

# **MARSABIT WATER AND SEWERAGE SERVICES ACT, 2018**

## **ARRANGEMENT OF SECTIONS**

### *Sections*

#### **PART I — PRELIMINARY**

- 1-** Short title
- 2-** Interpretation
- 3-** Objects of the Act
- 4-** Right to water
- 5-** Water use rights
- 6-** Priority in water use rights
- 7-** Vulnerable groups

#### **PART II — ADMINISTRATION**

- 8-** Functions of the County Department
- 9-** Water resource mapping
- 10-** Compliance officers
- 11-** Coordination of water use activities
- 12-** Reporting arrangement

#### **PART III — WATER SUPPLY AND SERVICE MANAGEMENT**

- 13-** Establishment of Marsabit Water and Sewerage Services Company
- 14-** Scope of the Company
- 15-** Water and Sewerage Companies
- 16-** Functions of the Water and Sewerage Companies
- 17-** Board of the Company
- 18-** Functions of the Board
- 19-** Remuneration of the Board
- 20-** Chief Executive Officer
- 21-** Removal of the Chief Executive Officer
- 22-** Staff of the Company
- 23-** The Common Seal of the Company
- 24-** Village Water Units
- 25-** Community Water Management
- 26-** Water Use Tariffs
- 27-** Water Use Reports
- 28-** Consumer Feedback
- 29-** Private Water Service Providers Permit
- 30-** Water Quality Control

**PART IV — WATERWORKS**

- 31- Waterworks permits
- 32- Development and maintenance of County Water Works
- 33- Storm Water Management Systems
- 34- Waterworks Priority Schedules
- 35- Compulsory acquisition of Land
- 36- Easement for Waterworks

**PART V — CONSERVATION**

- 37- Borehole Site Identification
- 38- Drilling of Boreholes
- 39- Water Pollution Control
- 40- Monitoring wells
- 41- National Water Conservation Policies

**PART VI — WATER HARVESTING**

- 42- Roof catchment
- 43- Construction of water pans

**PART VII — PUBLIC PRIVATE PARTNERSHIPS**

- 44- Public Private Partnerships for water services
- 45- Public Private Partnerships for Waterworks
- 46- Public Private Partnerships Policy

**PART VIII — SEWERAGE SERVICES AND WATER POLLUTION CONTROL**

- 47- Master Plan
- 48- Provision of sewerage services
- 49- Waste Water Management
- 50- Discharge of contaminated Water or effluent
- 51- Water Pollution Control
- 52- Interference with sewerage system
- 53- Sewerage Tariffs

**PART IX — WATER CRISIS RESPONSE**

- 54- Water Crisis Report Strategy
- 55- Water trucking
- 56- Cross County Disaster Management

Marsabit Water and Sewerage Services Act, 2018

**PART X — FINANCIAL PROVISIONS**

**57-** Application of revenues from permits and penalties

**58-** Finances of County Water Service Providers

**PART XI — OFFENCES**

**59-** Obstruction of Officers

**60-** Proceedings for Offences

**61-** Remedy of Defaults

**62-** General Penalty

**PART XII — MISCELLANEOUS**

**63-** Regulations

**64-** Transition Plan

**65-** Protection of Liability

**66-** Public Participation and County Public Participation Legislation

**67-** Conciliation Panel

**68-** Procedure of Resolving Conflict

**69-** Finances of the Panel

**PART XIII — SAVINGS AND TRANSITION**

**70-** Savings and Transition

**71-** Staff of Water companies, boards or committees existing at the commencement of this Act

**SCHEDULE — FORM FOR PRESENTING CONFLICTS TO THE CONCILIATION PANEL**

**MARSABIT WATER AND SEWERAGE SERVICES ACT, 2018**

**AN ACT of the County Assembly of Marsabit to provide for Water Management and Sewerage 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** 1. This Act may be cited as the Marsabit Water and Sewerage Services Act, 2018.
- Interpretation** 2. In this Act, unless the context otherwise requires:—
- No. 17 of 2012** ‘**borehole**’ means a hole, usually vertical, drilled to determine ground conditions for the extraction of, or measurement of groundwater;
- ‘**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 No. 17 of 2012;
- ‘**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;
- No. 17 of 2012** ‘**County Executive Committee Member**’ means the County Executive Committee Member responsible for matters relating to water, 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;

Marsabit Water and Sewerage Services Act, 2018

No. 18 of 2012

**‘County Secretary’** means a county secretary appointed in accordance with Section 44 of the County Governments Act, 2012;

**‘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 Marsabit County Department responsible for Water services established as a ministry in Marsabit County or as a department in a ministry in Marsabit County;

**‘Fund’** means the Marsabit County Water Services Fund established under section 57 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;

**‘Organization’** includes public benefit organizations, community based organizations, faith based organizations, companies, individuals;

**‘panel’** means the Conciliation Panel established under section 67 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;

## Marsabit Water and Sewerage Services Act, 2018

**‘permit’** means a permit for the time being in force under this Act;

**‘public benefit organization’** includes a local, national or international organizations established under the Public Benefits Organizations Act 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;

**‘village water unit’** means a Unit recognized as such by the County Executive Committee Member;

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

**‘water trucking’** means the use of heavy commercial vehicles to transport water in the County by the Department;

**‘water use rights’** has the meaning assigned to it under section 5; and

**‘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;

**Objects of the Act**

**3.** The objectives of this Act is to provide for effective, efficient and management of water resources and water services in the County including :

- (a) Giving effect to the constitutional provisions on water services and sanitation as devolved functions under the Constitution ;
- (b) Coordination of water use activities in the County and between the county and the National government;
- (c) Management of revenues earned from water supply and sanitation in the County;
- (d) Maintenance of County owned water supply and sanitation infrastructure;
- (e) Planning and management of water catchment areas; and

## Marsabit Water and Sewerage Services Act, 2018

(f) Promote sustainable use of water resources in the County.

### **Right to water**

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

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

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

### **Water use rights**

**5.** (1) Any water use rights can only be conferred in accordance with this Act.

(2) Any existing rights at the commencement of this Act shall be deemed to have been granted in accordance with this Act provided that where they are provisions that are inconsistent with this Act, the parties shall review the relevant instrument to be in line with this Act.

### **Priority in water use rights**

**6.** (1) The priority in water use rights under this Act shall be in the following order of preference—

(a) Water for domestic use;

(b) Water for domestic animals;

(c) The County Executive may issue regulations on the priority of water use in the County.

(2) The County Executive Committee Member may grant a person permission to derogate from the water use priority provided for in subsection (1) due to County health, economic or security reasons.

### **Vulnerable groups**

**7.** (1) The Department shall take special measures to ensure the provision of water and sewerage services to vulnerable groups, including—

(a) ensuring the presence of gender sensitive sewerage for children in schools;

(b) provision of services to internally displaced persons, persons with disabilities, refugees or victims of drought, nomads and pastoralists; and

(c) the promotion of appropriate hygiene and sewerage programmes among communities.

**PART II — ADMINISTRATION**

**Functions of the  
County Department**

**8.** The County Department responsible for Water and Sewerage Services shall—

- (a) Regulate the development of infrastructures and systems for water and sewerage services in the County;
- (b) Issue authorization to any person intending to carry out any water and sewerage works in the County;
- (c) Issue permits, licenses and regulate the provision of water or sewerage services in the County;
- (d) Ensure compliance with established standards relating to water and sewerage services and works;
- (e) Maintaining collaboration and cooperation with the National Government and other County Government agencies in the performance of its functions under this Act;
- (f) Collaborating with other county government departments in initiating, developing, coordinating and managing policies, strategies and plans for water resource management in the County;
- (g) Formulating and publishing the county water and sanitation ten year sectorial plan;
- (h) The County Executive shall put measures for public participation in the planning process as prescribed in relevant National Legislation and County Laws; and
- (i) Perform any other function prescribed by any written laws.

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

**Water resource  
mapping**

**9.** The County Executive Committee Member shall undertake periodic water resource mapping for the county as prescribed by the County Executive through regulations.

**Compliance  
officers**

**10.** (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



## Marsabit Water and Sewerage Services Act, 2018

Board upon a request in writing submitted by the County Executive Committee member or the chief officer.

### **Coordination of water use activities**

**11.** (1) The County Executive Committee Member shall coordinate all the water use activities including development of water works in the County.

(2) Any organization that intends to plan and execute any water and sewerage projects shall apply for an approval from the County Executive Committee Member.

### **Reporting arrangement**

**12.** (1) Where a water project is being initiated and undertaken by any organization, the County Executive Committee Member shall in consultation with the relevant stakeholders in the County issue regulations to provide for—

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

(2) The County Executive Committee Member shall coordinate with National Government agencies undertaking water use projects and activities in the County with regard to water use priorities in the County.

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

(4) Before granting approval for any water project being initiated in any area, the relevant stakeholders must be consulted.

## **PART III — WATER SUPPLY AND SERVICE MANAGEMENT**

### **Establishment of Marsabit Water and Sewerage Services Company**

**13.** (1) There is established the Marsabit Water and Sewerage Services Company.

(2) The Company shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;

## Marsabit Water and Sewerage Services Act, 2018

- (b) borrowing money or making investments;
- (c) entering into contracts; and
- (d) Doing or performing all other acts or things for the proper performance of its functions under this Act.

**Scope of the Company** 14. The Company shall be responsible for provision of water and Sewerage services within Marsabit Township and other urban areas as may be determined by the County Executive Committee Member.

**Water and Sewerage Companies** 15. (1) The County Executive Member may, upon approval of the County Assembly, establish and incorporate such Water and Sewerage Companies as shall be necessary for the effective implementation of this Act and to give full effect to county functions with regard to water and sewerage services including the provision of water services to rural areas.

(2) Prior to the establishment and incorporation of a company under subsection (1), the County Executive Committee Member shall ensure that all necessary measures have been put in place to assess the suitability and necessity of an additional water and Sewerage company.

**Functions of the Water and Sewerage Companies** 16. (1) The Water and Sewerage Companies established under this Act shall be responsible for water supply management in the County including—

- (a) Water service provision and sewerage management in the urban areas provided in this Act;
- (b) Collection of water use revenues in their areas of operation;
- (c) Collection of water use data in their areas of operation;
- (d) Management of water works developed by the Department;
- (e) Management of any water use resource owned by the County;
- (f) formulate and implement pro-poor policies as regards access to water;
- (g) maintain database related to water and sewerage services; and
- (h) Perform any other function prescribed by any written laws.

**Board of the Company** 17. (1) The management of the Companies shall vest in the Board.

(2)The Board of any of the Companies shall consist of—

## Marsabit Water and Sewerage Services Act, 2018

- (a) A chairperson appointed by the Governor subject to the approval of the County Assembly;
  - (b) Not more than four persons, each representing a sub-county in which the Company is offering services;
  - (c) The Chief Officer responsible for matters relating to water in the County;
  - (d) The Chief Officer responsible for matters relating to finance in the County; and
  - (e) Two persons representing special interests as the County Executive Committee Member may determine.
- (3) The Chief Executive Officer shall be the secretary to the Board.
- (4) A person shall be qualified for appointment as chairperson if the person—
- (a) Is a resident of Marsabit County;
  - (b) holds at least a degree qualification from a recognized University;
  - (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.
- (5) A person shall be qualified for appointment as a member of the Board 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

Marsabit Water and Sewerage Services Act, 2018

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

**Functions of the Board** 18. 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.

**Remuneration of the Board** 19. The remuneration of the members of the Board shall be determined by the County Executive Committee Member in consultation with the County Public Service and upon the advice of the Salaries and Remuneration Commission.

**Chief Executive Officer** 20. (1) There shall be a chief executive officer of the Company.

(2) The chief executive officer shall be appointed by the county executive committee 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; and
- (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) The secretary to the Board;
- (b) subject to the direction of the Board, be responsible for day to day management of the affairs of the Company;
- (c) 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

Marsabit Water and Sewerage Services Act, 2018

duties and the general administration of the Company; and

- (d) carry out any other duty as may from time to time be assigned by the Board.

**Removal of the Chief Executive Officer** 21. The chief executive officer may—

- (a) at any time resign from office by issuing notice in writing to the chairperson of the Board;
- (b) be removed from office by the 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.

**Staff of the Company** 22. The County Public Service board may appoint such officers and other staff as are the necessary for the proper discharge of functions under this Act, upon such terms and conditions of service as it may determine.

**The Common Seal of the Company** 23. (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.

## Marsabit Water and Sewerage Services Act, 2018

### **Village Water Units**

**24.** (1) The County Executive Committee Member may establish a Village Water Unit in any village not within an urban area.

(2) The County Executive Committee Member 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 Committee Member 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 within a reasonable distance from the nearest Village Water Unit taking into account all factors including distance between Village Units and other factors as the County Executive Committee Member Committee may determine.

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

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

### **Community Water Management**

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

(2) The Community Water Resource Committees in the County shall—

(a) Manage water services assets in trust and for the benefit of the community;

(b) Prepare water use schedules for use in the Village Water Units;

(c) Regulate inter-community water use access;

(d) Give Community feedback in the village water units;

(e) Promote alternative forms conflict resolution in the Village Water Units; and

## Marsabit Water and Sewerage Services Act, 2018

(f) Any other duty assigned to the Community Water Resource Committees by the County Executive Committee Member.

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

(4)The County Executive Committee Member shall ensure that not more than two thirds of the member of the Community Water Resource Committees shall be of the same gender.

(5)Water services related assets including equipment purchased for or by specific communities shall not be designated to other communities without consultation with the affected community.

### **Water Use Tariffs**

**26.** (1) The County Executive Committee Member shall regulate water use tariffs in the County for water service providers.

(2) The tariffs under this Section shall be established in accordance with the principles set out under Section 120 of the County Governments Act No. 17 of 2012.

(3) The County Executive Committee Member shall publish water use tariffs every year.

### **Water Use Reports**

**27.** The County Executive Committee Member shall publish and publicize water use reports at least once in each year detailing water supply demand and use in the County and furnish the County Assembly with such reports.

### **Consumer Feedback**

**28.** The County Executive Committee Member shall develop mechanisms for receiving consumer feedback including the use of Information Communication technology platforms.

### **Private Water**

#### **Service Providers Permit**

**29.**(1) No person shall undertake water and sewerage services provision in the County without a valid permit from the County Executive Committee Member.

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

(3) 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

## Marsabit Water and Sewerage Services Act, 2018

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.

(4) The County Executive Committee Member 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 the 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 Control**

#### **Quality**

**30.** The County Executive Committee Member 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 through regulation.

## **PART IV – WATERWORKS**

### **Waterworks permits**

**31.** (1)The County Executive Committee Member may issue permits for waterworks construction and development in the County, except such water works activities that may be exempted by the County Executive Committee Member through 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) by a Government



Marsabit Water and Sewerage Services Act, 2018

agency whether national or 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 Committee Member shall issue regulations for the terms and conditions binding permit holders under this part.

**Development and maintenance of County Water Works**

**32.** (1) The County Executive Committee Member 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; and
- (f) Any other waterworks development related role assigned or undertaken by the County;

(2) The County Executive Committee Member 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**

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

Marsabit Water and Sewerage Services Act, 2018

(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 upon conviction 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) demonstrates proper ownership titles and adherence to physical planning laws in place before the coming into force of this Act, the County Executive Committee Member may apply the Compulsory Acquisition provisions under this Act.

(4) The County Executive Committee Member may engage National Agencies, Public Benefit Organizations and other persons to facilitate the construction and management of storm water harvesting systems.

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

**Waterworks Priority Schedules**

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

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

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

**Compulsory acquisition of Land**

**35.** (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).

**Easement for Waterworks**

**36.** (1) The holder of the 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 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.

Marsabit Water and Sewerage Services Act, 2018

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

**No.6 of 2012**

**PART V – CONSERVATION**

**Borehole Site Identification** **37.** (1)The County Executive Committee Member shall in consultation with any relevant National Government agency undertake borehole site identification in the County.

(2)The County Executive Committee Member 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) shall guide borehole drilling activities in the County.

**Drilling of Boreholes** **38.** (1) The County Executive Committee Member shall monitor all borehole drilling activities in the County to ensure compliance to relevant permits and applicable laws.

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

**Water Control** **Pollution** **39.** (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 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 Committee Member, 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** **40.** The County Executive Committee Member shall construct wells for the purposes of monitoring ground water levels and water quality.

**National Water Conservation Policies** **41.** The County Executive Committee Member shall facilitate the implementation of National Water Conservation Policies through Community Natural Resource Committees.

**PART VI— WATER HARVESTING**

Marsabit Water and Sewerage Services Act, 2018

- Roof catchment**
- 42.** (1) The County Executive shall develop a roof catchment policy for the County.
- (2) Permanent 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 of not more than ten thousands shillings or imprisonment of not more than one month or both.
- (4) The County Executive Committee Member shall issue regulations on the requirements for roof catchment systems in urban areas.

- Construction of water pans**
- 43.** (1)The County Executive Committee Member may construct water pans for enhancing food security through agriculture in the County.
- (2) The County Executive Committee Member may issue regulations prescribing technical guidelines for the construction of water pans in the county.

**PART VII — PUBLIC PRIVATE PARTNERSHIPS**

- Public Partnerships for water services**      **Private**
- 44.** (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 Contracting Authority when instituting a public private partnership.
- (3) In establishing a public private partnership under this part, the County Executive Committee Member and the Chief Officer or their respective representatives shall be part of the Contract Node.

- Public Partnerships Waterworks**      **Private for**
- 45.** (1)The County Executive Committee Member 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.

Marsabit Water and Sewerage Services Act, 2018

- Public Partnerships Policy**      **Private**      **46.** (1) The County Executive Committee Member 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 — SEWERAGE SERVICES AND WATER POLLUTION CONTROL**

- Master Plan**      **47.** The County government may in collaboration with other county and national government departments and local residents prepare a five-year sewerage services master plan.
- Provision of sewerage services**      **48.** (1) The Company shall either directly or through public private partnership—
- (a) provide necessary sewerage facilities and services; and
  - (b) Construct, operate and maintain extensive system of sewers and treatment facilities to meet applicable discharge requirements.
- Waste Management**      **Water**      **49. (1)** The County Executive Committee Member shall—
- (a) develop strategies and policies to encourage treated waste water and dried sludge re-use; and
  - (b) periodically carry out effluent quality analysis to confirm efficacy of the facilities.
- Discharge of contaminated water or effluent**      **Water**      **50.** (1) A person shall not discharge or dispose any contaminated water or effluent unless in accordance with the prescribed guidelines and standards.
- (2) A person who contravenes subsection (1) commits an offence and shall—
- (a) be liable upon conviction to a fine not exceeding five hundred thousand shillings if a corporate body; and

Marsabit Water and Sewerage Services Act, 2018

(b) be liable upon conviction to a fine of fifty thousand shillings or to imprisonment for a term not exceeding two months if an individual.

**Water Control**      **Pollution**      **51.** (1) A person shall not throw or convey, or cause to be thrown or conveyed, any rubbish, dirt, refuse, effluent, trade waste or other offensive or unwholesome matter or thing into or near to any water resource in such manner as to cause, or likely to cause, pollution of the water resource.

(2) A person who contravenes subsection (1) commits an offence and shall be liable upon conviction to a fine not exceeding five hundred thousand shilling or to an imprisonment for a term not exceeding three years or to both.

**Interference with sewerage system**      **52.** (1) A person shall not interfere with any sewerage facility or system without a written consent issued by the Company for the purposes of carrying out works within the area of the facility or system.

(2) A person who contravenes this section commits an offence and is liable to a fine not exceeding shillings five hundred thousand or to imprisonment for a term not exceeding three years or to both.

**Sewerage Tariffs**      **53.** (1) Subject to the County Governments Act and any written law, the Company may impose tariffs or levy sewerage services levy on water or sewerage services for the purposes of disposal of water or sewage.

(2) The tariffs imposed or levied under this section shall be subject to approval by the county executive committee.

**PART IX — WATER CRISIS RESPONSE**

**Water Crisis Report Strategy**      **54.** (1) The County Executive Committee Member shall in consultation with national government agencies dealing with disaster management develop a water crisis response 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 crisis response management;
- (f) Stakeholder participation; and
- (g) Any other issue relevant to water related disaster management.

Marsabit Water and Sewerage Services Act, 2018

(2)The County Executive Committee may involve Organizations in the development of the Water Crisis Management Strategy in subsection (1).

**Water trucking**

**55.** (1) Water Trucking shall be a measure of last resort in responding to water crisis 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**

**56.** (1)The County Executive Committee Member 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) 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 X — FINANCIAL PROVISIONS**

**Application of revenues from permits and penalties**

**57.** (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—

Marsabit Water and Sewerage Services Act, 2018

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

(4) The fund shall be administered through guidelines issued by the County Treasury in consultation with the County Executive Committee Member.

**Finances of County Water Service Providers** **58.** (1) A County Water Service Provider 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 auditing public entities.

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

**PART XI — OFFENCES**

**Obstruction of Officers** **59.** (1) No person shall willfully hinder or interrupt, or cause to 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) commits an offence under this Act.

**Proceedings for Offences** **60.** Without prejudice to the rights of any person to bring proceedings in respect of an offence, the County Executive Committee Member, the County 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** **61.** (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—



## Marsabit Water and Sewerage Services Act, 2018

- (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**

**62.** (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 XII — MISCELLANEOUS**

### **Regulations**

**63.** The County Executive Committee Member shall issue regulations for any matter that is subject to regulations under this Act including but not limited to—

- (a) Terms and conditions for permits under this Act;
- (b) Composition and management of Community Natural Resource Committees ;
- (c) Water resource mapping;
- (d) Dealings with Public Benefit Organizations under this Act;
- (e) Establishment of Village Water Units; and
- (f) Waterworks development.

### **Transition Plan**

**64.** (1) The County Executive Committee Member 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.

(2)The plan shall contain the following information—

- (a) The criteria for identifying water service provision and supply

## Marsabit Water and Sewerage Services Act, 2018

management assets whose ownership belongs to the County and not to individual communities or persons;

- (b) Water service provision and supply management assets Owned by the County, whether controlled by the County or not;
- (c) Information on urban areas and rural areas not under the control of a Company established by the County in accordance with this Act;
- (d) Information on Community Natural Resource Committees in the County;
- (e) 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;
- (f) 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; and
- (g) The County Executive Committee Member shall ensure that citizen participation is adhered to under this part.

**Protection of Liability** 65. 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** 66. (1) Procedures undertaken under this Act that directly affect community interests shall be subject to public participation.  
(2) The County Executive Committee Member 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** 67. (1) Any conflict arising from the Transition Plan established Pursuant to section 64, or the performance of any function under this Act, shall in be resolved by conciliation 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 conciliation panel appointed in subsection (2) shall comprise of—

## Marsabit Water and Sewerage Services Act, 2018

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

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

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

### **Procedure Resolving Conflict**

**68.** (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.

### **Finances of the Panel**

**69.** The allowances of the conciliation panel, shall be determined by the County Executive Committee Member in consultation with the County Public Service Board.

## **PART XIII — SAVINGS AND TRANSITION**

Marsabit Water and Sewerage Services Act, 2018

**Savings  
Transition**

**and 70.** (1) Except to the extent that this Act expressly provides to the contrary all legal rights and obligations of the Government however arising and subsisting immediately before the commencement of this Act shall continue as rights and obligations of the County governments.

(2) All law in force immediately before the commencement of this Act shall continue in force and shall be construed with the necessary modifications bringing it in conformity with this Act.

(3) Any public officer appointed by the Public Service Commission before the commencement of this Act who is serving in the county shall be deemed to have been seconded in the service of the county government on terms and conditions of service at that date.

(4) Notwithstanding the provisions of this Act, any water companies, boards or committees existing at the commencement of this Act shall be deemed to have been constituted under this Act and shall continue to serve until a new water company, board or committee is appointed.

(5) Notwithstanding the provisions of this Act—

(a) any services rendered or fees charged by any water companies, boards or committees existing at the commencement of this Act shall be deemed to have been rendered and charged under this Act;

(b) any orders or notices made or issued by any water companies, boards or committees existing at the commencement of this Act shall be deemed to have been made or issued under this Act;

(c) any function or transaction carried out by or on behalf of any water companies, boards or committees existing at the commencement of this Act, civil proceedings or any other legal or other process in respect of any matter carried out under any written law, before the commencement of this Act, shall be deemed to have been carried out under this Act; and

(d) all rights, assets and liabilities of any water companies, boards or committees existing at the commencement of this Act shall be automatically and fully transferred to the Corporation, and any reference to any water companies, boards or committees existing at the commencement of this Act in any contract or document shall, for all intent and purposes, be deemed to be in reference to any water companies, boards or committees existing at the commencement of this Act established under this Act.

## Marsabit Water and Sewerage Services Act, 2018

**Staff of Water companies, boards or committees existing at the commencement of this Act**

**71.** (1) A person who immediately before the commencement of this Act was serving as a staff of any water companies, boards or committees existing at the commencement of this Act, shall, continue to serve as an employee of any water companies, boards or committees existing at the commencement of this Act on their existing terms of service, subject to the power of the Board to evaluate the performance and suitability of such an employee, based on the criteria to be determined by the Board.

(2) The criteria stated under subsection (1) shall be the basis on which an offer for employment or reassignment may be made to the employees on such terms and conditions as the Board may determine.

(3) A person who was serving as chairperson or member of the Board of the Company shall continue to serve the Company until new members of the Board are appointed under this Act.

Marsabit Water and Sewerage Services Act, 2018

**SCHEDULES**

**FORM FOR PRESENTING CONFLICTS TO THE CONCILIATION PANEL**

**(S.68)**

*(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***

S/NO.	NAME	ID NO	SIGNATURE
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

Marsabit Water and Sewerage Services Act, 2018

11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			
21.			
22.			
23.			
24.			
25.			
26.			
27.			
28.			
29.			
30.			
31.			