

THE MARSABIT WATER SERVICES BILL 2016

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A Bill for

AN ACT of the County Assembly of Marsabit to provide for the management of water services and implementation of National Government Policy on water conservation in Marsabit County ; and for connected purposes

ENACTED by the Marsabit County assembly as follows—

PART I —PRELIMINARY

Short title. **1.** This Act may be cited as the Marsabit Water and Sewerage Services Act, 2016.

Interpretation. **2.** In this Act, unless the context otherwise requires—

“borehole” means a vertical hole drilled to determine ground conditions for the extraction of or measurement of, groundwater;

Cap. 486. “Company” has the same meaning as assigned to it under section 2 of the Companies Act;

No. 15 of 2013. “Contract Node” has the same meaning as assigned to it under section 2 of the Public Private Partnerships Act 2013;

No. 15 of 2013. “Contracting Authority” has the same meaning as assigned to it under section 2 of the Public Private Partnerships Act 2013;

“County” means Marsabit County;

“County Executive” means the County Executive Committee Member responsible for water in the County;

“County Executive Committee” means the County Executive Committee of Marsabit County constituted under Article 179 (2) of the Constitution ;

No. 17 of 2012 “County Public Service Board” has the same meaning as assigned to it under section 2 of the County Governments Act 2012;

No. 17 of 2012

“County Secretary” has the same meaning as assigned to it under section 44 of the County government Act;

No. 18 of 2012

“County Treasury” has the same meaning as assigned to it under section 2 of the Public Finance Management Act 2012;

“county water service provider” means a company established by the County for water service under section 10;

“department” means the Department of Water established as a ministry in Marsabit County. “Fund” means the Water Services Fund established under section 46 of this Act;

“Governor” means the Governor of Marsabit County;

“household” means a household as defined by the final gazetted results of the last population census carried out by an institution authorized under any written law;

“national water conservation policy” means the National Government policy on water , natural resources and environment conservation;

“national legislation” means a law enacted by the Parliament of Kenya;

“Regulatory Board” means the Water Services Regulatory Board established under section 68 of the Water Act ;

No** of 2016.

“panel” means the Conciliation Panel established under section 56 of this Act;

“pollution”, in relation to a water resource, means any direct or indirect alteration of the physical, thermal, chemical or biological properties of a water resource so as to make it—

- (a) less fit for any beneficial purpose for which it is or may reasonably be expected to be used; or
- (b) harmful or potentially harmful to—
 - (i) the welfare, health or safety of human beings;

- (ii) any aquatic or non-aquatic life or property; or
- (iii) the environment;

No. 15 of 2013 “licence” means a licence for the time being in force under this Act;

“public benefit organization” means a local, national or international organizations established under the Public Benefits Organizations Act 2013, or any other law for undertaking charitable activities connected with water use projects for public benefit in the County;

No. 15 of 2013. “public private partnership” has the same meaning as assigned to it under the Public Private Partnerships Act 2013;

No. 13 of 2011. “urban area” has the same meaning as assigned to it under the Urban Areas and Cities Act 2011;

“water services provider” means a company, public benefit organization or other person providing water services under and in accordance with a licence issued by the Regulatory Board for the service areas defined by the licence;

“water use rights” has the same meaning as assigned to it under section 5 of this Act;

“waterworks” means any structure, apparatus, contrivance, device or thing for carrying, conducting, providing or utilizing water or liquid waste, but does not include hand utensils or such other contrivances as may be prescribed by Regulations made under this Act or National Legislation;

“water trucking” means the use of heavy commercial vehicles to transport water in the County by the Department.

Objects of the Act. 3.The objectives of this Act is to provide for effective, efficient and peaceful governance of water use and water services in the County including providing for—

- (a) operationalization water services provision as a County function under the Constitution;
- (b) prioritization water use in the County;
- (c) establishment an administrative framework for water services provision in the County;
- (d) provision of water services in urban and rural areas in the County;

- (e) prescribing penalties for water use related offences in the County;
- (f) the coordination of water use activities in the County;
- (g) the regulation of water works in the County;
- (h) the conservation of water in the County including water harvesting;
- (i) the management of revenues earned from water supply and sanitation in the County; and
- (j) the ownership and maintenance of County owned water supply and sanitation infrastructure.

Right to water.

4. (1) Every person in the County has the Constitutional right to clean and safe water in adequate quantities.

(2) The County Government shall endeavour to put in place measures to ensure the progressive realization of the right to water as specified in subsection (1).

(3) The County Government may partner with local communities, Public Benefit Organizations, the National Government and other persons to facilitate the realization of the right to water.

Water use rights.

5. (1) On the commencement of this Act, no conveyance, lease or other instrument shall be effectual to convey, assure, demise, transfer or vest any person, any property or right or any interest or privilege in respect of any water use in the County, and no such property, right, interest or privilege shall be acquired otherwise than under this Act.

(2) Subject to subsection (3), during water scarcity the priority in water use rights under this Act shall be as follows—

- (a) water for domestic uses such as drinking, cooking and personal hygiene shall be given the first priority;
- (b) water for small sized domestic animals like goats and sheep shall be given the second priority;
- (c) water for large animals like cattle shall be given the third priority;
- (d) water for crop farming shall be given the fourth priority;
- (e) water for the largest domestic animals like camels shall be given the fifth priority; and
- (f) water for any other use apart from those stated under paragraphs (a), (b), (c),(d) and (e) shall be given the last priority.

(3) The County Executive may, on request, grant a person permission to derogate from the water use priority provided for under subsection (2) due to health, economic or security reasons in the County.

PART II— ADMINISTRATION

County Water
Department.

6. (1) The County Water Department headed by the County Executive shall have the overall responsibility of water, sanitation and sewerage matters in the County.

(2) The County Executive may establish the following offices as administrative units of the Department —

- (a) the office of the County Water Director;
- (b) Sub-County Water Officers; and
- (c) such other offices as may be necessary, constituted by the County Executive .

Responsibilities of
the County
Executive.

7.(1) The County Executive shall coordinate and plan on the use of water in the County, including—

- (a) formulating and publishing the County water and sanitation ten years’ sectorial plan;
- (b) coordinating with the County Planning Unit on planning and budget issues relating to the water function in the County represented in the following documents under the Public Finance Management Act 2012 and the County Governments Act 2012—
 - (i) the County Integrated Development Plan;
 - (ii) the County Sectoral Plan ;
 - (iii) the County Annual Development Plan;
 - (iv) the County Fiscal Strategy Paper; and
 - (v) any other policy document or activity relevant to County budgeting.

No. 17 of 2012

No. 18 of 2012

(2)The County Executive shall put measures for public participation in the planning process as prescribed in relevant National Legislation and County Laws.

(3) The County Executive shall undertake periodic water resource mapping for the County as prescribed by Regulations.

Appointment of compliance officers.

8. (1) The County shall appoint compliance officers to assist in the enforcement of the provisions of this Act and Regulations made thereto.

(2) The Compliance Officers shall be recruited by the County Public Service Board, upon a request in writing submitted by the **County Executive**.

Coordination of water use activities.

9. (1) The County Executive shall coordinate all the water use activities including development of water works in the County.

(2) The Public Benefit Organizations shall require the approval of the County Executive for execution of projects undertaken after the commencement of this Act.

(3) The County Executive shall, in consultation **with the Public Benefit Organizations** in the County, make Regulations to provide for—

- (a) periodic reporting of the activities of Public Benefit Organizations to the Department;
- (b) prioritization of water use projects by Public Benefit Organizations in accordance with the County needs;
- (c) stakeholder forums for meetings between Public Benefit Organizations in the County and the Department;
- (d) standard forms for reporting and seeking necessary approvals by a Public Benefit Organization under this Act.

(4) The County Executive shall ensure that the National Government agencies undertaking water use projects and activities in the County, undertake such activities in line with the water use priorities in the County.

(5) The mandate under subsection (4) shall be undertaken in the spirit of cooperation and consultation as stipulated in Article 6 (2) of the Constitution.

PART III —WATER SUPPLY AND SERVICE

MANAGEMENT

County Water
Service Providers.

10. (1) Pursuant to section 75 of the Water Act, the County shall establish such number of entities as may be necessary to be known as County Water Service Providers.

(2) The Company established under subsection (1) shall be a limited liability company or other body providing waters services and shall satisfy the requirement of section 75 of the Water Act, 2016.

(3) The Company shall have at least two members who shall be office holders in the County.

(4) The County Water Service Provider shall be responsible for water supply management in the County including—

- (a) water service provision , sanitation and sewerage management in urban areas;
- (b) collection of water use revenues in the County;
- (c) with the approval of the Regulatory Board and the County Executive extend water services to rural areas in the County;
- (d) maintenance of a database on water use and sewerage in the County ; and
- (e) management of water works developed by the Department.

Composition of
Board of the
Company.

11. (1) The management of the Company shall vest on the Board appointed by the Governor.

(2) The Board of the Company shall comprise—

- (a) a chairperson appointed by the Governor;
- (b) four persons, each representing a sub-County in the County;
- (c) three persons representing special interests groups ;

(d) the Chief Executive Officer who shall be an *ex officio* member of the Board with no power to vote; and

(e) the Secretary who shall be an *ex officio* member of the Board with no power to vote.

(3) In appointing the members of the Board under subsection (2) (a), (b) and (c) the Governor shall ensure that not more than two third of the members are of the same gender.

Qualification of chairperson and members of the Board.

12. (1) A person shall be qualified for appointment as chairperson of the Board, if that person—

(a) is a resident of the County;

(b) holds at least a degree from an institution recognised in Kenya;

(f) has knowledge and experience of at least seven years in matters relating to water resources management, water and sewerage services management or any other related field;

(g) satisfies the requirements of Chapter Six of the Constitution; and

(h) has a distinguished career in their respective fields.

(2) A person shall be qualified for appointment as a member of the Board, if that person—

(a) is a resident of the County;

(b) holds at least a diploma from an institution recognised in Kenya;

(c) has knowledge and experience of at least five years in matters relating to water resources management, water and sewerage services management or any other related field;

(d) satisfies the requirements of Chapter Six of the Constitution; and

(e) has had a distinguished career in their respective field.

(3) A person is not qualified for appointment as a chairperson or member of the Board , if that person—

(a) is a member of Parliament or County Assembly;

- (b) is a member of a governing body of a political party;
- (c) is a member of a Commission established under the Constitution;
- (d) is a member of two other State Corporations;
- (e) is an undischarged bankrupt;
- (f) has been removed from office for contravening the Constitution or any other law; or
- (g) has, in the conduct of his affairs, not met any statutory obligations.

Functions of the Board.

13. The functions of the Board shall be to—

- (a) ensure proper and efficient administration and performance of the functions of the Company;
- (b) approve the estimates of the revenue and expenditure of the Company; and
- (c) perform such other functions as are provided for under this Act, the Water Act, 2016 or any other written law.

Remuneration of the Board.

14. The remuneration of the members of the Board shall be as determined by the County Executive, in consultation with the County Public Service Board.

Appointment of Secretary.

15. The Board shall appoint a secretary who shall—

- (a) be a certified public secretary ;
- (b) not be a member of the Board; and
- (c) take minutes during the meetings of the Board.

Chief executive officer.

16. (1) The Board shall competitively recruit and appoint a chief executive officer of the Company.

(2) The chief executive officer shall be—

- (a) subject to the direction of the Board, be responsible for the

day to day management of the affairs of the Company;

- (b) in consultation with the Board, be responsible for the direction of the affairs and transactions of the Company, the exercise, discharge and performance of its objectives, functions and duties and the general administration of the Company;
- (c) carry out any other duty as may from time to time be assigned by the Board.

(3) The chief executive officer shall hold office for a period of three years renewable once.

Qualification for appointment of chief executive officer.

17. A person shall be qualified for appointment as a chief executive officer, if that person—

- (a) has at least a degree from a university recognised in Kenya;
- (b) holds at least five years' post-qualification professional experience; and
- (c) has a distinguished career in a senior management position in either the private or public sector; and
- (d) satisfies the requirements of Chapter Six of the Constitution.

Removal of the chief executive officer.

18. The chief executive officer may—

- (a) at any time resign from office by issuing notice in writing to the chairperson of the Board;
- (b) be removed from office by the county executive member on recommendation of the Board on either of the following grounds-
 - (i) serious violation of the Constitution or any other written law;
 - (ii) gross misconduct, whether in the performance of the functions of the office or otherwise;
 - (iii) physical or mental incapacity to perform the functions of office;
 - (iv) incompetence; or

(v) bankruptcy.

Staff of the
Company.

19. The Board may appoint such officers and other staff as are necessary for proper discharge of its functions under this Act, upon such terms and conditions of service as it may determine.

Common seal of
the company.

20. (1) The common seal of the Company shall be kept in the custody of the chief executive officer or of such other person as the Board may direct, and shall not be used except upon the order of the Board.

(2) The common seal of the Company, when affixed to a document and duly authenticated, shall be judicially and officially noticed, and unless the contrary is proved, any necessary order or authorization by the Board under this section shall be presumed to have been duly given.

(3) The common seal of the Company shall be authenticated by the signature of the chairperson of the Board or the Chief Executive Officer.

(4) The Board shall, in the absence of either the chairperson or the chief executive officer, in any particular matter, nominate one member of the Board to authenticate the seal of the Company on behalf of either the chairperson or the chief executive officer.

Water use tariffs.

21. (1) The County Executive shall regulate water use tariffs in the County charged by the water service providers.

(2) The County Executive shall publish water use tariffs in the County Gazette every year.

Water use reports.

22. The County Executive shall publish, on an annual basis, water use reports detailing water supply demand and use in the County.

Consumer
feedback.

23. The County Executive shall develop mechanisms for receiving consumer feedback including the use of information communication technology platforms.

Private water
service providers.

24. (1) The County may allow the establishment of water service providers by private persons.

(2) A private water service provider shall obtain a licence in order to—

(a) provide water services to at least twenty households; or

(b) supply—

(i) at least twenty-five thousand litres of water a day for domestic purposes; or

(ii) at least one hundred thousand litres of water a day for any purpose,

(3) A person who provides water services in contravention of this section commits an offence.

(4) Nothing in this section prohibits—

(a) the provision of water services by a person to his employees; or the provision of water services on the premises of any hospital, factory, school, hotel, brewery, research station or institution to the occupants thereof, **in cases where the source of supply of the water is lawfully under its control, or where the water is supplied to it in bulk by a licence holder.**

Licences for water
service providers.

25. (1) The County Executive shall issue licences for private water service providers.

(2) The County Executive shall make Regulations prescribing the terms and conditions by which private water service providers shall be bound including—

(a) the right of access to private water supply for public utility in nearby schools or health facilities;

(b) the acceptable quality of water;

(c) water service provision tariff ceilings; and

(d) public consultation and, where applicable, environmental impact assessment in accordance with the relevant national legislation on environment management.

Water quality

26. (1) The County Executive shall establish mechanisms for water

control.

quality control in the County which shall include the —

- (a) establishment of a water quality control laboratory;
 - (b) liaison with national government agencies with relevant expertise on consumer quality control; and
 - (c) publishing information on water quality in the County and taking necessary steps to ensure that such information is readily available.
- (2) Water service providers shall conform to water quality standards established by the Department.

PART IV— DEVELOPMENT OF WATERWORKS

Waterworks
licences.

27. (1) The County Executive may issue licences for waterworks construction and development in the County, except such water works activities that may be exempted by the County Executive through Regulations or a County Gazette notice.

(2) A person who undertakes waterworks constructions and development without a licence commits an offence.

(3) Where an offence is committed under subsection (2) by a National Government agency or another County Government—

(a) the procedures set out under the Intergovernmental Relations Act 2012 relating to intergovernmental conflicts shall apply;

No. 2 of 2012

(b) the County may take any appropriate action to restrain actions in furtherance of the offence.

(4) The County Executive shall make Regulations for the terms and conditions binding licence holders under this part.

Development and
maintenance of
County
waterworks.

28. (1) The County Executive shall develop waterworks for water service provision in the County which shall include—

(a) implementation of development and investment plans for waterworks proposed in any County development plans and policy documents;

- (b) designing, **documentation, post contracting** and project management of County water works;
- (c) providing technical assistance to community initiated projects, Public Benefit organizations, National Government agencies and persons other than the County engaging in water works development in the County;
- (d) repair and maintenance of County owned and operated waterworks;
- (e) construction of water pans and other waterworks for food security enhancement in the County;
- (f) any other waterworks development related role assigned or undertaken by the County;

(2) The County Executive may hand over completed County water works for water use to the Company or any other County Water Service Provider for management.

(3) Where an entity not owned by the County government develops waterworks, the County executive shall oversee such development

Storm water management systems.

29. (1) The County Executive shall develop storm water management systems in urban areas including a storm water management physical plan for urban areas in the County.

(2) A person who unlawfully obstructs or damages a natural storm water course or a storm water management developed by the Department commits an offence under this Act and—

- (a) is liable, on conviction, to penalties specified under section 51 of this Act; and
- (b) may be directed by the County Executive to remedy such damage or obstruction by any suitable means including pulling down a building or other construction at the persons own cost.

(3) Where a person who may be liable under subsection (2) demonstrates proper ownership titles and adherence to physical planning laws in place before the coming into force of this Act, the County Executive shall apply the **Compulsory Acquisition provisions under section 35 of this Act and any other existing laws.**

Waterworks priority schedules.

30. (1) The County Executive shall develop and publish a waterworks priority schedule for waterworks development in the County based on County development plans and policies.

(2) The waterworks priority schedule under subsection (1) shall be updated and published in the County Gazette every financial year.

(3) The waterworks priority schedule developed under subsection (1) shall guide the activities of Public Benefit Organizations and National Government agencies undertaking waterworks development in the County.

Compulsory acquisition of Land.

31. (1) The County may compulsorily acquire land within its jurisdiction to develop waterworks for public purposes.

No. 6 of 2012.

(2) The County shall abide by the provisions of the Land Act, 2012 in undertaking compulsory acquisition under this section.

Easement for waterworks.

32. (1) The holder of a licence under this part which authorizes the construction of waterworks that would, when constructed, be situated upon lands not held by the licence holder shall acquire an easement on, over or through the land on which the works would be situated and, unless the works have previously been lawfully constructed, shall not construct or use the works unless and until he has acquired such an easement.

No. 6 of 2012

(2) The County Executive shall ensure that easements held under subsection (1) adhere to the requirements of the Land Act 2012.

Borehole site identification.

33. (1) The County Executive shall in consultation **with the concerned National Government agency** undertake borehole site identification in the County.

(2) The County Executive may publish borehole site identification reports on a quarterly basis and undertake necessary steps to make such reports available to the public.

(3) The borehole site identification report developed under subsection (2) shall guide borehole drilling activities in the County.

Drilling of boreholes.

34. (1) The County Executive shall monitor all borehole drilling activities in the County to ensure compliance with the relevant licences and applicable laws.

(2) A person shall not undertake any borehole drilling activity without a certificate of authorization issued by the County Executive in accordance with this Act.

Water pollution control.

35. (1) A person shall not throw or convey, or cause or licence to be thrown or conveyed, any rubbish, dirt, refuse, effluent, trade waste or other offensive or unwholesome matter or thing into or near to any water resource in such manner as to cause, or likely to cause, pollution of the water resource.

(2) A person who contravenes subsection (1) , commits an offence under this Act and any other relevant national legislation.

(3) The County Executive shall, through the compliance offices appointed under this Act, prosecute persons who commit an offence under this Part or assist and facilitate such prosecution by national government agencies.

Monitoring wells.

36. The County Executive shall construct wells for the purposes of monitoring ground water levels and water quality.

National water conservation policies.

37. The County Executive shall facilitate the implementation of National water conservation policies through the Department.

PART V— WATER HARVESTING

Roof catchment.

38. (1) The County Executive shall establish a roof catchment policy for the County.

(2) Institutions and permanent structures constructed in urban areas in the County shall have roof catchment and water storage systems.

(3) A person who fails to install a roof catchment and water storage system as provided under subsection (1) shall be liable to a penalty

prescribed by the County Executive under this Act.

(3) The County Executive shall make Regulations on the requirements for roof catchment systems in urban areas.

Construction of water pans.

39. (1) The County Executive may construct water pans for enhancing food security through agriculture in the County.

(2) The County Executive shall make Regulations prescribing technical procedures for the construction of water pans in the County.

Storm water harvesting systems

40. (1) The County Executive may engage National Agencies, Public Benefit Organizations and other persons to facilitate the construction and management of storm water harvesting system.

(2) Development and Construction of storm water management systems in the County shall be supervised by the Department.

PART VI — PUBLIC PRIVATE PARTNERSHIPS

Public Private Partnerships for Water Services.

41. (1) A **County** Water Service Provider may enter into a public private partnership agreement for the exercise and performance of any of its functions.

(2) A **County** Water Service Provider shall serve as the Contracting Authority when instituting a public private partnership.

(3) In establishing a public private partnership under this part, the County Executive or his representative shall be part of the Contract Node.

Public Private Partnerships for Water Services.

42. (1) A **County** Water Service Provider may enter into a public private partnership agreement for the exercise and performance of any of its functions.

(2) A **County** Water Service Provider shall serve as the Contracting

Authority when instituting a public private partnership.

(3) In establishing a public private partnership under this part, the County Executive or his representative shall be part of the Contract Node.

Public Private Partnerships for Waterworks.

42. (1) The County Executive may enter into a public private partnership agreement with any person for the development and maintenance of waterworks in the County.

(2) The Department shall serve as the Contracting Authority when instituting a public private partnership.

Public Private Partnerships Policy.

43. (1) The County Executive shall develop a public private partnership policy for the County water sector.

(2) The public private partnership policy may provide for the following—

- (a) projects identified for public private partnerships;
- (b) citizen participation and community involvement in public private partnerships;
- (c) engagement of the youth and women;
- (d) reporting on public private partnerships in the County; and
- (e) any other matter that is relevant to such public private partnership.

PART VII— DISASTER MANAGEMENT

Disaster management strategy.

44. (1) The County Executive Committee shall develop a water related disaster management strategy which shall contain the following information

—

- (a) early drought warning responses strategy;
- (b) flood control response strategy;
- (c) short term interventions;
- (d) long term interventions;
- (e) cross County issues on water related disaster management;
- (f) stakeholder participation; and
- (g) any other matter relevant to water related disaster

management.

(2) The County Executive Committee may consult Public Benefit Organizations in the development of the Disaster Management Strategy specified under subsection (1).

Water trucking.

45. (1) Water trucking shall be a measure of last resort in responding to drought or disaster management in the County.

(2) The County Executive shall impose charges to cater for the operational costs and expenses for the water bouzers.

(3) The County Executive Committee shall make Regulations on Water trucking in the County.

(4) The County Executive Committee shall designate the responsibility of water trucking to the most suitable office in the Marsabit County Government.

PART VIII —FINANCIAL PROVISIONS

Water Services
Fund.

No.18 of 2012.

46. (1) The County Executive Member in charge of finance shall establish a Water Services Fund in accordance with the section 116 of the Public Finance Management Act 2012.

(2) The sources of funds of the Water Services Fund shall comprise—

- (a) such moneys as may be appropriated by the Marsabit County assembly;
- (b) revenues from licences issued under this Act;
- (c) revenues from sales of water;
- (d) revenues from penalties received from the commission of an under this Act;
- (e) such monies or assets as may accrue to the Fund in the course of the exercise of its powers or in the performance of its functions under this Act; and
- (f) all monies from any other source provided, donated or lent to the Fund.

(3) The Fund shall be applied to the following purposes—

- (a) financing the activities of County Water Service Providers;
- (b) development of water infrastructure;
- (c) payment of compensation and liability arising from duties performed under this Act; and
- (d) provision of technical assistance and maintenance of **community** owned water works or projects upon request by the community.

(4) The Fund shall be administered in the manner provided by Regulations made by the County Treasury, in consultation with the County Executive.

Accounts and
Audit.

47. (1) A County Water Service Provide shall keep proper books of account of their respective income, expenditure, assets and liabilities.

(2) The annual accounts of a County Water Service Provider shall be prepared, audited and reported in accordance with the Public Audit Act.

Cap. 412B.

(3) A company established under this Act shall comply with corporate governance principles, provided for under Regulations made by the County Executive in consultation with the County Treasury.

Financial year.

48. The financial year shall be the period of twelve months ending on the thirtieth June in each year.

PART IX— OFFENCES

Obstruction
of officers.

49. (1) A person shall not willfully hinder or interrupt, or cause be hindered or interrupted, any licence holder, or his employee, contractor or agent, in the lawful exercise or performance of any powers and functions under this Act.

(2) A person who contravenes the provisions of subsection (1) commits an offence under this Act.

(3) Without prejudice to the rights of any person to bring proceedings in respect of an offence, the County Executive, the Company, a County Water Service Provider or Compliance Officers may institute and maintain criminal proceedings in any court against any person accused of an offence under this Act or under any rules or regulations made under this Act.

Remedy of defaults.

50. (1) Where an act or omission by a person contravenes any requirement or prohibition made or imposed by or under this Act, the County Executive may, by order served on the person concerned, require him, within a reasonable time specified in the order—

- (a) to remedy the contravention;
- (b) to clean up any pollution or make good any other detriment identified in the Order which was caused to any water resource by reason of the contravention; or
- (c) to remove or destroy any works, plant or machinery **employed for the purposes of the contravention.**

(2) In default of the person's compliance with such an order, the County or its agents may take such steps as are necessary to execute the order, and the expenses incurred in doing so shall be recoverable **at the suit of the County**, person or body in any court of competent jurisdiction as a debt from the person to whom the order was given.

General penalty.

51. A person who is convicted of an offence under this Act, or under any Regulations made under this Act, shall, if no other penalty is prescribed in respect of the offence, be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding twelve months, or to both.

PART X — MISCELLANEOUS

Regulations.

52. (1) The County Executive shall make Regulations for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of the provisions of subsection (1), the County Executive shall make Regulations on the following—

- (a) terms and conditions for licences issued under this Act;
- (b) **composition** and management of Community Natural Resource Committees ;
- (c) water resource mapping;

- (d) dealings with Public Benefit Organizations under this Act;
- (e) management of water use and supply in the rural areas; and
- (f) waterworks development.

Transition plan.

53. (1) The County Executive shall formulate and publish in the County Gazette a transition plan for water service provision and supply management in the County within one year on the commencement of this Act .

(2) The plan specified under subsection (1) shall contain the following information—

- (a) the criteria for identifying water service provision and supply management assets;
- (b) water service provision and supply management assets owned by the County, whether or not controlled by the County;
- (c) information on urban areas and rural areas not under the control of a Company established by the County in accordance with this Act;
- (d) measures for taking over water service provision and supply management assets owned by the County Government but not in the control of the County Government;
- (e) the dates for effecting control of water service provision and supply management assets owned by the County Government but not in the control of the County Government.

(3) The County Executive shall ensure that citizen participation is adhered to under this part.

Protection from liability

54. Nothing done by a person exercising authority or a power under this Act shall, if the matter or thing was done or omitted in good faith for the purpose of executing this Act or any rule, regulation or order made under this Act, subject such a person in his personal capacity to any action, suit, claim or demand whatsoever.

Public Participation and County public participation legislation.

55. Procedures undertaken under this Act that directly affect community interests shall be subject to public participation. The County Executive shall put in place proper modalities to ensure adherence to Public Participation principles as prescribed under section 87 of the County Government Act 2012 and County public participation legislation.

Conciliation Panel.

56. (1) Any conflict arising from the Transition Plan formulated under section 59, or the performance of any function under this Act, shall in be

resolved by Mediation in the first instance.

(2) The Governor shall in the case of any conflict appoint a Conciliation Panel of at least three persons, who are not employees of the County Government, to determine the conflict

(3) The Panel appointed under subsection (2) shall comprise—

- (a) an advocate of the High Court of Kenya who shall be the chairperson;
- (b) an official of a Public Benefit Organization with experience in conflict resolution; and
- (c) a religious leader from the community with a minimum qualification of a bachelor's degree from a university recognized in Kenya.

(4) The Governor shall recruit a secretary for the Panel on a temporary basis.

(5) The Panel may seek the advice of other persons who have expertise in the relevant field and invite representations from interested parties.

Procedure for
resolving conflicts

57. (1) Where a conflict arises, the representatives of the persons affected shall complete the Form prescribed in the Schedule and submit it to the County Executive, with a list of at least one hundred signatures or thumb prints of the persons affected.

(2) The County Executive shall forward the Form submitted under subsection (1) to the Governor who shall constitute a panel within twenty one days.

(3) The County Secretary shall organize a sitting venue for the panel in place that is convenient for the persons making the complaint to appear but with due regard to the security and facilities required by the Panel.

(4) The Panel shall convene its sitting and hear the oral submissions of the person making the complaint, any expert opinion interested parties in a period of three weeks

(5) The conciliation panel shall subsequently prepare a report of its

findings and recommendation and present the report to the Governor for adoption.

(6) The decision of the Panel shall be guided by the Constitution of Kenya and the provisions of this Act.

Finances of the Panel.

58. The expenses of the conciliation panel, including the allowances shall be managed by the County Executive, in consultation with the County Treasury.

FORM FOR PRESENTING CONFLICTS TO THE CONCILIATION PANEL			
(s.60)			
<i>(Fill as appropriate)</i>			
Names (list up to five representatives)			
Name	ID No.	Group	Position held Ward Represented
1.			
2.			
3.			
4.			
5.			
Nature of Complaint (List the issues)			
1.			
2.			
3.			
4.			

5.

6.

1.

2.

3.

4.

5.

Name

ID. No.

Ward

1.

MEMORANDUM OF OBJECTS

The provision of water services and sanitation was devolved as a function of the County governments under the Fourth schedule of the Constitution, following the promulgation of the Constitution of Kenya 2010. Provisions on Water Conservation, County Public Works and Water and Sanitation were confirmed as a function of the Marsabit County Government through Kenya Gazette Supplement No. 116 of 9th August, 2013. This Bill therefore seeks operationalize water service provision and supply management in Marsabit County; to make provision for regulating water service providers; water works; ensure compliance to set down water quality standards; control of pollution in water bodies and related matters.

PART I of the Bill provides for preliminaries, which include the short title and interpretation of terms as used in the Bill; the right to water and water use rights including the priority of water use in the County.

Part II of the Bill provides for the setting up of the County Water Department and procedures to control the involvement of National Government Agencies and Public Benefit Organizations in the County.

Part III of the Bill provides for water service provision and supply management in the County

including setting up a Water Service Provider for the County and regulating Private Water Service Providers.

Part IV provides for development of waterworks by the County Executive and control of waterworks projects in the County by other persons including National Government agencies and Public Benefit Organizations.

Part V provides for water harvesting by the County including roof catchment and storm water management systems in the County.

Part VI provides for the establishment of public private partnerships by the County Executive and County Water Service providers.

Part VII provides for water use related disaster management including water trucking and development of a water disaster management strategy by the County.

Part VIII provides for the financial provisions of the Bill. It provides for the establishment of Water Services Bill and the accounts and audits of the company.

Part IX Provides for the offences and the general penalties under the Act.

Part X provides the miscellaneous provisions such as the power to make Regulations by the County Executive; transition plan for the water sector; public participation and conflict resolution.

Dated the....., 2016.

SULEIMAN KHALIF,
Majority Leader, County Assembly of Marsabit.