Water Sector in Grenada | OECS | Organisation of Eastern Caribbean States |
| GDBS | Grenada Bureau of Standards | PURC | Public Utilities Regulatory Commission |
| G-WaSP | Grenada Water Stakeholder Platform | RWH | Rainwater harvesting |
| IWRM | Integrated Water Resources Management | WRMU | Water Resources Management Unit |

1. Introduction

1.1 Background

The Government of Grenada¹ has agreed on the need to reform the water sector in the country to provide a more efficient and equitable framework in order to maximize the contribution of the water sector to sustainable economic, social and environmental development. A Grenada National Water Policy was first developed and approved in 2007, and supporting water legislation was drafted in 2008. The principal elements of the Policy asserted that there must be established an institutional framework for the *integrated management of water resources*; and there must be a *separation in the management of water resources and water services*. The Policy and legislation, however, were not implemented or promulgated.

This legislative review represents the third output of a major review of the Grenada National Water Policy supported by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), and supports the Grenada National Water Policy, 2019 (NWP) and Grenada IWRM Plan 2019 (IWRM Plan). The objective of the review is to identify any gaps which may have arisen in the draft water legislation in the last decade.

In the NWP the Government of Grenada has set out the Nation's vision for the water sector, whilst the IWRM Plan provides a road map for the realization of the objectives of the NWP, that is, how the *intentions* can be turned into *actions*.

1.2 Context

Challenges to implementation of the 2007 National Water Policy

The lack of implementation of the 2007 National Water Policy was explored in various stakeholder consultations, and the main implementation obstacles were identified as: a lack of required financial resources; *a lack of adequate political will*; and given the state of the national and global economy, implementation of water sector reform was not given priority.

National Water Policy 2019

For the purposes of water policy formulation, the water sector includes direct consumption and use of water (including harvested rainwater); land drainage; irrigation; industrial and other abstraction; in-stream use of water for recreation, amenity and ecology; environmental protection; treatment and disposal of sewage and industrial effluent; and associated infrastructure.

The revised and updated 2019 NWP places greater emphasis on climate change resilience, gender mainstreaming, Carriacou and Petite Martinique (C&PM), and defines the policy vision as: *“A water secure Grenada in which present and future generations have sustainable access to adequate, safe and affordable water, and sanitation, to maintain and enhance the quality of their lives and livelihoods and the integrity of natural ecosystems.”*

¹ 'Grenada' refers to the tri-island State of Grenada which includes the islands of Carriacou and Petite Martinique.

The Goal of the NWP is to provide sustainable management of the country's water resources, through stakeholder participation and contribution to economic, social and environmental development in an efficient and equitable manner.

Further, to accelerate progress towards the achievement of the Policy Goal, the National Water Policy defines 13 Policy Objectives, grouped under four main Outcomes, as follows:

- Outcome 1 - Enhanced enabling environment and improved, 'climate smart' water-related behavior;
- Outcome 2 - Increased water access, availability and quality;
- Outcome 3 - Increased water use efficiency and conservation; and
- Outcome 4 - Strengthened preparedness for climate variability and extremes.

IWRM Plan 2019

The IWRM Plan is structured to guide implementation of, and track progress toward, the National Water Policy goal and vision, and presents 58 priority actions to be taken, within the framework of the policy outcomes and defined objectives. These actions, to be carried out over the period 2019-2035, are categorized as high- medium- or low-priority, to enable a step-wise approach to implementation.

Further, to enable monitoring of the achievement of results, the proposed implementation timeframe and estimated cost for each action is given, along with the lead implementing agency and collaborators, and comments which link the action to a prior national policy document and/or plan.

As shown at **Figure 1.1**, the total estimated funding allocation for the IWRM Plan is EC\$135 million. Most of the priority actions, amounting to EC\$104 million or 77 percent of the total funding allocation, have been designated as 'High Priority' – of which about EC\$88 million or 65 percent of the total funding allocation is secured under the G-CREWS project (GCF, 2018).

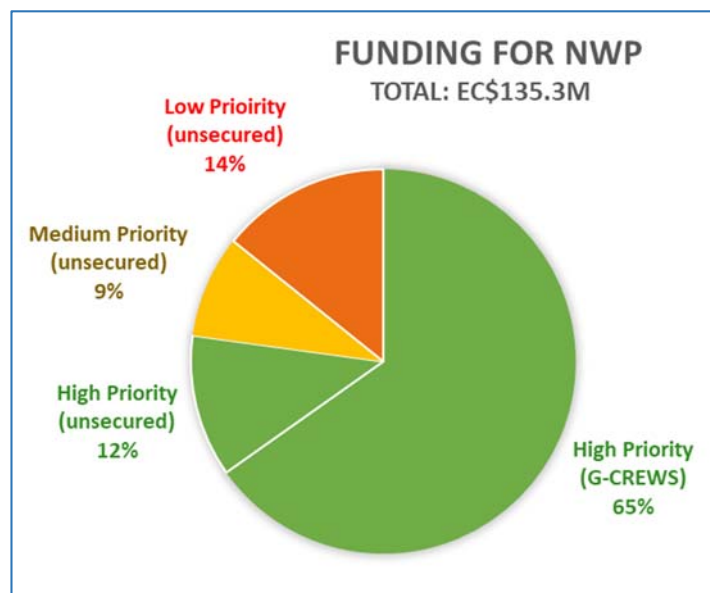


Figure 1.1 Funding for IWRM Plan by category

2. Existing Regulatory and Institutional Environment

2.1 Legal Framework

There are eleven principal laws that govern the water sector in Grenada (**Table 2.1**), comprising:

Forest, Soil and Water Conservation Act, Cap. 116 makes provision for the conservation of the forest, soil, water and other natural resources of Grenada. The main objective of the Act is to prevent flooding and soil erosion. Section 3 of the Act provides the aims of a forest policy, including the preservation of tree cover to prevent soil erosion, flooding and to protect water supplies. Under Section 12, the Act also provides for preservation of forest on private lands and for a scheme of compensation for private landowners so affected.

Table 2.1 Grenada’s principal water legislation

| Law | Responsible Government Agency |
|---|--|
| Forest, Soil and Water Conservation Act, Cap. 116 | Min. of Agriculture – Forestry Dept. |
| Grand Etang Forest Reserve Act, Cap. 124 | Min. of Agriculture – Forestry Dept. |
| Grenada Solid Waste Management Authority Act, Cap. 131A | GSWMA |
| National Parks and Protected Areas Act, Cap. 206, as amended | Min. of Agriculture – Land Use Division |
| National Water and Sewerage Authority Act, Cap. 208, as amended | NAWASA |
| Pesticides Control Act, Cap. 238 | Min. of Agriculture – Pest Management Unit |
| Physical Planning and Development Control Act, 2016 | Planning and Development Authority |
| Public Health Act, Cap. 263 | Min. of Health – Environ. Health Division |
| Public Utilities Regulatory Commission Act, 2016 | Min. of Public Utilities |
| Waste Management Act, Cap. 334A | GSWMA |
| Water Quality Act, Cap. 334B | Sanitary Authority |

The above Acts and Subsidiary Legislation are found in the 2010 Revised Edition of the Laws of Grenada and online at the Government of Grenada website at www.gov.gd except the Physical Planning and Development Control Act, 2016 and the Public Utilities Regulatory Commission Act, 2016 which are published in the annual Laws of Grenada 2016.

Grand Etang Forest Reserve Act, Cap. 124 allows for the strict reserve of the lands depicted, defined and delineated as “The Grand Etang Forest Reserve” for the public purposes of forest conservation and promotion of rainfall and water supply of Grenada.

Grenada Solid Waste Management Authority Act, Cap. 131A establishes a Solid Waste Management Authority which is charged with the duty of developing the solid waste management facilities, services and other resources in conformity with appropriate administrative, technical, managerial and engineering practices, and with due regard to ecological and environmental factors.

National Parks and Protected Areas Act, Cap. 206 provides for the designation and maintenance of national parks and protected areas, and for connected purposes. The Act aims to protect and preserve environmentally sensitive areas.

National Water and Sewerage Authority Act, Cap. 208 ('NAWASA Act') vests the right to the use of every body of water in Grenada in the National Water and Sewerage Authority (NAWASA), and identifies its duties, *inter alia*, as conserving, augmenting, distributing or redistributing water resources, and maintaining and improving sewerage systems in Grenada (Sect. 6). Under the provisions of Section 7, NAWASA is responsible for providing a satisfactory supply of potable water for domestic purposes, and a potable or otherwise satisfactory supply of water for agricultural, industrial and commercial purposes. Part VII of the Act provides for the management and protection of catchment areas and provides for these areas to be retained as forest reserves under the supervision of the Chief Forestry Officer.

Pesticides Control Act, Cap. 238 which governs the importation, sale, storage and use of pesticide, and for connected matters. The Act establishes the Pesticides Control Board whose duties are to advise the Minister (of Agriculture) on matters relevant to making regulations under the Act and to carry out the provisions of the Act and the Regulations.

Physical Planning and Development Control Act, 2016, which deals with a wide range of physical planning matters and requires developers to carry out Environmental Impact Assessments for various types of development. The definition of "building" under the Act is wide enough to allow investigation of any development to be made, which development may impact on the water resources of the country. In addition, the Act requires the preparation of a physical plan for the whole of Grenada, in which land may be allocated for prescribed purposes including protection of coastal zones, special resources and use areas, controlling the disposal of sewage and the pollution of water bodies. Preparation of this plan is outstanding.

Public Health Act, Cap. 263 establishes a Sanitary Authority to exercise a supervisory function over all sanitary matters, which is empowered to make pertinent regulations. The Act deals with power of entry for sanitary inspection of premises (Sect. 76), and is also applicable to vessels (Sect. 77). Within the Public Health Regulations, SRO 44 of 2006, are provisions that allow for the protection of water resources and makes it an offence for any person to pollute any stream.

Public Utilities Regulatory Commission Act, 2016 ('PURC Act'), as amended by the Public Utilities Regulatory Commission (Amendment) Act, 2017 prescribes the functions of the Commission, *inter alia*, as to:

- Set, initiate and conduct reviews of tariffs charged by public utility ... (Sect. 17 (1) (a));
- Determine complaints made by consumers against public utilities to which this Act applies ... (Sect. 17 (1) (b));
- Hear and resolve any dispute that may arise between parties governed by an enactment regulating the supply of services by a public utility ... (Sect. 17 (1) (c));
- Enforce the terms and conditions of any licence granted or issued pursuant to any enactment under which the Commission has been conferred regulatory functions and powers ... (Sect. 17 (1) (e)); and

- The Act establishes a Public Utilities Appeals Tribunal, the constitution and procedure of which is to be specified in regulations made under the Act. An appeal from a decision of the Commission lies with the Appeals Tribunal (Sect. 32).

Waste Management Act, Cap.334A provides for the management of waste in conformity with the best environmental practices, and deals with unauthorized disposal of waste in national parks or protected areas (Sect. 33); prohibition on the importation of waste (Sect. 34); waste storage requirements (Sect. 35); industrial and commercial waste generators (Sect. 38); and management of used oil (Sect. 40).

Water Quality Act, Cap. 334B governs matters related to the quality of water intended for human consumption – defined as all water either in its original state or after treatment, intended for that purpose, regardless of its origin and whether it is supplied from a distribution network, from a tanker, bottles or containers. Under Sect. 6, the Act requires that water for human consumption shall be regularly monitored by an authorized person (usually Public Health Inspectors) at the point where it is made available to the user.

2.2 National Codes and Standards

There is one national building code, the OECS Building Code (2015), the sixth edition of the original OECS Code of 1992, which was based on the Caribbean Uniform Building Code (CUBiC) and other regional codes, and makes considerable reference to several British, United States and Canadian codes and standards². The ‘new’ OECS Code incorporates the following post-1992 studies and other developments *inter alia*: new rainfall and flood hazard information; and guidance on mitigation of climate change and adaptation to climate change. It is noteworthy that the Building Code is now enforceable in law under the provisions of the *Physical Planning and Development Control (Adoption of Building Code) Order, 2016*.

With regard to national standards, the Grenada Bureau of Standards (GDBS) – which derives its authority from the Standards Act, Cap. 310 – has established *Grenada National Standard GDS 79:2006 Specification for Effluent from Industrial Processes Discharged into the Environment* (GDBS, 2006), which sets maximum permissible limits for effluent from the tourism and hospitality industry discharged into the coastal nearshore environment.

GDBS has also established the following standards which are directly relevant to the food sector: *GDS 71: 2003 - Specification for Packaged Water*; and *GDS 72: 2003 - Code of Hygienic Practice for the Collection, Processing and Marketing of Packaged Water (Mineral Water, Spring Water, Purified Water)*.

2.3 Regional and Multinational Environmental Agreements

At the regional level, Grenada has committed to the following environmental agreements and instruments:

² CUBiC, published in 1985, is a set of technical standards for use by all building professionals, builders and government regulators in the Caribbean region, to ensure that buildings constructed will be resistant to the natural hazards of high winds, heavy rainfall, earthquakes and other environmental pressures of the Caribbean.

- St. George’s Declaration of Principles for Environmental Sustainability in the Organization of Eastern Caribbean States (OECS);
- CARICOM Implementation Plan for the ‘Regional Framework for Achieving Development Resilient to Climate Change’ (CCCCC, 2012); and
- OECS Water Sector Model Policy and Model Water Act for Countries within the Organisation of Eastern Caribbean States (OECS, 2013a).

Grenada has also ratified or acceded to the following international conventions and agreements which require measures and systems to be implemented at the national level for the protection of the environment:

- The Cartagena Convention (The Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region) and the Land-Based Sources of Marine Pollution Protocol;
- Convention on Biological Diversity;
- United Nations Framework Convention on Climate Change;
- United Nations Convention to Combat Desertification;
- Sendai Framework on Disaster Risk Reduction;
- Addis Ababa Action Agenda; and
- 2030 Agenda for Sustainable Development.

2.4 Institutional Actors

While every individual has a stake in the successful implementation of the NWP, the following stakeholders and institutions are identified as critical to the Policy’s implementation:

- The citizen – expected to play an active role in IWRM;
- Private sector – including SMEs, trade associations and community enterprises, will be expected to, among other measures, develop and implement corporate environmental policies that emphasize water conservation and guidelines for sustainable industrial processes;
- Civil society – NGOs and CBOs will play a key role in advocacy, in helping consumers, especially the poor, to express their demands, and will participate in all levels of decision-making in water resources management, through mechanisms such as those based on the G-WaSP;
- Government of Grenada, and the following departments and statutory bodies:
 - Ministry of Agriculture and Lands, and the Forestry Department – key actors in watershed protection and IWRM;
 - Ministry of Health (MoH) – will retain its oversight and audit functions to ensure compliance with drinking water quality standards, and assume the added duties and responsibilities for water pollution control, including enforcement of quality and effluent standards;

- NAWASA – which will retain its responsibility for providing water and sewerage services and relinquish its water resources management role;
- Planning & Development Authority – as the steward of the OECS Building Code;
- Public Utilities Regulatory Commission (PURC) – will provide policy-level and administrative oversight of the proposed Water Resources Management Unit (WRMU), and water and wastewater services regulation;
- WRMU – this proposed entity will carry out the day-to-day management of Grenada’s water resources in their entirety; and
- Caribbean Public Health Agency (CARPHA) – within the OECS, CARPHA has a role in coordinating and advising national governments with respect to water quality and pollution control issues.

3. Legal Framework for Water Policy Implementation

3.1 Outputs of 2008 Review of Water Sector Legislation

Following development of the 2007 Grenada National Water Policy, the Government of Grenada in 2008 initiated a project which represented the legislative component of the review of the water sector of Grenada (Sealey-Browne, 2008), the scope of which included:

- Review all the relevant legislation relating to the allocation, supply and protection of the water resources base from pollution;
- Identify deficiencies and gaps in the existing legislation given the proposed outline of the new water policy;
- Provide a brief highlighting the required amendments to the existing legislation and new legislation that needs to be proposed, and provide proposed draft legislation.

One of the main outputs of the Sealey-Browne report was that the NAWASA Act in its present form is severely deficient in realizing the water policy initiatives approved by the Government. The Act goes against the principles of transparency and accountability with respect to the management of water services and water resources. By virtue of the provisions of the Act, it is implicit that NAWASA has both resource regulatory, and service provider and regulatory functions; in essence it regulates itself as it is the authority with the responsibility for the management of the country’s water resources whilst at the same time it has the responsibility to provide water and sewerage services (Sealey-Browne, 2008). Based on the review of the existing water legislation, Sealey-Browne proposed the following four pieces of legislation:

(a) Water Resources, Supply and Sewerage Bill, meant to repeal and replace the NAWASA Act, this Bill sought to incorporate the objectives and guiding principles of the National Water Policy, and proposed the following, *inter alia*:

- To establish a Water Resources Management Unit (WRMU), under the portfolio of the Minister of Agriculture, for the purpose of managing the water resources of Grenada;

- To provide for water user rights and water allocation throughout the State;
- To enact a licensing process to regulate the abstraction and use of water resources;
- To make provisions for water conservation and water management practices;
- To establish a regulatory oversight body called the Water and Sewage Commission to regulate the delivery of water supply services and sewage services, and to establish and approve tariff schemes; and
- To promulgate regulations to allow for the establishment of an Appeals Tribunal for the purpose of hearing appeals against decisions of the Unit, the Commission, and the responsible Ministers.

(b) Water Quality (Amendment) Bill, which sought to empower the Sanitary Authority to perform its functions more effectively and efficiently, including the following measures:

- Prohibition of certain acts at a drinking water source, likely to cause pollution of the source;
- Declaration of Water Quality Control Areas and preparation of Water Quality Control Plans;
- Elaboration of the duty of person operating a water system, and standard of care to be exercised by the owner;
- Elaboration of powers of inspection of an Authorised officer to determine compliance; and
- Stipulation of strict penalties for offences under the Act.

(c) Public Health (Amendment) Bill, which sought to provide for representation on the Sanitary Authority by the WRMU, as established under the new legislation, in place of NAWASA.

(d) Physical Planning and Development Control (Amendment) Bill, which similarly sought to have a representative from the WRMU sit as a member of the Sanitary Authority, in place of NAWASA.

3.2 Gap Analysis

A review of the existing regulatory environment shows that for the most part, the observations made by Sealey-Browne (2008) remain pertinent. In addition, the following laws and legal instruments will require attention.

- **Pesticides Control Act, Cap. 238**: Sealey-Browne (2008) notes that the provisions of this Act are “extremely deficient”. In view of the ramifications for water quality, there is need for this Act to be amended, perhaps in alignment with the OECS Model Pesticides Act.
- **Physical Planning and Development Control Act, 2016**: there will be a need to amend the Building Code to make provision for onsite storage and rainwater harvesting infrastructure (see IWRM Plan, Priority Action No. 11).
- **Public Health Act, Cap. 263 and Public Health Regulations**: will need to be reviewed and amended to empower MoH to properly carry out its water pollution control duties.

- **Standard GDS 79:2006:** the requirements of the standard GDS 79:2006 *Specification for Effluent from Industrial Processes Discharged into the Environment* are to be enforced through rules which will *inter alia*:
 - Require facilities which discharge significant quantities of effluent into the environment to obtain a permit or license and/or appropriate certification;
 - Specify monitoring and reporting requirements; and
 - Specify quality assurance and quality control methods and procedures to be followed to determine the levels of the various effluent parameters.

These rules have not been promulgated to date. Without these rules the Standard is ineffective (see IWRM Plan, Priority Action No. 8).

- **OECS Model Water Act:** this Model Act (OECS, 2013b) should be reviewed, to ensure that the proposed *Water Resources, Supply and Sewerage Bill*, and amended laws, align with it.
- **Water Resources, Supply and Sewerage Bill:** this Bill needs to be reviewed from the perspective of Grenada's commitments to various Multilateral Environmental Agreements and amendments made, wherever feasible, to allow for those commitments to be met.
 - The regulatory function was originally conceived to be carried out by the proposed Water and Sewerage Commission, which is no longer a requirement given the identical function now being exercised by the PURC. There are, however, certain specific functions and powers laid out in Sect. 41 of the Bill for the Water and Sewerage Commission. To the extent that any of these powers/functions are not to be carried out by the PURC under the PURC Act, there may be the need for appropriate amendments to that Act to achieve this.
 - It should be noted that the Public Utilities Appeals Tribunal under PURC will effectively obviate the requirement for an Appeals Tribunal as proposed by this Bill.
 - It should be highlighted, further, that this Bill creates a lacuna in the **provision of water for agriculture**. A review of the legislation should consider the appropriate placement for the provision of water for agriculture.
- **Water Quality (Amendment) Bill:** this Bill should be reviewed and appropriate amendments made to include provisions governing rainwater harvesting in commercial operations, as promoted in the NWP.
- Though not a stand-alone public utility, the proposed WRMU may fall under the purview of the PURC (PURC Act of 2016, as amended), because PURC has overall regulatory authority over all public utilities, defined by Sect. 2 to mean a private body or statutory authority providing services to the public. Sect. 2 further defines 'statutory authority' to include a *commission, board, committee, council, or similar body, whether these are incorporated or unincorporated*. The proposed WRMU would therefore fall within the definition of a statutory authority for the purposes of PURC.

3.3 Conclusion and Recommendations

The most profound conclusion from the legislative component of the review of Grenada's water sector is the absolute need for segregation of the functions of NAWASA (as water service provider) from water resources management and regulation.

The IWRM Plan identifies a *funded* priority action to review, draft and promulgate legislation to establish and empower a Water Resources Management Unit, including a comprehensive *Water Management Act* and amendments to existing supporting legislation. There is need for appropriate resource allocation at the Attorney-General's chambers, particularly the Drafting Unit, to enable the timely review of legislation and legislative drafting requirements.

The required laws should be enacted or amended as the case may be, with urgency.

4. References

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