

Tharaka Nithi County Water Services Bill, 2020

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A BILL for

AN ACT of the Tharaka Nithi County Assembly to provide the legal and institutional framework for provision of water and sewerage services in the county and for connected purposes.

ENACTED by the County Assembly of Tharaka Nithi as follows—

PART 1 — PRELIMINARY

Short Title

1. This Act may be cited as the Tharaka Nithi Water Services Act, 2019.

Interpretation.

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

“Community water service” means water services provided by a community association on a self-help basis;

“County entity” means an entity of the County Government recognized as such under the provisions of the Public Finance Management Act, 2012;

“County Executive Committee Member” means the County Executive Committee Member for the time being responsible for water and sewerage services in the county;

“County Executive Committee” means the county executive committee provided for under Article 179 of the Constitution of 2010;

“County water services provider” means a water services provider established by the County Government as a county government entity for the provision of water services within the county;

“Gazette” means the Kenya Gazette;

“Governor” means the County Governor of Tharaka Nithi in terms of Article 179(4) of the Constitution of Kenya 2010;

“Public officer” means a person serving as a public officer in the County Government of Tharaka Nithi or any of its agencies;

“Regulatory Board” means the Water Services Regulatory Board established by the Water Act 2002, or its successor;

“Sewerage services” means the provision of a piped network for the transport and or movement of wastewater for treatment and or final disposal offsite;

“Sanitation” means treatment and or final disposal of wastewater on site through latrines, septic tanks, conservancy tanks, soakaway pits, exhauster services and similar systems but does not include sewerage services;

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“Water services” means the provision of water and or sewerage services for domestic, commercial, industrial, agricultural, livestock or other purpose and includes the supply of water for multiple uses; and

“Water services provider” means an entity providing water and or sewerage services as a business but excludes an establishment providing water services to persons resident within the premises of the establishment.

Application, objects and purposes of the Act

3 (1). This Act shall apply to the provision of water and sewerage services in Tharaka Nithi County.

(2). The Act gives effect to the Constitution of Kenya, 2010 and national laws as regards the provision of water and sewerage services by the County Government of Tharaka Nithi.

(3). The rights conferred and duties imposed by this Act are in addition to those conferred and imposed by any other laws.

Guiding Principles and Values

4. The County Executive Committee member, the county water services provider and any person administering or applying this Act shall be guided by and give effect to the principles and values of the Constitution set out herein—

- (a) national values and principles of governance in Articles 10;
- (b) the right of every person to clean and safe water in adequate quantities in Article 43(1)(d); and
- (c) the values and principles of public service in Article 232 (1) and (2).

PART II –POLICY, COORDINATION AND OVERSIGHT OF WATER SERVICES

Powers and Duties of County Executive Committee member

5.(1). Subject to the provisions of this Act, the County Executive Committee member shall exercise control and oversight over the development and provision of water and sewerage services within the county;

(2). Without prejudice to the generality of section 5(1), the County Executive Committee Member shall have responsibility to—

- (a) formulate and periodically review county policies, strategies and plans for the development and provision of water services;
- (b) on behalf of the county government put in place and maintain measures and arrangements to implement and give effect to the Constitution and national law on the provision of water and sewerage services;
- (c) coordinate and oversee the development and provision within the county of water and sewerage services;
- (d) mobilise financial and other resources for the provision of

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- water and sewerage services; and
- (e) prepare a report for the County Assembly each quarter, and from time to time as may be necessary, on the state of water and sewerage services in the county.

(3). In performance of the functions and duties under this Act the County Executive Committee member shall –

- (a) consult and coordinate with departments, agencies and entities of the national and county government whose functions affect the development and provision of water and services; and
- (b) consult with relevant stakeholders including non-governmental organisations, the private sector and consumer groups.

(4). In discharge of the duties and functions under this Act, the County Executive Committee member shall be assisted by the Directorate of Water and Sewerage Services established under this Act.

County Water and Sewerage
Services Strategy

6. (1) Following public consultation the County Executive Committee member shall formulate a county water and sewerage services strategy.

(2) The County Water and Sewerage Services Strategy shall provide –

- (a) Information on areas within the county in which access to basic water and sewerage services is inadequate;
- (b) Plans and measures for the development and continuous improvement of water and sewerage services- within the county;
- (c) An investment programme and a timeframe for the development, expansion and improvement of water and sewerage services in the county;
- (d) Institutional and financial arrangements and measures for the improvement of access to basic water services within the rural areas and underserved urban areas;
- (e) Measures to facilitate the provision of water and sewerage services by private sector water service providers and community water service providers;
- (f) Criteria and procedures for the provision by the county government of financial, technical and other assistance to county owned water utility companies and community water service providers; and
- (g) Measures and arrangements of the county government for the provision of water for irrigation and other agricultural purposes.

(3) The strategy shall be published in the Gazette after approval by the County Executive Committee.

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(4) The county water services strategy shall be reviewed periodically and in any case not later than every five years.

(5) Every county public officer and every county organ shall give effect to the gazetted county water and sewerage services strategy in discharge of their duties under this Act.

(6) Every private water services provider and every community water service provider shall take account of the county water services strategy in its plans and programmes.

The Directorate of Water and Sewerage Services

7. (1). There is established a Directorate of Water and Sewerage Services which shall be headed by the Director of Water and Sewerage Services.

(2) The County Executive Committee member shall, in consultation with the County Public Service Board, determine the staff establishment required by the Directorate to effectively perform its functions under the Act.

(3) The duties and functions of the Directorate shall be to —

- (a) Provide technical support and advice to the County Executive Committee member in the discharge of [his][her] functions;
- (b) implement and give effect to the county water and sewerage services strategy;
- (c) subject to national legislation, implement a system and requirements for registration of water services providers operating within the county;
- (d) subject to national legislation, formulate rules, standards and guidelines for the provision of water services within the county;
- (e) in consultation with the Water Services Regulatory Board, enforce rules, guidelines and standards for the provision of water services within the county;
- (f) gather, collate and analyse information and disseminate data on water and sewerage services in the county;
- (g) maintain an inventory of the assets, facilities and other infrastructure of the county government for the provision of water and sewerage services;
- (h) provide operational, technical and other support to water service providers;
- (i) receive and address complaints regarding the provision of water services; and
- (j) perform such other duties and functions in relation to the provision of water and sewerage services as are assigned to it by the County Executive Committee member.

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PART III – ESTABLISHMENT AND OPERATION OF WATER SERVICES PROVIDERS

Establishment of county water services provider

8(1). The county government may, following a resolution of the County Assembly, by notice in the Gazette, or through incorporation of a limited liability company, establish one or more county entities as a water and sewerage services provider or providers as the case may be.

(2) A county water services provider established under this section shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of:-

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of moveable and immovable property;
- (c) borrowing money;
- (d) entering into contracts; and
- (e) doing or performing all other things or acts necessary for the proper discharge of its functions under this Act which may lawfully be done or performed by a body corporate.

(3) The County Executive Committee member shall assign to each county water services provider established under this section a water supply area which may cover the whole or a portion of the area of geographical jurisdiction of the county government.

(4) In determining the area of supply of a county water services provider the County Executive Committee member shall take account of and give effect to the operation within the whole or part of the proposed supply area of community or private water services providers.

(5) Following the establishment of a county water services provider the assets, facilities and other infrastructure used for the provision of water and sewerage services within the water services provider's water supply area which belong to the county government shall be transferred or leased to the water services provider.

(6) Where the assets for the provision of water services in the supply area belong to a community water services provider the county water services provider may enter into an agreement with the community water services provider for the use and or acquisition of the assets the terms of which may provide that the community water services provider continues to provide water services as an agent of the county water services provider and that the community water services provider may purchase water in bulk from the county water services provider.

Functions of the county water services provider

9. (1) A county water and sewerage services provider established under this Act shall be responsible for the provision of water and sewerage services, and for development and management of the related infrastructure and facilities, within its water supply area and for this purpose it may acquire

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and own land, infrastructure and facilities for water services provision.

- (2) The county water and sewerage services provider shall have the exclusive right to provide water services for domestic consumption within its area of supply.
- (3) Where the county water services provider does not have arrangements and plans to make available to irrigators a supply of water for irrigation, livestock and other agricultural purposes either at all or in adequate quantities, the Director may permit as per regulations, another water services provider providing water exclusively for use for purposes of irrigation, livestock or other agricultural purposes to operate within the same or part of the same area of supply.
- (4) A water services provider providing a water supply which is intended for use predominately for irrigation, livestock or other agricultural purpose shall take measures to ensure that the pipes, tanks or other facility conveying or storing the water are identified by a distinctive colour or other features enabling consumers to know that the water supplied is not intended for domestic consumption.
- (5) The performance by a county water services provider of the functions set out in this Act shall be subject to the requirement, to obtain and maintain a licence issued by the Regulatory Board under the Water Act, 2016.
- (6) A county water services provider established under the Act may, with the approval of the County Executive Committee member, contract out the whole or aspects of its functions to a private water services provider, a community water services provider or another county entity which has the requisite capacity to provide water services.

The governance of water service providers

- 10.** (1). Each county water services provider shall have a board of directors comprising not more than seven (7) members which shall guide and direct the performance of its functions.
- (2) The rules and procedures of the county government on the appointment, composition and qualifications of members of the board of directors of a water services providers shall be prescribed by the Regulations hereinto.
 - (3) The term of the Board of the county water and sewerage services provider shall be three years which term shall not be affected by the expiry of the term of office of the county government.

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- Meetings and Procedure of the Board **11.** The First Schedule shall have effect in relation to the meetings and procedures of the Board.
- Chief Executive Officer and other employees of county water services providers **12.** (1) A county water services provider shall employ a chief executive officer who is competitively recruited by its Board.
- (2) The terms and conditions of service of the chief executive officer shall be set by its board of directors and specified in an instrument of appointment.
- (3) The chief executive officer shall, in accordance with this Act, and under the general direction of the Board, be responsible for the daily management and performance of the functions and duties of the county water services provider.
- (4) The chief executive officer shall be an *ex officio* member of the board of directors.
- (5) A county water services provider may engage such employees as it may consider sufficient for the performance of its functions under this Act on such terms and conditions of service as the Board may approve.
- (6) A person employed by a county water services provider shall be a public officer and subject to the laws governing the conduct of public officers.
- Finances of county water service providers **13.**(1) The funds and assets of a county water services provider shall consist of—
- (a) such monies as may be appropriated by the County Assembly for the purposes of the county water services provider;
- (b) (b) any monies or property which may in any manner accrue or vest in the county water services provider in the course of the exercise of its functions under this Act;
- (c) such monies as may become payable to the County water services provider by way of fees and other charges in respect of services rendered by or through it; and
- (d) all monies from any other sources provided whatsoever donated, lent or granted to the county water services provider.
- (2) The County Executive Committee may set up a dedicated fund into which the county government and others may place funds for supporting the provision of water services to underserved areas.

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(3) The rules governing the operation of the fund shall be prescribed by the County Executive Committee member in consultation with the County Executive Committee member in charge of the County Treasury.

Annual estimates of county water services provider

14. (1) Not less than six months before commencement of each financial year, the board of a county water services provider shall cause to be prepared estimates of the revenue and expenditure for that year.

(2) The annual estimates shall make provision for all the estimated capital and recurrent expenditure of a county water services provider for the financial year concerned.

(3) The annual estimates shall also make provision for such amounts as are required to pay any portion of the principal and or interest of loans or advances if any secured by or on behalf of the water services provider to finance the capital costs of developing and or rehabilitating infrastructure and or facilities and or acquiring equipment and other assets for the provision of water services.

(3) The Board shall submit the estimates to the County Executive Committee member, who shall present the estimates for consideration and approval by the County Assembly.

(4) No expenditure shall be incurred for the purposes of a county water services provider except in accordance with the annual estimates approved under this section.

Accounts and audit

15. (1) The board of a county water services provider shall keep proper books of account of its income, expenditure, assets and liabilities.

(2) Within three months after the end of each financial year the board of each county water services provider shall submit to the Auditor-General the accounts in respect of that year, together with –

(a) a statement of the income and expenditure during that year; and

(b) a statement of the assets and liabilities on the last day of that financial year

(3) The annual accounts of a county water services provider shall be prepared, audited and reported upon in accordance with the provisions of Article 226 and 229 of the Constitution and applicable national and county government legislation.

Register of water service providers

16.(1) The Directorate shall maintain a register of all water service providers operating within the area of jurisdiction of the county.

(2) For purposes of the register each water services provider shall, within 12 months of commencement of the Act or, in respect to water service providers established after the commencement of the Act, of its

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establishment or such longer period as the Executive Committee member may allow, submit to the Directorate information on:

- (a) its area of supply;
- (b) The predominant use or uses of the water supplied;
- (c) the number and location of customers served;
- (d) an inventory of the facilities and infrastructure available to it for the provision of water services;
- (e) particulars of its board of directors or management committee and staff including the technical qualifications of its staff;
- (f) the tariff or tariffs charged;
- (g) particulars of liabilities;
- (h) its licence status with the Regulatory Board and, if licensed, a copy of the licence;
- (i) plans and programmes for the improvement of water services it provided; and
- (j) such other information as the Executive Committee member may by regulations prescribe.

(3) By the end of March of each calendar year the water services provider shall notify the Directorate of material changes to the information provided in the previous year and the Directorate shall as soon as practicable thereafter update the register.

(4) The register shall be open to inspection by members of the public during normal working hours.

PART IV— COMMERCIAL VIABILITY AND SERVICE DELIVERY

Tariffs for water services. **17.**(1) Subject to the national policy and such requirements as may be imposed under national law, tariffs for the provision of water services for domestic consumption in urban areas shall be set on the basis of full cost recovery while tariffs for the provision of water services in rural areas may be set on the basis of the full recovery of operation and maintenance but not capital costs.

(2) In situations where the predominant use of the water supplied is for irrigation, livestock or other agricultural purpose, the tariffs charged shall in all cases be set on a full cost recovery basis, including the recovery of the capital costs.

(3) The county government may in appropriate cases provide financial assistance to enable a water services provider providing water services for predominantly used for domestic consumption and which satisfies the criteria stipulated in the water services strategy meet a portion of its operation and maintenance costs.

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(4) Subject to national legislation a water services provider may impose a charge for accepting into its sewerage system and treating wastewater from industrial and other trade premises within its supply area.

(5) A water services provider which provides desludging and or exhauster services may impose a charge for treating the sludge and or wastewater.

(6) Not less than 14 days prior to the due date of payment a water services provider shall avail a bill or other invoice to each of its customers prepared whenever practicable on the basis of metered supply.

Private sector participation **19.**(1) Subject to compliance with the requirements of applicable national law a county water services provider may, in an appropriate case, engage in a public private partnership for development of water services infrastructure and or the provision of water and or sewerage services.

(2) Any assets, facilities and infrastructure developed under a public private partnership to be used for the provision of water and or sewerage services shall be deemed to be public property and upon the expiry or other termination of the public private partnership agreement shall be vested in and be owned by the county government or county water services provider as appropriate.

(3) The county government may with the approval of its assembly and the Regulatory Board and subject to compliance with applicable national and county legislation divest itself of the assets and liabilities for the provision of water services to a private water services provider or community water services provider.

Customer relations **20.** (1) A water services provider shall at all times maintain a customer relations system including a feedback and grievance resolution system.

(2) A water services provider shall formulate and regularly review a service delivery charter, including implementation mechanisms.

Interruptions in water services **21.** (1) On each occasion of a planned interruption a water services provider shall notify its customers who are likely to be affected by the interruption not less than 24 hours prior to the planned interruption and shall indicate the expected duration of the interruption.

(2) Where an unplanned interruption occurs to water services, the water services provider shall notify its customers as soon as reasonably practicable and in any event not less than 12 hours after the discovery of the interruption, and keep customers fully apprised on the progress being made to redress the cause of the interruption and the expected time and or day of resumption of normal service.

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(3) Where an interruption in services extends for a period longer than 14 days the water services provider shall take remedial measures to the extent practicable to provide consumers with a basic supply of water for domestic consumption through bowsers and other mobile means.

(4) Where such interruptions arise from damage to pipes or other infrastructure by a contractor carrying out works the contractor shall repair the damaged pipes or infrastructure within such time as the Director stipulates and, pending the restoration of the water supply, the contractor shall provide an alternative water supply to the affected consumers.

PART V –INSPECTION,EVALUATION AND MONITORING

Power of entry and inspection **22.** (1) A water services provider shall establish and maintain an inspectorate service with adequate resources and staff.

(2) An inspector employed by the water services provider may enter any premises to which it provides water and or sewerage services in order to inspect and monitor:

- (a) the distribution system
- (b) the water metre(s)
- (c) water storage systems
- (d) the sewerage system
- (e) such other elements of the water and sewerage services as the County Executive Committee member, may, through regulations, authorize.

(3) An inspection may only be undertaken between the hours of 8am and 6pm except in case of an emergency.

(4) A water services provider shall communicate to its customers the recommended methods and procedures of verifying the identity of inspectors seeking entry into premises and maintain at all times a customer help line to which customers may telephone to verify any information provided to them by the inspector.

(5) Where the water services provider has knowledge of, or suspects the illegal or unauthorized access to, and use of its water and or sewerage services in any premises, it shall apply to the appropriate court for a warrant to enter and search the premises.

(6) Nothing in this sub-section (4) shall prevent a water services provider from disconnecting and terminating the water services from a point outside the premises in question.

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Evaluation and monitoring of water service providers **23.**(1)The County Executive Committee member shall, on an annual basis, with the technical assistance of the Directorate and in consultation with the Regulatory Board,undertake monitoring and evaluation of the performance of each water services provider to ascertain the extent of compliance withthe county water services strategy and performance targets.

(2) The County Executive Committee member shall, on the basis of recommendations of the monitoring and evaluation report, take appropriate remedial measures to ensure the continuous improvement of the standard and quality of water and or sewerage services provided by water services providers operating in the county.

PART VI –OFFENCES RELATING TO CONDUCT OF EMPLOYEES OF A WATER SERVICES PROVIDER

Offences by employees **24.** (1) Employees of a county water services provider shall have immunity from liability and prosecution for any losses arising from action taken in good faith in execution of lawful duties.

Cap 63
Cap 65
Cap 183 (2) Notwithstanding (1) above, any actions of employees of a county water services provider involving solicitation and receiving of bribes and corrupt practices shall be punishable, as appropriate, under Public Officer Ethics Act, Penal Code, or the Anti-Corruption and Economic Crimes Act or their replacement or amendment.

(3) It is an offence for a employee of the water services provider to wilfullyfail to—

- (i) read a metre when it is [his] [her] duty to do so;
- (ii) disconnect water services to a customer who has defaulted in making payment contrary to rules set by the water services provider;
- (iii) notify the water services provider of an illegal or unauthorized access and utilization of the water and or sewerage services;

(4) It is an offence for an employee of a water services provider to collude with other persons to allow or assist such persons illegally to access and use water services contrary to rules set by the water services provider or for the principal purpose for which the water is supplied .

(5) Upon conviction for an offence under this section the person shall be liable to a sentence of not less than three months imprisonment or a fine not exceedingthirty thousands shillings, or both such fine and imprisonment.

(6) For purposes of this section, an employee of a water services provider includes a person engaged on casual terms of service, as well as a contractor when performing duties falling within the scope of this section.

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PART VII—GENERAL OFFENCES

- Impersonation of staff of the water services provider **25.** Any person who impersonates an employee of a water services provider shall be guilty of an offence and, upon conviction, be liable to a sentence of not less than six months imprisonment, or a fine not less than Thirty Thousands shillings, or both such fine and imprisonment.
- Vandalism of water and sewerage infrastructure services **26.** (1) Any person who willfully vandalizes, damages, or destroys infrastructure or a facility of a water and sewerage services provider shall be guilty of an offence and, on conviction, shall be liable to a sentence of not less than six months imprisonment or a fine of not less than fifty thousand shillings or both such fine and imprisonment.
- (2) Upon conviction for a second or subsequent offence involving the willful destruction or vandalism of infrastructure or facilities belonging to a water services provider the offender shall be liable to imprisonment for a term not exceeding two years, or a fine of not less than One Hundred Thousand shillings, or both such fine and imprisonment.
- Illegal connection to water services **27.**(1) Any person who illegally connects to, diverts and utilizes for any purpose, water and or sewerage services provided by a water services provider shall be guilty of an offence and upon conviction shall be liable to imprisonment for a term of not less than six months a fine of not exceeding one million Shillings or both such fine and imprisonment.
- (2) Upon conviction the offender shall additionally be liable to a surcharge of the full value of the water services illegally utilized, with interest computed at the rate of 12% per annum until paid in full, which surcharge shall be recoverable as a debt owed to the water services provider.
- Contamination of water and supply to domestic premises **28.**(1) Any person who willfully contaminates or pollutes water which is used or intended to be used for domestic supply by discharging contaminants into it, throws waste or other contaminating matter into it or otherwise handles such water in such a manner as to contaminate it shall be guilty an offence and upon conviction shall be liable to imprisonment for a period of not less than six months or to a fine of not less than fifty thousand shillings or both such fine and imprisonment.
- (2) Any person who supplies water to domestic premises which he knows or ought to know is not fit for domestic consumption without issuing a warning to persons who are likely to consume it to the effect that the water is not fit for consumption and must be treated prior to being consumed is guilty of an offence and liable on conviction to imprisonment for six months or a fine of not less than Fifty Thouand shillings of both such fine and such imprisonment.

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PART VIII—ADMINISTRATION OF CERTAIN WATER SUPPLY AND INFRASTRUCTURE SERVICES

Raw water abstraction permits and access rights **29.** (1) A county water services provider shall ensure the availability and development of sources of water for abstraction as necessary to enable the water services provider supply adequate quantities and quality of water to its consumers.

(2) A county water services provider shall, in its strategiesbusiness plans and programmes, give priority to the supply of water for domestic consumption over the supply of water for any other purposes.

(3) A water services provider shall apply for and secure an abstraction permit from the relevant national regulatory authority, access rights, easements and source development agreements as may be necessary to enable it obtain such raw water as it requires for the performance of its functions.

(3) Where the water services provider does not have access to adequate sources of raw water for supply to consumers within its area of supply it shall, with the support of the County Executive Committee member, make arrangements for the purchase of water in bulk.

Septic Tank SludgeManagement **30.**(1)The County Executive Committee member in consultation with the County Executive Committee member in charge of public health shall, as soon as reasonably practicable following coming into effect of the Act, make regulations governing the sustainable management of septic tank sludge, including the licensing of exhauster service providers, and disposal of sludge after collection from septic tanks by exhauster service providers.

(2) Regulations made under this section may require one or more county water service providers to establish and maintain facilities for the disposal of septic tank sludge and waste water from exhausters operating within the area of supply of the county water services provider.

Easements, access rights etc **31.**(1) The acquisition of easements for purposes of water services infrastructure shall follow the procedure set out in national law.

(2) A water services provider which acquires easements, access rights and or property rights over land on or over which its facilities and infrastructure is constructed shall ensure that it has obtained and registered the property or access rights in its name and it has in its custody the relevant title documents.

(3) A water services provider shall take steps to obtain and maintain in its records “as built” drawings of its facilities and infrastructure, geo-

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referenced maps and plans and other relevant documents which show the location and layout of the water infrastructure.

(4) A service provider shall take steps to put in place and maintain mark post of the pipeline and hydraulic structures.

(5) The County Executive member shall prescribe rules for protecting access rights to point water sources enjoyed by community members on traditional or other non-statutory basis.

Operation of community water projects

32.(1). The County Executive Committee member shall facilitate the development and operation of community water service providers in rural areas within which the county water service providers do not provide adequate water services.

(2) Where, following viability studies, it is recommended that certain community water service providers should cluster into bigger associations in order to better achieve viability, the County Executive Committee member shall put in place appropriate measures to encourage such community water service providers to cluster; consolidate and outsource to a common services provider services such as billing services, pump maintenance services and other similar services; or engage the services of a contractor to provide professional management services.

(3) A community water services provider which takes steps to enhance viability through clustering, outsourcing of services and or engagement of professional management services shall be eligible to financial, technical and other support from the county government during the period before it achieves financial viability.

Construction boreholes within supply area

33.(1) Subject to national legislation every application to the water resources regulatory authority for the construction of a borehole for domestic water consumption within the area of supply of a water services provider shall be submitted for a “no-objection” to the water services provider within whose area of supply the borehole is to be constructed.

(2) In considering an application for a “no-objection” the water services provider shall take account of its ability to provide the water services in respect to which the application for the borehole has been made and, if it reasonably believes that it can provide the required water services within a period not exceeding one year, it shall decline the request for a “no-objection.”

(3) The water services provider shall maintain an inventory of boreholes constructed within its area of supply and as soon as it is able to provide water services to the owner of the borehole it shall require the owner of the

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borehole to discontinue the use of the borehole and take a supply of water from the water services provider.

(4) Where the water services provider wishes to take water from the borehole for supply to its customers it shall enter into a contract with the owner of the borehole for the purchase of water from the owner of the borehole.

(5) Any dispute between the owner of the borehole and the water services provider over the use of the borehole by the water services provider for the provision of water to the water service provider's customers shall be submitted to the Director for determination and if any party is dissatisfied with the decision of the Director he/she may appeal to the Water Tribunal established under the Water Act 2016.

Regulation of water vending kiosks

34.The County Executive Committee member shall, within six months of this law coming into effect, make regulations on water vending kiosks.

(2) Without prejudice to the generality of subsection (1) such regulations may make provision with respect to:

- (a) the operations and licensing of water kiosks;
- (b) (ii) sources of water and tariffs chargeable for water sold and purchased at water vending kiosks;
- (c) (iii) optimal location of kiosks; and
- (d) (iv) restriction of ownership of water vending kiosks by employees of water service providers.

PART IX— APPROVALS OF CONSTRUCTION WORKS AFFECTING INFRASTRUCTURE

Approval of construction works

35.(1)In all cases where a person is undertaking construction works which affect water and sewerage infrastructure operated by a water services provider the approval of the water services provider shall be obtained on terms and conditions set by the water services provider, which may include the payment of a fee.

(2) It is an offence for a person to undertake the works contemplated in this section without the approval of the water services provider and upon conviction, such person will be liable to a fine of not less than One Hundred Thousands shillings or imprisonment for a term not exceeding six months or both such fine and such imprisonment.

(3) Where damage is caused to infrastructure belonging to or used by the water services provider through construction works the person responsible for the construction works shall, in addition to any other prescribed

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penalties, be liable to a surcharge of the full cost of repairs or replacement and it shall not be a defence to any action taken against the person responsible, whether civil or criminal, that the water services provider had approved the works.

(4) The provisions of this section shall apply equally to public entities undertaking construction works as they do to private contractors undertaking works for private persons or under a contract with public bodies.

Certification of property development works connecting to water mains

36.(1) In every case where a developer of property is undertaking plumbing, sewerage and related works for connection of the private property to the mains operated by a water services provider –

(a) The developer shall present the plans for such plumbing and sewerage works to the water services provider for inspection and approval, prior to commencement of construction; and

(b) Upon completion of the works, the water services provider shall inspect the works and if the works comply with the approved plans, certify the works as approved for connection to the mains.

(2) A developer who undertakes plumbing, sewerage and related works for connection of the private property to the mains operated by a water services provider without presenting the plans for certification as required under this section shall be guilty of an offence and on conviction shall be liable to imprisonment for up to six months or a fine or not more than One Hundred Thousand Shillings or to both such fine and imprisonment.

PART X— PROTECTION OF WATER RESOURCES

Storm water drainage.

37.(1) Before undertaking works for the development of property in an urban area the person shall prepare and submit for approval by the Directorate a storm water management plan.

(2) The plan shall make provision for short term storm water retention and augmentation of groundwater resources before discharge into storm water drainage channels of the urban authority.

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(3) The arrangements made by the urban authority for the disposal of storm water from rooftops and paved areas of the urban area may not increase the risk of erosion or flooding of private property.

(4) The powers of the Directorate to approve a storm water management plan under this section shall be exercised in consultation with the directorate in charge of county urban planning.

Rainwater catchment

38.(1) The County Executive Committee member in consultation with the County Executive Committee member in charge of county physical planning and building approvals shall make rules requiring householders, businesses and other users of water in the county to install rainwater catchment systems with a storage capacity capable of meeting 7 days demand of the user for domestic water supply.

(2) The rules shall make provision for enabling the county government to offset a portion of the capital cost of installing the storage systems subject to such terms and conditions as the County Executive Committee member in charge of the County Treasury shall approve.

(3) A householder who, having received financial assistance from the county government to do so, willfully fails to install a rainwater catchment system contrary to the rules shall be guilty of an offence and on conviction shall be liable to imprisonment for a term not exceeding three months or a fine not exceeding one hundred thousand shillings or both such fine and such imprisonment.

(4) The Directorate shall advise householders and other users of water on the household treatment and other handling requirements for rainwater which is to be consumed.

(5) The Executive Committee Member in consultation with the Executive Committee Member in charge of agriculture shall make rules requiring users of water for irrigation, livestock or other similar purposes shall install storage tanks and other facilities for the storing flood water and surface run off for use during dry seasons.

Catchment conservation

39.(1) The County Executive Committee member, in consultation with the county executive committee member in charge of environment, shall formulate a strategy for the conservation by the county government of catchments and other sources of water from which a water service provider takes water for supply.

(2) The strategy shall provide for measures and institutional arrangements of the county government for the conservation of catchments and water sources.

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(3) The strategy shall provide collaborative arrangements between the county government and water resources users associations in the formulation, revision and implementation of catchment sub-catchment management plans.

(4) The County Executive Committee member may, following consultations with the County Executive Committee member in charge of the County Treasury, impose a levy on water consumption to be used to finance part of the cost of implementation of catchment management plans by water resources users associations.

Regulations

40. (1). The County Executive Committee member shall make regulations for the better carrying out of the provisions of this Act.

SCHEDULE

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF BOARDS OF COUNTY WATER SERVICES PROVIDERS (Section 11)

Meetings

1. (1) The Board shall meet for the dispatch of business at such times and places as it shall appoint, or failing any such appointment, as the Chairman shall appoint:

(2) Provided that the Board shall meet not less than four times in any financial year.

Special meetings

2. The Chairman or any three directors may, by not less than twenty-four hours' written notice to all other directors, summon a special meeting of the Board at the headquarters of the Corporation at any time.

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- Notice of meetings
3. (1). Except where a shorter period is appointed notice of the date, time and place of each meeting shall be given in writing at least five clear days beforehand to every director at such address in Kenya as he shall have notified to the Corporation from time to time.
- (2) Provided that the failure of any director to receive such notice shall not invalidate any proceeding
- Quorum
4. The quorum necessary for the transaction of business by the Board shall be not less than two thirds of the members of the Board.
- Chairperson
5. (1) The Chairperson shall preside at meetings of the Board.
- (2) Provided that if he is not present at the start or at any time during a meeting, the Vice Chairperson shall chair, and if both absent, the directors present, if a quorum, may choose one of their number to act as chairperson during the Chairperson's absence from that meeting.
- Voting
6. (1) Questions arising at meetings shall be decided by a majority of the votes of the directors present and voting.
- (2) Provided that in the case of any equality of votes, the Chairperson of the meeting shall have a second or casting vote.
- Minutes
7. The Board shall cause minutes to be kept of all resolutions and proceedings at each meeting and of the directors present thereat.
- Other procedures
8. Subject to the provisions of this Schedule, the Board may determine its own procedure, and the procedure for any committee of the Board and for the attendance of other persons at its meetings, and may make standing orders in respect thereof.
- Disclosure of interest
9. (1) If a director is directly or indirectly interested in any contract, proposed contract, or other matter and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact, and shall not take part in the consideration or discussion of, or vote on, any question with respect to the contract or other matter, or be counted in the quorum of the meeting during the consideration of the matter.
- (2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is

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made.

The common seal

10. The affixing of the common seal of the Corporation [company] shall be authenticated by the signatures of the Chairperson or some other director authorized generally or specially by the Board to act for the purpose, and of an employee of the Corporation [company] authorized generally or specially by the Board to act for the purpose.

Contracts and instruments

11. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Corporation [company] by any person generally or specially authorized by it for that purpose.

Proof of documents

12. Any document purporting to be a document duly executed or issued under the seal of the Corporation [company] or on behalf of the Corporation [company] shall be received in evidence and be deemed to be a document so executed or issued without further proof unless the contrary is shown.

MEMORANDUM OF OBJECTS AND REASONS

The object of the Bill is to provide the legal framework and institutional framework for provision of water and sewerage services in the county.

Part I provides for preliminary provisions.

Part II provides for policy coordination and oversight of water services that is powers and duties of the County Executive Committee Member, County water and sewage services strategy paper, establishment of a directorate of water and sewerage services.

Part III provides for establishment of water service provider, functions of the water service provider, governance of water service providers, meetings and procedures of the Board, employment of Chief Executive officer and other employees of the county water service providers, annual estimates of the

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county water service provider, accounts and audit and register of water service providers.

Part IV provides for commercial viability and service deliver that is tariffs for water and sewerage services, ring fencing of revenue, private sector participation, customer relations and intruptions of water services.

Part V provides for inspection, evaluation and monitoring that is powers of entry and inspection, and evaluation and monitoring of service providers.

Part VI provides for offences relating to conduct of employees of water service providers.

Part VII provides for General offences that is impersonation of a staff of the water service provider, vandalism of water and sewerage service infrastructure, illegal connection to water serices and contamination of water and water supply to domestic premises.

Part VIII provides for administration of certain water supply and infrastructure services that is raw water abstraction permits and access rights, Septic tank sludgwmanagement, easments, access rights, operation of community water projects, construction of bore hores within supply area and regulation of water vending kiosks.

Part IX provides for approvals of construction works and certificate of property development works connecting water mains.

Part X provides for protection of water sources that is storm water drainage, rain water catchment, catchment conservation and regulations.

STATEMENT OF CONSTITUTIONAL AND CONFLICT OF LAWS

The Bill does not contravene any of the provisions of the Constitution of Kenya and it is not ultra vires to any of the provisions of national laws relating to water Services. In case of any conflict between the Bill and ant National laws, the povisions of Article 191 of the Constitution shall take effect.

The enactment of this Bill shall occasion additional expenditure of public funds that have been provided for in the budget estimate.

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Dated 17th December 2019

Ms. Margret Gitari
Chair person Environmental Committee