

MARSABIT WATER SERVICES BILL 2018
ARRANGEMENT OF CLAUSES
PART I –PRELIMINARY

- 1 –Short title and commencement
- 2 –Interpretation
- 3 –Objects of the Act
- 4 –The right to water
- 5 –Water use rights

PART II –ADMINISTRATION

- 6 –County Water Department
- 7 –Planning for water use
- 8 –Compliance officers
- 9 –Coordination of water use activities

PART III –WATER SUPPLY AND SERVICE MANAGEMENT

- 10 –County Water Service Provider
- 11 –Board of the Company
- 12 –Functions of the Board.
- 13 – Establishment of an Authority as a water service provider
- 14 –Remuneration of the Board.
- 15 –Chief executive officer.
- 16 –Removal of the Chief Executive Officer
- 17 –Company Secretary
- 18 –Staff of the Company.
- 19 –The common seal of the Company.
- 20 –Village Water Units
- 21 –Water Use Tariffs

- 22 –Water Use Reports
- 23 –Consumer feedback
- 24 –Community Natural Resource Committees
- 25 –Private Water Service Providers
- 26 –Water Service Provider Permits
- 27 –Water Quality Control

PART IV –WATERWORKS

- 28 –Waterworks permits
- 29 –Development and maintenance of County Water works
- 30 –Storm Water Management System
- 31 –Waterworks Priority Schedules
- 32 –Compulsory acquisition of Land
- 33 –Easement for Waterworks

PART V –CONSERVATION

- 34 –Borehole Site identification
- 35 –Drilling of boreholes
- 36 –Water Pollution Control
- 37 –Monitoring wells
- 38 –National Water Conservation Policies

PART VI –WATER HARVESTING

- 39 –Roof catchment
- 40 –Construction of water pans
- 41 –Storm water harvesting systems

PART VII –PUBLIC PRIVATE PARTNERSHIPS

42–Public Private Partnerships for Water Services

43–Public Private Partnerships for Waterworks

44–Public Private Partnerships Policy

PART VIII –DISASTER MANAGEMENT

45 –Disaster management strategy

46 –Water trucking

47 –Cross county disaster management

PART IX –FINANCIAL PROVISIONS

48 –Application of revenues from permits and penalties

49 –Finances of County Water Service Providers

PART X –OFFENCES

50 –Obstruction of officers

51 –Proceedings for Offences

52 –Remedy of defaults

53 –General Penalty

PART XI –MISCELLANEOUS

54 –Regulations

55 –Transition plan

56 –Protection from liability

57 –Public Participation

58 –Conciliation Panel

59 –Procedure for Resolving Conflicts

60 –Finances of the Panel

A bill for

An Act of the County Assembly of Marsabit to provide for Water Management services and implementation of National Government Policies on water conservation in Marsabit County and for connected purposes

ENACTED by the County Assembly of Marsabit as follows:-

PART I PRELIMINARY

Short title and commencement

1. This Act may be cited as the Marsabit Water Services Act 2018, and shall come into operation fourteen days after its publication in the Kenya Gazette.

Interpretation

2. In this Act, unless the context otherwise requires:-

‘**borehole**’ means a hole, usually vertical, drilled to determine ground conditions for the extraction of, or measurement of groundwater;

No. 17 of 2012

‘**Chief Officer**’ means the Chief Officer responsible for matters relating to water in the County, appointed in accordance with section 45 of the County governments Act;

‘**company**’ has the meaning assigned to it under section 2 of the Companies Act Cap. 486;

No. 15 of 2013

‘**Contract Node**’ has the meaning assigned to it under section 2 of the Public Private Partnerships Act 2013;

No. 15 of 2013

‘**Contracting Authority**’ has the meaning 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 in charge of water in the County, appointed in accordance with section 35 of the County Governments Act 2012;

‘**County Executive Committee**’ means the County Executive Committee established in Marsabit County in accordance with the Constitution of Kenya;

No. 17 of 2012

‘**County Public Service Board**’ has the meaning assigned to it under section 57 of the County Governments Act 2012;

No. 18 of 2012

‘County Secretary’ has the meaning assigned to it under section 44 of the County government Act

‘County Treasury’ has the meaning 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;

‘department’ means the Department of Water established as a ministry in Marsabit County or as a department in a ministry in Marsabit County;

‘fund’ means the Water Services Fund established under section 48 of this Act;

‘governor’ means the Governor of Marsabit County

‘household’ means a household as defined by the most recently published National Census Report in Kenya

‘national water conservation policy’ means National Government policies on natural resources and environment conservation through water resource users;

‘national legislation’ means a law enacted by the Parliament in Kenya;

‘panel’ means the Conciliation Panel established under section 58 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 the 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;

‘permit’ means a permit 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

L.N. 146/2013

2013, or any other law for undertaking charitable purposes connected with water use projects for public benefit in the County

No. 15 of 2013

‘public private partnership’ has the meaning assigned to it under the Public Private Partnerships Act 2013;

No. 13 of 2011

‘urban area’ has the meaning assigned to it under the Urban Areas and Cities Act 2011;

‘water service provider’ means a company, authority or water service provider engaging in distribution or supply of water services in the County

‘water use rights’ has the meaning 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 rules 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 :-

- a) Operationalizing water services provision as a County function under the Constitution;
- b) Stating the water use priority in the County;
- c) Establishing and administrative framework for water services provision in the County;
- d) Provision of water services in urban areas;
- e) Setting up water units in villages and other areas not defined as urban areas;
- f) Prescribing penalties for water use related offences in the County;
- g) Coordination of water use activities in the County;
- h) Regulation of water works in the County;
- i) Conservation of water in the County including water harvesting
- j) Management of revenues earned from water supply

- andsanitation in the County; and
- k) Ownership and maintenance of County owned watersupply and sanitation infrastructure.

The 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 stated in subsection (1) above.
- (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) After 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) 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
- e) Water for the largest domestic animals like camels shall be given the fourth priority; and
- f) Water for any other use apart from those stated shall be given the last priority.

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

PART II ADMINISTRATION

County Water
Department

6. (1) The County Executive shall have the overall responsibility of governing water and sanitation issues in the County.

(2) The County Executive and the Chief Officer may constitute a County Water Department to administer water and sanitation issues in the County.

(3) The County Executive may establish the following offices as administrative units of the Department :-

- a) The offices of the County Water Director or Directors;
- b) Sub-County Water Officers; and
- c) Other officers constituted by the County Executive on the basis of a need.

(4) The Department shall be under the direction of the County Executive and Chief Officer.

Planning for water use

7.(1) The County Executive shall coordinate and perform planning obligation relating to water use in the County including:-

- a) Formulating and publishing the county water and sanitation ten year sectorial plan;
- b) Coordinate 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 Sectorial 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 the County Executive by

regulations.

Compliance officers

8. (1) The County may recruit compliance officers to enforce provisions of this Act and regulations issued under this Act.

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

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 by other persons except the County Government.

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

The County Executive shall in consultation with Public Benefit Organizations in the County issues 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 direct National Government agencies undertaking water use projects and activities in the County with regard to water use priorities in the County.

(5) The mandate under subsection (4) above shall be undertaken in the spirit of cooperation and consultation

as stipulated in article 6 (2) of the Constitution of Kenya

PART III WATER SUPPLY AND SERVICE MANAGEMENT

County Water
Service Provider

10. (1) The County may establish a Company as a County Water Service Provider.

(2) The Company established in subsection (1) above shall have at least two members who shall be office holders in the County. (3) The County Water Service Provider shall be responsible for water supply management in the County including:-

- a) Water service provision and sanitation management in urban areas;
- b) Management of village water units in rural areas;
- c) Collection of water use revenues in the County;
- d) Collection of water use data in the County
- e) Management of water works developed by the Department;
- f) Management of any water use resource owned by the County;
- g) formulate and implement pro-poor policies as regards access to water; and
- h) maintain database related to water and sewerage services

Board of the Company

11. (1) The management of the Company shall vest in the Board appointed by the County Executive in consultation with the Governor.

(2) The Board of the Company shall consist of-

- (a) A chairperson appointed by the County Executive;
- (b) Four persons, each representing a sub- county in the County;
- (c) a Chief Executive Officer
- (d) a Secretary ; and
- (e) three persons representing special interests as the County Executive may determine.

(3) A person shall be qualified for appointment as chairperson or a

member appointed under subsection (2) if the person-

- (a) Is a resident of Marsabit County;
- (b) holds at least a diploma qualification from a reputable academic institution;
- (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) meets the requirements of Chapter Six of the Constitution; and
- (e) has had a distinguished career in their respective fields.

Functions of the Board.

12. The functions of the Board shall be to:-

- (a) ensure proper and efficient exercise of the powers and performance of the functions of the Company;
- (b) advise the management of the Company generally on the exercise of the powers and the performance of the functions of the Company;
- (c) approve the estimates of the revenue and expenditure of the Company; and
- (d) perform such other functions as are provided for under this Act or any other written law.

Establishment of an Authority as a water service provider

13. (1) The County executive may by notice in the County Gazette establish an authority as a Water Service Provider for special purpose which shall be a body corporate with perpetual succession and a common seal and capable, in its corporate name, of-

- a) suing and being sued;
- b) purchasing, holding and disposing of movable and immovable property; and
- c) doing all such other things as may be done by a body corporate.

(2) An Authority established under this section shall be for a limited special purpose and shall not manage more than one village water unit

or project.

(4) A County Gazette Notice issues under subsection (1) shall state the following issues:-

- a) The project or village unit that the Authority will manage;
- b) The officials of the Authority;
- c) The Conduct of the affairs of the Authority; and
- d) The duration of existence the Authority.

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.

Chief executive officer.

15. (1) There shall be a chief executive officer of the Company.

(2) The chief executive officer shall be appointed by the executive member on recommendation of the Board and recruited through a competitive process.

(3) To qualify for appointment as a chief executive officer, a person must-

- (a) possess a degree from a recognized university;
- (b) have had experience in management for a period of not less than five years.

(4) The chief executive officer shall hold office for a period determined by the Board.

(5) The chief executive officer shall be:-

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

Removal of the Chief Executive

16. The chief executive officer may-

Officer

- (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 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;
 - (v) bankruptcy.

Company Secretary

- 17.** (1) There shall be a Company Secretary to the Company established as a County Water Service Provider, in accordance with section 178B of the Companies Act Cap. 486.
- (2) The Company Secretary shall be competitively recruited by the Board of the Company.

Staff of the Company.

- 18.** The County Public Service board may appoint such officers and other staff as are necessary for proper discharge of functions under this Act, upon such terms and conditions of service as it may determine.

The common seal of the Company.

- 19.** (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

Village Water Units

20.(1) the County Executive may establish a Village Water Unit in any village not within an urban area,

(2) The County Executive shall ensure that each Village Water Unit has access to sufficient amount of water, including but not limited to an operational borehole.

(3) The County Executive shall be guided by the following considerations when establishing a Village Water Unit:

a) A Village Water Units or boreholes shall be established in a radius of not less than fifty kilometers from the nearest Village Water Unit or borehole or any other distance as the County Executive Committee may determine.

b) A Village Water Unit shall be established in a Village with less than seventy households.

c) A Village water Unit shall be established in a Village with a functional Community Natural Resource Committee.

d) The County Executive shall issue regulations to provide modalities for County residents to request the establishment of a Village Water Unit.

Application to County
Water Service Provider
other than Company

21. The provisions on the appointment and procedures of the Board and the Chief Executive Officer of the Company, including recruitment of staff, shall apply in the same manner to a water service provider established by the County which is not a Company.

Water Use Tariffs

22. (1)The County Executive shall regulate water use tariffs in the County for water service providers.

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

Water Use Reports

23. The County Executive shall publish regular water use reports detailing water supply demand and use in the County.

Consumer feedback

24. The County Executive shall develop mechanisms for receiving consumer feedback including the use of Information Communication technology platforms.

Community Natural Resource Committee

25. (1) Persons residing in the locality of a Village Water Unit may, with the approval of the County Executive, establish a Community Natural Resource Committee registered within the relevant County department as an association.

(2) Community Natural Resource Committees in the County may undertake the following aspects of water supply management:-

- a) Preparing water use schedules for use in the Village Water Units;
- b) Regulating inter-community water use access;
- c) Community feedback in the village water units;
- d) Conflict resolution mechanisms in the Village Water Units; and
- e) Any other duty assigned to the Community Natural Resource Committees by the County Executive or the Department.

(3) The County Executive shall issue regulations to prescribe the composition and proper management of Community Natural Resource Committees.

(4) The County Executive shall ensure that not more than two thirds of the leadership of the Community Natural Resource Committees shall be of the same gender.

Private Water Service Providers

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

(2) No person shall, within the limits of supply of a permit holder—

- a) provide water services to more than twenty households; or
- b) supply—
 - i) more than twenty-five thousand litres of water a day for domestic purposes; or
 - ii) more than one hundred thousand litres of water a day for any purpose,

except under the authority of a permit.

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

(4) Nothing in this section prohibits—

- a) the provision of water services by a person to his employees; or
- b) 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 permit holder.

Water Service
Provider Permits

27. (1) The County Executive shall issue permits for private water service providers.

(2) The County Executive may issue regulations prescribing the terms and conditions by which private water service providers shall be bound including but not limited to:-

- a) The right of access for private water supply for public utility in nearby schools or health facilities;
- b) The acceptable quality of water as determined by the department;
- 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
Control

28. (1) The County Executive shall establish mechanisms for water quality control in the County, including but not limited to:-

- 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 WATERWORKS

Waterworks permits

29. (1) The County Executive may issue permits 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) Any person who undertakes waterworks constructions and development for which a permit is required under subsection

(1) commits an offence under this Act.

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

a) The County shall adhere to the procedures under the Intergovernmental Relations Act 2012 relating to intergovernmental conflicts;

b) The County shall be at liberty not to offer any assistance to the activities that constitute such an offence; and

c) The County may use any appropriate measure to restrain actions in furtherance of the offence.

(4) The County Executive shall issue regulations for the terms and conditions binding permit holders under this part.

No. 2 of 2012

Development and
maintenance of County
Water works

30. (1) The County Executive shall develop waterworks for water service provision in the County including but not limited to:-

a) Formulation 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.

Storm Water Management
Systems

31. (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) Any 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 to penalties issued under 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) above demonstrates proper ownership titles and adherence to physical planning laws in place before the coming into force of this Act, the County Executive may apply the Compulsory Acquisition provisions under this Act

Waterworks Priority
Schedules

32. (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) above

shall be updated and published every financial year.

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

Compulsory acquisition of Land

33. (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 when undertaking compulsory acquisition under subsection (1) above.

Easement for Waterworks

34. (1) The holder of a permit under this part which authorizes the construction of waterworks that would (or a portion of which would), when constructed, be situated upon lands not held by the permit 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) above adhere to the requirements of the Land Act 2012.

PART V CONSERVATION

Borehole Site identification

35. (1) The County Executive shall in consultation with any relevant National Government agency undertake borehole site identification in the County.

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

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

Drilling of boreholes

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

Water PollutionControl

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

37. (1) No person shall throw or convey, or cause or permit 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 be likely to cause, pollution of the water resource.

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

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

Monitoring wells

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

National Water
Conservation
Policies

39. The County Executive shall facilitate the implementation of National Water Conservation Policies through Community Natural Resource Committees.

PART VI WATER HARVESTING

Roof catchment

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

(2) Buildings constructed in urban areas shall have roof catchment and water storage systems.

(3) A person who fails to install a roof catchment and water storage system shall be liable to a penalty prescribed by the County Executive under this Act.

(3) The County Executive shall issue regulations on the requirements

for roof catchment systems in urban areas.

Construction of water
pans

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

(2) The County Executive may issue regulations prescribing technical guidelines for the construction of water pans in the county.

Storm water harvesting
systems

42. (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.

PARTVII PUBLIC PRIVATE PARTNERSHIPS

Public Private Partnerships
for Water Services

43. (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 and the Chief Officer or their respective representatives shall be part of the Contract Node.

Public Private
Partnerships for
Waterworks

44. (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

45. (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 issue that is relevant to such public private partnership.

PART VIII DISASTER MANAGEMENT

Disaster management strategy

46. (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 issue relevant to water related disaster management.

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

Water trucking

47. (1) Water Trucking shall be a measure of last resort in responding to drought management in the County.

(2) The County Executive Committee shall issue guidelines on Water Trucking in the County.

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

Cross county disaster management

48. (1) The County Executive shall undertake necessary measures to facilitate the establishment of a cross county disaster management mechanism including an authority with neighboring counties.

(2) The mechanism or authority established in subsection (1) above shall facilitate cross county disaster management response including:-

- a) Access to water point in the Counties by communities from neighboring counties;
- b) Conflict resolution ; and
- c) Development of cross county water related disaster management strategies.

PART IX FINANCIAL PROVISIONS

Application of revenues
from permits and penalties

49. (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 funds of water services fund shall consist of:-

- a) such moneys as may be appropriated by the Marsabit County assembly;
- b) revenues from permits issued under this act;
- c) revenues from penalties and compensation given under this Act; and
- d) grants and donations.

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

- a) Financing the activities of County Water Service Providers;
- b) Development of water infrastructure; and
- c) Payment of compensation and liability arising from duties performed under this Act.
- 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 through guidelines issued by the County Treasury in consultation with the County Executive.

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

(2) The accounts of a County Water Service Provider shall be audited in accordance with the relevant National Legislation that provides for

Finances of County
Water ServiceProviders

auditing public entities.

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

PART X OFFENCES

Obstruction of officers

51. (1) No person shall willfully hinder or interrupt, or cause be hindered or interrupted, any permit 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 subsection (1) above commits an offence under this Act.

Proceedings for Offences

52. 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

53. (1) Where, by his act or omission a person contravenes any requirement or prohibition made or imposed by or under this Act, then, without affecting any other liability of the person under this Act or otherwise in respect of the contravention, the County 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; and
- (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, in any court of competent jurisdiction as a debt from the person to whom the order was given.

General Penalty

54. (1) A person who is guilty of an offence under this Act, or under any rules or 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 both.

PART XI MISCELLANEOUS

Regulations

55. The County Executive shall issue regulations for any matter that is subject to regulations under this Act including but not limited to:-

- i. Terms and conditions for permits under this Act;
- ii. Composition and management of Community Natural Resource Committees ;
- iii. Water resource mapping;
- iv. Dealings with Public Benefit Organizations under this Act;
- v. Establishment of Village Water Units; and
- vi. Waterworks development.

Transition plan

56. (1)The County Executive shall publish a transition plan for water service provision and supply management in the County in the County Gazette within one year after this Act comes into force.

- a. The plan shall contain the following information:-
 - i. The criteria for identifying water service provision and supply management assets whose ownership belongs to the County and not to individual communities or persons;
 - ii. Water service provision and supply management assets Owned by the County, whether controlled by the County or not;
 - a) Information on urban areas and rural areas not under the control of a Company established by the County in accordance

with this Act;

- b) Information on Community Natural Resource Committees in the County;
- c) Procedures for taking over Water service provision and supply management assets owned by the County Government but not in the control of the County Government;
- d) 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

57. 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

58. (1) 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

59. (1) Any conflict arising from the Transition Plan established Pursuant to section 55, 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 employed by the County Government, to determine the conflict

(3) The mediation panel appointed in subsection (2) above shall comprise of:-

- a) An advocate of the High Court of Kenya who shall chairperson

of the panel ;

- b) An official of a Public Benefit Organization with experience in conflict resolution;
- c) A religious leader from the community with a minimum qualification of a bachelor's degree from a recognized university

(3) The County Public Service Board shall hire a secretary for the conciliation panel on a temporary basis.

(4) The conciliation panel may seek the advice of consultants and invite representations from interested parties.

60. (1) When a conflict arises, the representatives of the persons affected shall fill the form prescribed in the schedule and submit it to the County Secretary, accompanied by a list of at least five hundred signatures or thumb prints of persons affected.

(2) The County Secretary shall forward the form in subsection (1) to the Governor who shall constitute a panel within 3 weeks.

(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 listen to the submission of the person making the complaint, any expert opinion interested parties in a period of three weeks

(5) The conciliation panel shall then prepare a report of its findings and recommendation and present it 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.

61. The finances of the conciliation panel, including the allowances of the conciliation panel shall be managed by the County Secretary in consultation with the County Treasury.

Procedure for resolving conflicts

Finances of the Panel

SCHEDULES

FORM FOR PRESENTING CONFLICTS TO THE CONCILIATION PANEL

(S.60)

(Fill as appropriate)

Details of Persons Making the Complaint:			
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.			
Prayers (list the remedies sought)			
1.			
2.			
3.			
4.			
5.			

Signatures		
Name	ID. No.	Ward
1.		
2.		
3.		

- 4.
- 5.
- 6.
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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 VII provides for the establishment of public private partnerships by the County Executive and County Water Service providers.

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

Part IX Provides for the management of water revenues, offences, and penalties under this Act.

Part XI 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.

Dated2018

Hon. Hassan Waqo Jarso,
Chairperson, Water, Environment and Natural Resources
County Assembly of Marsabit