

PART I—PRELIMINARY

PART II – ACCESS TO WATER AND OWNERSHIP OF WATER RESOURCES

PART III – ADMINISTRATION

PART IV- PROVISION OF WATER SERVICES

PART V – SANITATION SERVICES

PART VI – WATER WORKS

PART VII – WATER CONSERVATION

PART VIII – WATER MANAGEMENT AND DRAINS

PART IX- FINANCIAL PROVISIONS

PART X- PUBLIC PRIVATE PARTNERSHIP

PART XI – OFFENCES, GENERAL AND TRANSITIONAL PROVISIONS

THE MANDERA COUNTY WATER AND SANITATION SERVICES BILL, 2024

A BILL for

AN ACT of the County Assembly of Mandera to provide for the regulation and management of water services, establishment of water services providers and for connected purposes.

ENACTED by the County Assembly of Mandera, as follows —

PART I—PRELIMINARY

1. Short Title and Commencement

1) This Act may be cited as the Mandera County Water and Sanitation Services Act, 2024.

2. Interpretation

In this Act, unless the context otherwise requires—

“Board of Directors” means the Board of Directors of a Water Services Provider licensed to provide water services under this Act;

"Charges" in relation to the use of water from a water resource or service includes fees, levies and premiums of any kind;

"Chief Officer" means the chief officer for the time being responsible for water services.

"Constitution" means the Constitution of Kenya 2010;

"Company" has the meaning assigned to it under section 2 of the Companies Act, 2015;

"County" means the Mandera County;

"County Assembly" means the County Assembly of Mandera;

"County Executive Committee Member" means the County executive committee member for the time being responsible for water services;

"County Public Service Board" means the County Public Service Board for Mandera County;

"Department" means the county department responsible for Water Services;

"Effluent" means gaseous waste, water or liquid or other fluid of domestic, agricultural, trade or industrial origin treated or untreated and discharged directly or indirectly into the aquatic environment;

"Gazette" means the *Kenya Gazette* published by the Government Printer;

"institutional stakeholders" include County and National Government institutions, public benefit organizations, international organizations, community-based organizations, religious institutions and Societies involved in water and sanitation services in the County;

"International Development Partner" means a registered institution representing or affiliated to a foreign government or any international development or charitable agency rendering or supporting the delivery of water services in the County;

"license" means a license issued under the Water Act, 2016.

"Managing Director" means the managing director of a water service provider;

"Management of water resources" means the development, augmentation, conservation or protection of a water resource;

"On-site Sanitation" means treatment or final disposal of wastewater on site through latrines, septic tanks, conservancy tanks, soak away pits, exhauster services and similar systems but does not include sewerage services;

"Permit" means a Water Service Provision Permit issued under 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 reasonably be expected to be used; or
- (b) harmful or potentially harmful to—
 - (i) the welfare, health or safety of human;
 - (ii) any aquatic or non-aquatic life or property; and
 - (iii) the environment.

"public works" in this context means storage, intakes, transmission, distribution, pipelines, canals, dykes, water treatment works, sewer treatment works, pumping stations and pumps, drilling and distribution lines;

"Riparian land" is defined as a minimum of six meters or equal to the full width of water course up to a maximum of thirty meters on either side of the bank of water source;

"Sanitation" means the provision of on-site sanitation services including latrines, septic tanks and conservancies including the associated exhauster services, sewerage and water drainage;

"sector wide forum" means the water and sanitation services sector wide forum established under this Act and/or any of its regulations;

"Sewerage services" means the development and management of infrastructure for transportation, storage, treatment and safe disposal of waste water originating from centralized and decentralized systems but shall not include household sanitation facilities;

"Water course" means any channel or depression in which water flows regularly or intermittently;

"Water resource" means any lake, pond, swamp, marsh, stream, water course, estuary, aquifer, artesian basin or other body of flowing water or still water, whether above or below the ground;

"Water Resource User Association" means a registered community-based organization for collaborative management of water resources and resolution of conflicts concerning the use of water resources;

"water services" means any services of or incidental to the supply or storage of water and includes the provision of sanitation and sewerage services;

"Water services provider" means a company, Community Based Organization, Private Firm or other person or body licensed to provide water services under this Act;

“Water Services Regulatory Board” means the Water Services Regulatory Board established under section 70 of the Water Act, 2016;

“water supply” system’ means a network of infrastructure including waterworks, water service assets and contracts for the provision of water to persons in a locality in the County;

“water works” means any construction, excavation, piping, drainage of any land, supply or transportation of water, water abstraction works, management of storm water and floods or storage, impounding of water for supply to the public or for private purposes, drainage of any swamp or other land;

"Works" means any Structure, Apparatus, Contrivance, Device or thing for carrying, conducting, providing or for the utilization of water or liquid waste but does not include hand utensils, simple hand operated devices or such other contrivances as may be prescribed by Regulations made pursuant to this Act;

3. The objects and purpose of this Act-

- (1) This Act shall apply to the sustainable development and management of water services in Mandera County;
- (2) ~~The rights conferred and duties imposed by this Act are in addition to those conferred and imposed by any other law in force in the Republic of Kenya;~~
- (3) This Act gives effect to and provide a legal framework for implementation of Article 43 (1) (b) and (d) and Paragraphs 10 (a) and 11 of Part 2 of the Fourth Schedule to the Constitution of Kenya in order to—
 - (a) ensure equitable and continuous access to clean water;
 - (b) promote water conservation;
 - (c) provide for the development, and management of County water services public works;
 - (d) provide institutional framework for delivering water services in the County;
 - (e) ensure effective and efficient provision of water services;
 - (f) promote public education and equality among water uses and users;
 - (g) promote inter-agency collaboration and public participation in water resource development and management;
 - (h) promote the effective regulation of water services in the County including;

- i. an effective administration of water supply, sanitation and sewerage services; and
- ii. the holding of water works and water services provision assets on behalf of the County.
 - (i) promote the effective coordination of the activities of institutional stakeholders in water services provision in the County;
 - (j) promote public participation in the water services provision in the County;
 - (k) provide a basis for the management of public private partnerships for water services in the County;
 - (l) ensure the coordination of waterworks development in the county; and
 - (m) any other matters relating to water services provision in the County.

4. Guiding principles

- (1) The County Executive Committee Member and all persons administering or applying this Act shall be guided by the principles and values of the Constitution that is-
 - (a) national values and principles of governance in Article 10;
 - (b) the right of every person to clean and safe water in adequate quantities in Article 43(1)(d);
 - (c) the right of every person to reasonable standards of sanitation under Article 43(1) (b);
 - (d) land policy principles in Article 60; and,
 - (e) The values and principles of public service in Article 232.

PART II – ACCESS TO WATER AND OWNERSHIP OF WATER RESOURCES

5. Right to water and sanitation

- (1) Every person in the County has the right to clean and safe water in adequate quantities, and reasonable standards of sanitation;
- (2) The County Government shall put in place measures to ensure the progressive realization of the right to water and sanitation as stated in subsection (1);
- (3) The County Government shall put in place measures to ensure the progressive provision of adequate and safe water for all users;

(4) The County Government may partner with local communities, faith-based organizations, international development partners, public benefit organizations, the National Government or any other persons to facilitate the realization of the right to water services and the provision of clean and adequate water for all users.

6. Ownership of Water Resources

(1) Every water resource is vested in and held by the National Government in trust for the people of Kenya.

7. County Water, Sanitation and Sewerage Services Strategy

(1) The County Executive Committee Member shall, following public participation, formulate and gazette a County Water Services Strategy;

(2) The County Water Services Strategy shall provide—

(a) information on areas within the County in which access to basic water, sanitation and sewerage services is inadequate;

(b) plans for the development and continuous improvement of water, sanitation and sewerage services in the County;

(c) strategies for expanding access to basic water, sanitation and sewerage services in the rural and underserved urban areas;

(d) measures to facilitate the provision of water, sanitation and sewerage services by private sector providers;

(e) criteria and procedure for the provision by the County Government of financial, technical, and other assistance to private sector providers of water services;

(f) an investment plan and timeframe for the development, expansion and improvement of water services in the County; and,

(g) institutional and financial arrangements and measures for the improvement of access to basic water services within the County.

(3) The Strategy shall be published in the Gazette and reviewed every ten years;

(4) The County Executive Committee Member, County public officers, private sector and other relevant stakeholders shall give effect to the County Water, Sanitation and

Sewerage Services Strategy in the plans, programs of the County or otherwise in the discharge of duties under this Act;

(5) Every County public officer shall give effect to the County Water, Sanitation and Sewerage Services Strategy in the discharge of their duties under this Act.

8. County Water Resources Monitoring and Information System

(1) The Department shall ensure that there is in place county monitoring and geo referenced information system on water resources;

(2) The Department may require any person, within a reasonable time or on a regular basis, to provide it with specified information, documents, samples or materials in relation to the system referred to in subsection (1);

(3) Subject to Article 35 of the Constitution, a member of the public on payment of the prescribed fee shall —

- (a) have access to any specific information contained in any county information system; and
- (b) be supplied with a copy of any document contained in the information system which is accessible to the public.

(4) The Department may collaborate with the national government and other counties and any of their entities to receive information relevant to the development of the County Water Resources Monitoring and Information System.

PART III – ADMINISTRATION

9. Water Services Department

(1) The Department shall have the overall responsibility of overseeing the provision and management of water services in the County;

(2) The County Public Service Board shall recruit qualified persons to serve under the Department as —

- (a) Sub-county water officers;
- (b) Ward water officers;
- (c) Other officers necessary for the proper delivery of water services as may be requested and justified by the Department.

(3) The Department shall in line with the principles of devolution decentralize its services to the lowest possible unit of the County's administration to ensure optimal provision of water services;

(4) The Department is mandated to;

- (a) Implement national and county government policies to improve access to sufficient and safe water services and ensure sustainable utilization and management of natural resources;
- (b) Implement county public works to increase access to water services;
- (c) Implement county public works to promote sustainable utilization and conservation of the environment and natural resources including water conservation;
- (d) Promote enforcement of both national and county government environment and natural resources management, water supply and sewerage policies, regulations and legislations;
- (e) Regulate and monitor water services providers in the county so as to achieve continued improvement in service delivery levels and standards at all times.

(5) The Department shall have all the necessary powers for the execution of its functions under this Act.

(6) The Department shall be responsible for –

- (a) Receiving applications, processing and issuance of permits to water service providers;
- (b) Recommending for the licensing of the Water Service Providers in the County;
- (c) Establishing a mechanism for handling complaints regarding water services;
- (d) Facilitating public awareness and participation on sustainable water services management;
- (e) Developing and implementing policies, strategies and mechanisms for the improvement of water works and services county-wide and for climate change adaptation and mitigation in the county's water sector;
- (f) Formulating investment plans for development of water services;
- (g) Providing technical assistance to the water services providers and other development partners;

- (h) Ensuring compliance with the established standards relating to development and provision of water services;
- (i) Mobilization of resources for provision of water services;
- (j) Supporting and directing enforcement of reserve flow and maintenance at all times;
- (k) In collaboration with water resource user associations, participation in development, implementation and monitoring of sub catchment management plans;
- (l) Monitoring compliance by water service providers with the conditions of licenses and the requirements of this Act;
- (m) Developing an annual Report on the state of water services including the performance of water service providers;
- (n) Taking all measures to ensure prevention and management of floods and flood related emergencies;
- (o) Establishing and facilitating a Water & Environmental Sanitation Coordination Committee to enable a consultation forum;
- (p) Performing any other functions incidental to water services or as may be required by any other written law applicable in Kenya.

(7) Where a water service provider fails to deliver water services in an effective and efficient manner or where there is sufficient information to show that a water service provider is not commercially viable, the County Executive Committee Member may designate another water services provider operating under this Act to take over the water provision services in that geographical limit.

10. Powers and Duties of the County Executive Committee Member for Water Services

- (1) Subject to the provisions of this Act, the County Executive Committee Member shall exercise supervisory control over the development and provision of water services in the County, in accordance with First Schedule;

(2) Without prejudice to the generality of the foregoing, the County Executive Committee Member shall have responsibility to—

- (a) formulate and periodically review county policies, strategies and plans for the provision of water services;
- (b) formulate and review periodically strategies and plans for implementation of water resources and catchment protection in the County in consultation with mandated national government agencies;
- (c) put in place measures to implement and give effect to the Constitution and national law on the provision of water services;
- (d) coordinate the development and provision of water services in the County in accordance with the County Water Master Plan, County Water Sector Strategic Plan, County Integrated Development Plan and County Annual Development Plan;
- (e) consider the recommendation of the Board of Directors of a Water Services Company on the removal of Managing Director and if satisfied that sufficient grounds have been established to remove the Managing Director;
- (f) mobilize financial and other resources for the provision of water services;
- (g) prepare and submit quarterly and annual reports to the County Assembly on the state of water services in the County.

(3) In the performance of these functions and duties under this Act, the County Executive Committee Member will as the circumstances may require—

- (a) consult departments, agencies and entities of the National and County Government whose functions affect the development and provision of water services in the County; and
- (b) consult relevant stakeholders including Non-Governmental Organizations, the private sector and consumer groups.

PART IV- PROVISION OF WATER SERVICES

11. The Department shall supervise the maintenance of existing water services systems and where necessary, oversee the establishment of new water services systems in the County;

12. Establishment of water services systems

- (1) The Department shall put in place proper transition and saving measures to ensure efficient and effective functioning of existing water and sewerage systems;
- (2) The Department shall establish sewerage systems in the County;
- (3) The Department shall ensure that each water supply and sewerage system –
 - (a) is appropriately staffed by a water company or respective water service provider;
 - (b) has access to equipment for emergency water trucking;
 - (c) has adequate waterworks for continuous water supply and sewerage services;
 - (d) appropriate waterworks for pastoral livelihood.
- (4) The establishment of a water supply and sewerage system shall be determined by—
 - (a) Appropriate rangeland management plans for the County or respective area to allow the preservation of pastureland;
 - (b) Existing standards;
 - (c) Population cluster and quota;
 - (d) Walking distances to water points;
 - (e) Any other consideration relevant to the establishment of sustainable water supply and sewerage system in the County as may be prescribed by the County Executive Committee Member from time to time.
- (5) The County Executive Committee Member shall issue regulations for the better administration of this Part.

13. Water and Sewerage Service Companies

- (1) The County Government may incorporate one or more Water and Sewerage Service Companies to serve as water and sewerage service providers in the County.
- (2) The shareholding of the Water and Sewerage Services Companies incorporated under (1) above shall be held entirely by the County Government;
- (3) Water and Sewerage Service Companies shall have their Articles and Memorandum of Association drawn in compliance with this Act;

(4) A Water and Sewerage Services Company shall have a board of directors appointed by the County Executive Committee Member;

(5) The Board of Directors shall comprise of the following members –

- (a) A Chairperson, not being an employee of the County Government, who shall be elected by the Board members from amongst themselves;
- (b) Four persons representing special interests in the County as follows –
 - (i) one person representing women nominated by the umbrella women group in the County;
 - (ii) one person representing youth nominated by the umbrella youth group in the County;
 - (iii) one person representing persons with disabilities nominated by the umbrella group of persons leaving with disability in the County;
 - (iv) One person representing marginalized groups nominated by the umbrella group of marginalized groups in the County.
- (c) One person representing institutional stakeholders in the service area;
- (d) The Chief Officer responsible for water services in the County;
- (e) The Chief Officer responsible for finance in the County.

(6) A person shall be qualified for appointment as chairperson or a member appointed under subsection (3) if the person –

- (a) is a Kenyan citizen;
- (b) holds at least a diploma qualification from an institution recognized in Kenya;
- (c) has knowledge and experience of at least three years in matters relating to water and natural resource management or any other relevant field.
- (d) Members of the Board referred to under subsection 4(d) and 4(e) may attend to board matters in person or through their appointed representatives who shall be senior County public officers at a level no lower than that of a Deputy Director;

(7) The appointment of persons to serve in a Board of Directors of a water company shall take cognizance of regional, ethnic and gender balance including affording equal opportunities to persons with disabilities, youth, marginalized groups and ethnic and other minorities in the County;

- (8) The members of the board appointed pursuant to Section 4 (a)(b) and (c) above shall hold office for a term of three (3) years renewable only once;
- (9) In case a member of the board appointed pursuant to Section 4 (a)(b) and (c) leaves office either by resignation, death or any other way, that will be replaced within 3 months. The procedure for appointment shall apply to replacement.

14. Functions of the water services companies

- (1) The water companies established under this Act shall be responsible for the maintenance, operation and management of water supply and sewerage services in the areas under their jurisdiction as shall be determined by the department;
- (2) In addition to functions assigned under subsection (1), a water company shall be responsible for—
 - (a) provision of water supply and sewerage services in their designated service areas as per the respective permits and licenses;
 - (b) management of water supply systems in the designated areas;
 - (c) collection of water-use revenues;
 - (d) collection of water use data;
 - (e) management of waterworks developed by the Department;
 - (f) management of water sources owned by the County;
 - (g) implementing pro-poor policies as regards access to water;
 - (h) maintaining a database with regard to water and sewerage services;
 - (i) Providing regular reports on its performance as required by the Department.

15. Service Provision Agreements

- (1) The Department shall develop service provision agreements for water companies which shall be the basis for assessing the performance of the Board of Directors;
- (2) The Service Provision Agreements shall contain time-based deliverables such as—
 - (a) the population coverage of the Water Company;
 - (b) periodic water quality information;
 - (c) asset management;
 - (d) consumer feedback;

- (e) revenue collection;
- (f) operation and maintenance costs; and
- (g) any other relevant issue.

(3) The Board of Directors and the Managing Director of a water company may be removed from office for failing to comply with a Service Provision Agreement;

(4) Water Services in the County shall be provided on the basis of an agreement with water service providers in accordance with the provisions of this Act;

(5) ~~The County Executive Committee Member in charge of water services shall, with the approval of the County Executive Committee, and in compliance with Section 77 of the Water Act, 2016 establish a water services provider;~~

(6) A water services provider shall not provide water services except under the authority of a permit issued by the County Executive Committee Member;

(7) A permit issued under subsection (6) shall specify the conditions and terms of the permit;

(8) Nothing in this section prohibits the provision of water services—

- (a) by a person to his employees; on the premises of an institution including a hospital, factory, school, hotel, research station or other institution of a similar nature to the occupants thereof. In cases where the source of supply of the water is lawfully under the control of the institution or where water is supplied to it in bulk by a licensee; as long as the source and water works have been certified to be fit for public use by the Department of water services; or
- (b) in circumstances where a person supplies less than fifty households per day; or
- (c) produces for supply less than 3500 litres of water per day.

(9) An agreement entered into with a water services provider and the County Executive Committee Member shall specify the powers and functions of the permit holder which shall be performed by the water services provider;

(10) The Agreement specified under subsection (9) shall make provisions with respect to—

- (a) The maintenance, rehabilitation and development by the water service provider of water services infrastructure and facilities in the County; and

(b) An agreement between the County Executive Committee Member and a Water Service Provider may be made under the Water Services Regulatory Board Regulations or under the Public Private Partnerships Act.

(11) A water service provider shall be responsible for:

- (a) Provision of water services within the area specified in the agreement and ensure that water services within the County are performed in an effective and efficient manner;
- (b) Maintenance of County assets for the provision of water services;
- (c) Collection, treatment and management of wastewater;
- (d) Treatment and management of sludge.

16. Managing Director

- (1) There shall be a Managing Director for each Water Company;
- (2) The Managing Director shall be appointed by the Board of Directors through a competitive recruitment process;
- (3) To qualify for appointment as a Managing Director a person shall—
 - (a) Be a Kenyan citizen;
 - (b) Be a holder of at least a Bachelor's degree;
 - (c) Have experience of not less than six years in a senior management position;
 - (d) Meets the requirements of Chapter Six of the Constitution.
- (4) The Managing Director shall hold office for a terms of three years renewable once;
- (5) The Managing Director shall be subject to the direction of the Board and shall have the following functions—
 - (a) Be responsible for the day-to-day management of the affairs of the Water Company;
 - (b) Be responsible for the direction of the affairs and transactions of the water company including the exercise, discharge and the performance of the objectives, functions, duties and the general administration of the Water Company;
 - (c) Be the accounting officer of the Water Company;

(d) Carry out any other duty as may from time to time be assigned by the Board of Directors.

17. Removal of the Managing Director

(1) The Managing Director may-

- a. at any time resign from office by issuing a one month notice in writing to the chairperson of the Board of Directors;
- b. be removed from office by the County Executive Committee Member on recommendation by the Board of Directors on either of the following grounds-
 - i. breach of the terms and conditions of employment contract;
 - ii. violation of the Constitution or any other written law;
 - iii. gross misconduct, whether in the performance of the functions of the office or otherwise;
 - iv. physical or mental incapacity to perform the functions of office;
 - v. Incompetence;
 - vi. bankruptcy.

(2) The Managing Director may only be removed from office under sub-section (1) after being accorded a fair hearing.

18. Staff of the Water Company

- (1) The Board of Directors may appoint such officers and other staff as are necessary for proper discharge of its functions in line with WASREB regulation on staffing, upon such terms and conditions of service as may be determined;
- (2) In the case of Companies newly established by the County Government and where the services being delivered by such companies are yet to be commercially viable, the County Executive Committee Member may—
 - (a) With the approval of the County Executive Committee, request the County Public Service Board to recruit staff and second such staff fully paid by the County Government, to, in the medium term, support the management and operations of the company; or

- (b) Second staff already working with the Department and are fully paid by the County Government, to, in the medium term, support the management and operations of the company.
- (3) In either case, the County Government shall, in compliance with the requirements of the regulator, not allow such staff secondment arrangements to go beyond the first five (5) years from the date of secondment;
- (4) Staff seconded to a water company by the County under Section 17(2) above shall not include the Company's Managing Director;
- (5) The staff appointed under sub-section (2) shall be competitively recruited in line with the organization structure approved by the Board of the Water Company;
- (6) The secondment, recruitment and appointment of staff shall take cognizance of regional, ethnic and gender balancing including affording equal opportunities to persons with disabilities, youth, marginalized groups and ethnic minorities in the County.

19. The common seal of the Company

- (1) The common seal of the Water Company shall be kept in the custody of the Managing Director or of such other person as the Board of Directors may direct, and shall not be used except with the approval of the Board of Directors;
- (2) The common seal of the Water 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 Water Company shall be authenticated by the signature of the Chairperson of the Board of Directors and the Managing Director;
- (4) The Board of Directors shall, in the absence of either the chairperson or the Managing Director, in any particular matter, nominate one member of the Board to authenticate the seal of the Water Company on behalf of either the chairperson or the Managing Director.

20. Private water services providers

- (1) The County may allow the operation of water service providers owned by private persons;

- (2) A water service provider –
 - (a) shall be responsible for the provision of water services within the limits specified in the license; and
 - (b) may be contracted to design, develop or manage water services.
- (3) No person shall, unless issued with a permit by the County Government under this Act—
 - (a) provide water services to fifty households or more; or
 - (b) supply –
 - (i) more than three thousand five hundred litres of water day for domestic purposes; or
 - (ii) more than five thousand litres of water day for any other purpose in the County.
- (4) A person who provides water services in contravention of this section commits an offence;
- (5) Nothing in this section prohibits—
 - (a) The provision of water services by a person to his or her employees; or
 - (b) The provision of water services on the premises of any hospital, factory, school, hotel, 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.

21. Community owned water operators

- (1) A community-based organization may make an application to the Department to be appointed a Water service provider in a specified area;
- (2) A Community-based organization under Section 21(1)—
 - (a) shall be responsible for the provision of water supply in rural areas within limits specified in the Service Provision Agreement;
 - (b) shall be responsible for the management of the boreholes and community water points such as water pans and other water points as may be permitted; and
 - (c) may charge fees for their services as shall be set in the Finance Act from time to time in line with WASREB guidelines.

(3) The County Executive Committee Member shall develop regulations and guidelines for the formation, membership, governance, management and reporting obligations of community-based organizations providing water services.

22. Water Service Provider Permits

(1) The Department may issue water service provision permits to water service providers;

(2) The County Executive Committee Member may prescribe regulations or guidelines governing water services provision, including but not limited to:

- (a) the right to access for private water supply for public utility in nearby schools and health facilities;
- (b) the acceptable quality of water as may be determined by the department and in line with national legislation, policies and standards;
- (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.

(3) A water services provider shall be responsible for the efficient provision of water services while fulfilling any other conditions specified in the permit;

(4) The Department may cancel or vary the terms of the permit if the permit holder—

- (a) contravenes any condition of the permit; or
- (b) fails to make beneficial use of the permit.

(5) A permit shall not be canceled or varied under this section unless notice of the proposed cancellation or variation has been served on the permit holder and the permit holder has been accorded a reasonable opportunity to show cause to the Department as to why the permit should not be canceled or varied.

23. Water Quality Control

(1) The Department shall establish mechanisms for water quality control in the County;

(2) The quality control mechanism referred to under sub-section (1) shall include—

- (a) adoption of standards for water quality in line with national legislation;
- (b) establishment of water quality control laboratory;
- (c) liaison with other County departments and national government agencies with the relevant expertise on water and sanitation control; and

- (d) publicizing information on water quality in the County and taking necessary steps to ensure that such information is readily available.
- (3) Water service providers shall conform to water quality standards adopted by the Department.

24. Application for water services provision permit and license

- (1) A Water Service Provider shall make an application to the County Executive Committee Member for a County Permit to provide water services in its proposed/designated area of jurisdiction in the County;
- (2) The application shall be submitted to the County Executive Committee Member in the prescribed form together with the prescribed fees;
- (3) An application for permit shall contain the following particulars—
 - a) The technical, financial capability of the applicant to provide the services authorized by the license and perform functions in the provision of efficient water services;
 - b) Business plans for the delivery of efficient, affordable and sustainable water and sewerage services;
 - c) Detailed plan for financial and infrastructural improvements;
 - d) A proposed tariff structure and a contractual commitment by the water service provider to submit to the Department 7.5% of its revenue earned being 2.5% water service provision levy and 5% Asset Maintenance Levy payable to Mandera County Government;
 - e) Any other information required by the County.
- (4) Where the County Executive Committee Member declines an application for a permit, the Executive Committee Member shall within seven working days of the decision give reasons to the applicant in writing;
- (5) A decision by the County Executive Committee Member in sub-section (4) above may be subject to review by the Water Tribunal established under section 119 of Water Act 2016;
- (6) A permit shall be issued subject to:

- a) such conditions as may be prescribed by or under this Act in relation to the permit;
- b) such other conditions as may be imposed by the Water Services Regulatory Board.

(7) Rules made under this Act may make provision for imposing conditions on permits generally or on particular permits;

(8) Without prejudice to the generality of subsection (7), such rules may—

- a) require the imposition of prescribed conditions in prescribed circumstances;
- b) require a successful applicant to maintain, in the prescribed manner, a contingency fund for the purpose of renewal, repair, enlargement or improvement of any plant, equipment, facilities or works used for the purposes of the permit or for meeting any other prescribed contingency;
- c) provide that a contravention of any specified conditions prescribed by or under this Act as a condition for the issuance of a permit shall constitute an offence punishable by a penalty specified in the permit.

(9) The imposition of a penalty by a regulation made in accordance with subsection (8) (c) shall not prejudice any remedy for the recovery of damages for any loss, damage or injury sustained by any person by reason of the contravention in respect of which the penalty is imposed;

(10) The geographical limits of supply of water services shall be as prescribed by the water service provision agreement.

25. Water services providers to pay levies to the County

- (1) A water services provider shall pay to the Department 7.5% of the total revenue earned annually which shall be used only for provision and development of the water services;
- (2) A water services provider who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding one million shillings; and
- (3) Payment of a fine under sub-section (2) above shall not operate as settlement of the revenue under sub-section (1) and such revenue shall remain due from the water services provider and shall be recoverable as a civil debt.

26. Placing water services providers under a Special regulatory regime

(1) Where a water service provider defaults in complying with the provisions of this Act or the regulations made under this Act more than twice, the Executive Committee Member may impose a special regulatory regime on the water services provider which may include—

- a) enhanced monitoring and reporting;
- b) loss of privileges;
- c) the imposition of financial penalties; and
- d) the dissolution of the Board of Directors of the water company.

(2) If the County Executive Committee Member is satisfied that notwithstanding the imposition of measures under a special regulatory regime, the default has not been remedied and is not likely to be remedied by the water company, the County Executive Committee Member may by notice in the Gazette, order that the services of the water company be taken over by another water company in the County or by the Department for a period specified in the notice;

(3) The period specified in the notice in sub-section (2) above may be reviewed by the County Executive Committee Member;

(4) The order of transfer under subsection (2) shall make such provision as it appears to the County Executive Committee Member to be desirable or necessary with respect to the use of any property or assets being used by the defaulting water company for the purposes of providing water services.

27. Permits not transferable

(1) Subject to subsection (2), a permit issued under this Act shall not be capable of being sold, leased, charged, transferred, attached or otherwise assigned, demised or encumbered;

(2) Despite subsection (1), a water services provider may enter into an agreement with any other person for the supply of water in bulk for any period and on any terms and conditions approved by the County Executive Committee Member;

(3) Where it appears to the County Executive Committee Member that it is expedient that—

- a) any water service provider should give a supply of water in bulk to another water service provider; and
- b) the other water service provider should take such supply; and
- c) the giving and taking such a supply cannot be secured by agreement. The County Executive Committee Member may by order direct the water services provider concerned to give such supply for such period on such terms as it may specify.

28. Deficiency of Water

- (1) A water services provider which is of the opinion that there is a serious deficiency of water available for distribution or that there is a likelihood of such a deficiency may with the approval of the County Executive Committee Member, for a specified period, prohibit or restrict the use for any specified purpose of water supplied by that service provider within its limits;
- (2) Before any such prohibition or restriction comes into force, public notice shall be given by the water service provider on proposed prohibition or restriction and of the date when it shall come into force;
- (3) The County Executive Committee Member shall take all measures to ensure that the medium of publication of the public notice in subsection (2) is accessible to the residents of the concerned locality;
- (4) Any person who, while such prohibition or restriction is in force, contravenes its provisions commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment to a term not exceeding 12 months or both.
- (5) A person shall not carry any of the following activities on riparian land—
 - a) tillage or cultivation;
 - b) clearing of indigenous trees or vegetation;
 - c) building of structures;
 - d) disposal of any form of waste within the riparian;
 - e) excavation of soil or development of quarries; or

f) planting of exotic species which may have adverse effects on water resources or any other activities, which in the opinion of the Department, may degrade water resources.

29. Interference with and obstruction of water resources and water works

- (1) No person shall, without written authority under this Act or any other written law, willfully obstruct, interfere with, abstract or divert water from any water supply and sewerage system, water course or water resource or negligently allow any such obstruction, abstraction, diversion or interference;
- (2) A person who contravenes sub-section (1) commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding 12 months or both;
- (3) Any person who without written authority from the Department or a water service provider knowingly or willfully: -
 - a) defaces, damages, alters, removes or interferes with water works, installation, equipment or gadgets developed by the department, development partner or water services provider; or
 - b) causes to be defaced, damaged, altered or connects to water works, installation, equipment or gadget; storm water system, sewerage system developed by the department, development partner or water service provider; or
 - c) connects storm water system to a sewerage system; or
 - d) uses or diverts domestic water for other purposes other than domestic use(s);

Commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding twenty-four months or both.

30. Illegal Connection and failure to pay water bills

- (1) Any person, who without any written authority from the Department or water company:
 -
 - a) Illegally connects to a water supply or sewerage system; or
 - b) Fails to pay their water services bills for 3 consecutive months; or

- c) Fails to pay the penalties imposed by the department or a water company under this Act or regulations made under this Act.
- (2) Commits an offence and shall in addition to remedying the default, be liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding 3 months or both.

31. Pollution of water courses or water resources

- (1) No person shall, without authority under this Act or any other written law, 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 any water resource, including its catchment area, in such manner as to cause or likely to cause pollution of the water resource;
- (2) A person who contravenes sub-section (1) commits an offence and shall on conviction, be liable to a fine not exceeding five hundred thousand shillings or to imprisonment term not exceeding twelve months or both;
- (3) No person shall carry out agricultural activities or establish any human or livestock dwellings within the riparian area of a surface water source;
- (4) A person who contravenes sub-section (3) shall be guilty of an offence and liable to a fine not exceeding two hundred thousand shillings or to imprisonment of a term not exceeding twelve months or both.

32. Clustering of Water Service Provision Areas

- (1) The county may, on application by consumers and with the consultation of the water services provider concerned, permit the transfer of water services, or part thereof, from one water services provider to another;
- (2) Where it appears necessary to the County Executive Committee Member to cluster, merge or restructure the water company, for the purpose of securing commercially viable water services, the County Executive Committee Member may, by notice in the Gazette, order such a joint provision of water services or such transfer of water services or may vary the relevant licenses accordingly;

(3) Where the County Executive Committee Member is convinced that a water supply system or group of systems do not meet the technical feasibility and/or commercial viability to be run by a water company, the County Executive Committee Member may:-

- a) After facilitating public participation, cluster the water supply systems with other smaller or larger systems considering: close proximity, homogeneity of the user communities, outcomes of the public participation forums and cross economic subsidization and place the resultant system under a water company; or
- b) Where clustering is unlikely to render the systems to result in a commercially viable unit; the County Executive Committee Member may temporarily revert the water services provision to the Department.

(4) The provisions of sections 22(3), 23(2), 24, 25(3), 26, 27, 28, 29, 30, 31, 32 and 34 above shall apply even when the Department is temporarily providing water services.

PART V – SANITATION SERVICES

33. Control of Effluent

- (1) It is the duty of the Water Services Provider receiving effluent into its sewerage system to ensure that it has measures in place for the receipt and handling of the effluent without causing pollution to the environment, harm to human health, damage to the sewerage system, a contravention of applicable laws or standards set by the County Executive Committee Member;
- (2) No person shall discharge effluent into the sewer system without the consent of the water services provider;
- (3) An application for consent under sub-section (2) above shall be made to the water services provider and shall state—
 - (a) the nature or composition of the effluent;
 - (b) the maximum quantity of the effluent which it is proposed to discharge on any one day;
 - (c) the highest rate at which it is proposed to discharge the effluent; and
 - (d) Any other information required by the water services provider.

- (4) The water services provider's consent may be subject to conditions, including conditions requiring the payment to the water services provider of charges for the discharge or the pre-treatment of the effluent before its discharge into the sewer system;
- (5) Such consent shall be granted by the water services provider in that jurisdiction;
- (6) Any person who contravenes subsection (2) commits an offence;
- (7) The County shall provide a Decentralized Treatment Facility (DTF) for effluent disposal.

34. Execution of Works for Water Protection

- (1) The County may, on any land belonging to it, or over or in which a necessary easement exists, construct and maintain sewers and other works for intercepting, treating disposing of any foul water to protect water sources or storage from being polluted;
- (2) Provided that before constructing any works the County, if the proposed works will affect or is likely to affect any body of water in the catchment area in which the works are situated, shall obtain the consent of the National Environment Management Authority and any other relevant body;
- (3) The Department proposing to construct any such drain, sewer or other works may, with the consent of the National Environment Management Authority concerned and subject to such conditions as the National Environment Management Authority may impose, carry the drain, sewer or other work under, across or along any road or road reserve or public place, whether within or outside the limits of the water service provider.

35. Privately Developed Sewers

- (1) Any privately developed sewer supervised by the water services Provider and connecting to public facilities may revert to the County.

36. Sewerage Service Levy

- (1) A water services provider may with the approval of the County Executive Committee Member, fix and impose a sewerage services levy on all water services within its limits of

supply, to cover a reasonable part of the cost of disposing of the water supplied within those limits;

(2) A portion of the levy may, with the approval of the County Executive Committee Member, be set aside by the Water Service Provider for use in the expansion of the sewerage system within the area of service by the Water Services Provider.

PART VI – WATER WORKS

37. Water Works Regulation and Development

(1) The Department shall develop water works in the County;

(2) The water works referred to under subsection (1) include—

(a) water supply systems;

(b) surface runoff control systems in rural areas;

(c) water harvesting and storage facilities;

(d) Ground water exploitation works;

(e) sewerage and waste-water drainage systems;

(f) any other waterworks as may be necessary in the County.

(3) Subject to the national legislation governing the regulation, management and development of water resources, water and sewerage services the Department may authorize persons other than the County, seeking to develop waterworks in the County;

(4) The Department shall develop a waterworks priority schedule for the County in every financial year detailing the waterworks that are of strategic importance to the County;

(5) The Department shall monitor the standards for waterworks developed in the County by any person, and in compliance with the Second Schedule to this Act.

38. Water Services Project Design Approval

(1) The department shall approve all water services project designs that are to be implemented in the County;

(2) The Department may recommend that a water services project design submitted for approval by any person be re-designed where such need arises;

- (3) Any person(s) who implements a project that has not been approved by the Department commits an offence;
- (4) The County Executive Committee Member may issue regulations for the better administration of this Part, including the qualification of persons involved in water project designs.

39. Compulsory Acquisition of Land

- (1) The County Government may compulsorily acquire land within its jurisdiction to develop waterworks for public purposes;
- (2) The County Government shall abide by the provisions of the Land Act, 2012 in undertaking compulsory acquisition under this section.

40. Easements for water works

- (1) The Department under this Part which authorizes the construction of waterworks that would, when constructed, be wholly or partly 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 such an easement has been acquired;
- (2) The County Executive Committee Member shall ensure that easements held under subsection (1) comply with the relevant provisions of the Land Act 2012.

41. National Government Licenses and Permits

- (1) The department before undertaking the construction and development of waterworks within the County shall obtain requisite licenses and permits in accordance with the Water Act, 2016;
- (2) The County Executive Committee Member shall facilitate quick access and provision of National Government permits and licenses necessary for the development of waterworks in the County;

(3) The County Executive Committee Member shall initiate discussions with the relevant National Government Institutions under this Part to ensure expedient issuance of National Government permits and licenses.

PART VII – WATER CONSERVATION

42. Water Conservation Areas

(1) County Executive Committee Member shall in consultation with National Land Commission, National Water Resources Management institutions and Intra County Basin Management Authority declare any area to be a water conservation area for the purposes of water conservation.

43. Designation of Catchment Areas

(1) The County Executive Committee Member shall in consultation with the Cabinet Secretary in charge of water, designate a defined area from which rainwater flows into a watercourse to be a catchment area for the purposes of this Act;

(2) The Department may designate a catchment area lying wholly or partly within another catchment area as a sub-catchment, in consultation with the Water Resources Authority;

(3) Each Sub-catchment shall formulate a Sub-catchment Management plan.

PART VIII – WATER MANAGEMENT AND DRAINS

44. Provision of Infrastructure

(1) The Department shall—

- a. Authorize proposed drainage, or discharge of water from any county public works into any natural water course: and
- b. Do any other thing necessary to give effect to sub-section (a) above.

45. Studies and Assessments

- (1) The studies and assessments which the County may undertake include –
 - a. Establishment of flood lines for water bodies;
 - b. Impact assessments for all waterworks infrastructure and environmental impact studies as per the national laws on environment.
- (2) The County Executive Committee Member may require that such persons take all reasonable measures to minimize the effects of the pollution at their own cost.

46. Owners of Large Buildings to Construct Rainwater harvesting Tanks

- (1) Any person, private or public entity constructing a building or buildings with a total roof area exceeding 200 square meters shall include in the construction a water tank capable of storing not less than 30% of rainwater as may be harvested from the roof(s) of such building(s);
- (2) Any private or public owner of existing building(s) with a total roof area exceeding 200 square meters shall within 5 years of the coming into force of this Act construct a water tank capable of storing not less than 30% of rainwater harvested from the roof(s) of such building(s);
- (3) Any person, private or public entity that fails to meet the provisions of sub-section (1) and (2) above shall be guilty of an offence which shall attract payment of a penalty of Kshs. 50,000 annually to the County through the Department until compliance;
- (4) The designs and drawings of all tanks to be constructed under this section shall be presented to the County Director responsible for Water Services for approval after payment of a prescribed design review fee.

PART IX- FINANCIAL PROVISIONS

41. Funds of the Department

1. The sources of funds of the Department shall include:
 - (a) County Assembly allocations;
 - (b) Donations;
 - (c) Grants from National Government and Development partners.
2. Water Services Provider revenue sources shall include:
 - (a) Water and sewerage service charges;
 - (b) Application for water and sewerage connection;

- (c) Deposits;
- (d) Connection and re-connection fees;
- (e) Penalties;
- (f) Grants from the County or national Government;
- (g) Grants from Development partners.

42. Financial year

- 1) The financial year of the department and the water service providers established shall be the period of twelve months beginning the first of July and ending on the thirtieth of June of every year.

PART X- PUBLIC PRIVATE PARTNERSHIP

- 43.** The County Executive Committee Member shall in working with national government agencies represent the county in the identification of projects that shall be implemented through a public private partnership.

- 44.** The County may engage with private entities through a public private partnership in the development of water services.

- 45.** All public private partnership projects shall last for a maximum period of 30 years.

46. Public Private Partnership Projects

- 1) Public Private Partnership Projects for the provision of water services shall receive favorable terms including incentives as may be reasonable from the County;
- 2) The County Executive Committee Member shall develop a policy that encourages investments in the area of water services provision.

PART XI – OFFENCES, GENERAL AND TRANSITIONAL PROVISIONS

47. Offences

- 1) A person shall not: -
 - a) discharge any effluent from any premises into the sewers of a water services provider without the consent of the water services provider as provided in this Act or Regulations made under it;
 - b) impersonate an employee of a water services provider;
 - c) willfully vandalize, damage or destroy water services infrastructure or a facility of a water services provider;
 - d) illegally connect to, divert, tamper with measuring devices, lay any pipe and utilize for any purpose, water services provided by a water services provider;
 - e) willfully obstruct or hinder any person authorized to inspect water services provision;
 - f) discharge effluent into water sources;
 - g) willfully contaminate or pollute water sources.
- 2) Any person who contravenes this section shall be guilty of an offence and shall be liable to a fine of not more than KShs. 1,000,000/= or to imprisonment for a term of not more than 1 year or both.

48. Remedy of defaults

- 1) Without prejudice to any other remedy or course of action, if a person contravenes any provision under this Act, the County Executive Committee Member may, by order served on the person concerned, require that person within a reasonable time specified in the order to remedy the contravention and in particular—
 - a) to clean up any pollution or make good any other harm identified in the order which was caused to any water resource by reason of the contravention; or
 - b) to remove or destroy any works, plant or machinery employed for the purposes of the contravention.

49. General penalty

- 1) Any person who commits an offence under this Act, or under any Regulations made under this Act, shall, if no other penalty is prescribed in respect of the offence, be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both.

50. Transitional Provisions

- 1) All water service providers established under the Water Act 2016 shall continue to exist as if the same were established under this Act;
- 2) All employees of Water Services Companies shall continue to remain employees of the companies for the remainder of their unexpired term;
- 3) All properties, assets, liabilities and agreements vested in any entity and department that was established prior to the enactment of this Act shall be deemed to be vested in the said entities in compliance with the provisions of this Act.

51. Regulations

- (1) The County Executive Committee Member may make regulations for the better implementation of the provisions of this Act.

MEMORANDUM OF OBJECTS AND REASONS

The Mandera County Water and Sanitation Services Bill, 2024, seeks to establish a comprehensive regulatory framework for the management, conservation, and provision of water and sanitation services within Mandera County. This Bill is designed to support the sustainable use and development of water resources and promote equitable access to safe, clean water and sanitation for all residents of Mandera County.

Key Objectives of the Bill:

- 1. Access to Water and Sanitation:** The Bill aims to guarantee the right to clean and adequate water, alongside reasonable sanitation standards, as stipulated in Article 43 of the Kenyan Constitution. It mandates the county government to implement measures to ensure progressive realization of these rights.
- 2. Establishment and Regulation of Water Service Providers:** The Bill provides for the formation and regulation of public, private, and community-based water service providers. It establishes standards, permitting processes, and service agreements to ensure efficient and effective water service delivery.
- 3. Water Conservation and Management** This Bill emphasizes the importance of water conservation by promoting sustainable resource management practices, protecting water catchment areas, and preventing pollution.
- 4. Sanitation Services and Infrastructure Development** It mandates the establishment and management of sewerage systems, effluent control measures, and decentralized treatment facilities to promote public health and environmental safety.
- 5. Public-Private Partnerships (PPPs):** The Bill encourages collaboration with private entities for infrastructure development, ensuring private investment in water services through incentives and a favorable regulatory environment.
- 6. Public Participation and Institutional Cooperation:** To foster accountability and inclusivity, the Bill promotes public participation, institutional collaboration, and stakeholder engagement in water resource management and decision-making processes.

The need for this Bill arises from the challenges in water scarcity, infrastructural gaps in water service delivery, and sanitation management within Mandera County. It seeks to align the county's water and sanitation services with national policies and constitutional requirements, address infrastructural deficiencies, and streamline administrative processes for sustainable resource management and access to essential services.

The Mandera County Water and Sanitation Services Bill, 2024, will ensure that the county's water and sanitation framework is effectively managed, promoting the welfare, health, and sustainable development of the community in Mandera County.

Statement on delegation of legislative powers and limitations of fundamental rights and freedoms.

The Bill does delegate legislative power to the County Executive Committee Member but does not limit fundamental rights and freedoms.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution.

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated this day of, 2024.

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DR. MOHAMUD MOHAMED
CECM WATER, ENERGY, ENVIRONMENT & CLIMATE CHANGE