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CONTENT

Bill for Introduction into the County Assembly of Elgeyo/Marakwet—

PAGE

The Elgeyo/Marakwet County Water Management Bill, 2021 1

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THE ELGEYO/MARAKWET WATER SERVICES BILL, 2021

A Bill for

AN ACT of the County Assembly of Elgeyo/Marakwet to provide for Water Management Services and implementation of National Government Policies on water conservation in Elgeyo/Marakwet County and for connected purposes

ENACTED by the County Assembly of Elgeyo/Marakwet, as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Elgeyo/Marakwet Water Services Act, 2021, and shall come into operation fourteen days after its publication in the *Kenya Gazette.*

Interpretation

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

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

"chief officer" means the Chief Officer responsible for matters relating to water in the County, appointed in accordance with section 45 of the County Governments Act;

"company" has the meaning assigned to it under section 2 of the Companies Act, Cap. 486;

"contract node" has the meaning assigned to it under section 2 of the Public Private Partnerships Act, 2013;

"contracting authority" has the meaning assigned to it under section 2 of the Public Private Partnerships Act, 2013;

"county" means Elgeyo/Marakwet County;

"county executive" means the County Executive Committee Member in-charge of water in the County, appointed in accordance with section 35 of the County Governments Act, 20l2;

"county executive committee" means the County Executive Committee established in Elgeyo/Marakwet County in accordance with the Constitution of Kenya;

"county public service board" has the meaning assigned to it under section 57 of the County Governments Act, 2012;

"county secretary" has the meaning assigned to it under section 44 of the County Government Act;

"county treasury" has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;

"county water service provider" means a company established by the county for water service;

"department" means the Department of Water established as a Ministry in Elgeyo/Marakwet County or as a department in a Ministry in Elgeyo/Marakwet County;

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

"governor" means the Governor of Elgeyo/Marakwet 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;

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

(a) less fit for any beneficial purpose for which it is or may reasonably be expected to be used; or

(b) harmful or potentially harmful to—

(i) the welfare, health or safety of human beings;

(ii) any aquatic or non-aquatic life or property; or

(iii) the environment.

"permit" means a permit for the time being in force under this Act;

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

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

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

"water service provider" means a company, Authority or water service provider engaging in distribution or supply of water services in the county;

"water use rights" has the meaning assigned to it under section 5 of this Act;

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

"water trucking" means the use of heavy commercial vehicles to transport water in the county by the department.

Objects of the Act

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

(a) operationalizing water services provision as a county function under the Constitution;

(b) stating the water use priority in the county;

(c) establishing and administrative framework for water services provision in the county;

(d) provision of water services both in rural and urban areas;

(e) setting up water units in villages and other areas not defined as urban areas;

(f) prescribing penalties for water use related offences in the county;

(g) co-ordination of water use activities in the county;

(h) regulation of water works in the county;

(i) conservation of water in the county including water harvesting;

(j) management of revenues earned from water supply and sanitation in the county; and

(k) ownership and maintenance of county owned water supply and sanitation infrastructure.

Right to water

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

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

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

Waterworks Priority Schedules

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

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

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

Water user rights

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

(2) Despite the generality of the provisions of section 5 of this Act, the priority in water use rights shall be as follows—

(a) water for domestic uses such as drinking, cooking and personal hygiene shall be given the first priority;

(b) water for small sized domestic animals like goats and sheep shall be given the second priority;

(c) water for large animals like cattle shall be given the third priority;

(d) water for crop farming; and

(e) water for any other use apart from those stated shall be given the last priority.

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

Planning for Water use

7. (1) The County Executive shall co-ordinate and perform planning obligation relating to water use in the county including—

(a) formulating and publishing the county water and sanitation ten year sectorial plan;

(b) co-ordinate with the County Planning Unit on planning and budget issues relating to the water function in the county represented in the following documents under the Public Finance Management Act, 2012 and the County Governments Act, 2012—

(i) the County Integrated Development Plan;

(ii) the County Sectoral Plan;

(iii) the County Annual Development Plan;

(iv) the County Fiscal Strategy Paper; and

(v) any other policy document or activity relevant to county budgeting.

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

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

Co-ordination of water use activities

8. (1) The County Executive shall co-ordinate all the water use activities including development of water works in the county by other persons except the County Government.

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

(3) The County Executive shall in consultation with Public Benefit Organizations in the county issues Regulations to provide for—

(a) periodic reporting of the activities of Public Benefit Organizations to the department;

(b) prioritization of water use projects by Public Benefit Organizations in accordance with the county needs;

(c) stakeholder forums for meetings between Public Benefit Organizations in the county and the department;

(d) standard forms for reporting and seeking necessary approvals by a Public Benefit Organization under this Act.

(4) The County Executive shall direct National Government agencies undertaking water use projects and activities in the county with regard to water use priorities in the county.

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

PART II—ADMINISTRATION

County Water and Sanitation

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

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

Functions of the Directorate

10. (1) Developing water and sanitation services infrastructure, including water works and public works that may be used by the corporation and water co-operative society.

(2) In collaboration with other National or County Government(s) departments, imitating, developing, co-ordinating and managing policies strategies and plans for water resources management and sanitation services.

(3) Developing and managing works for water conservation.

(4) Facilitating public awareness and participation on sustainable water resources, sanitation and storm water management.

(5) Promoting and facilitating adoption and use of water conservation systems and methods including water harvesting.

(6) In collaboration with other agencies, develop and manage public infrastructure for storm water management.

(7) Developing and co-ordinating implementation of water and sanitation servives management information system.

(8) Developing and promote policies, strategies and mechanisms for climate change mitigation and adaption in the water sector.

(9) Mobilizing resources for water resources management and development and sanitation services.

(10) Developing performance management system and overseeing its implementation by the agencies established under this Act.

(11) Monitoring and evaluating the implementation of this Act and the water sector.

(12) Conducting and facilitation research and appropriate surveys for water resources management and facilitating dissemination and implementation of research findings.

(13) Acting as the repository of information and data on water sector.

(14) Advising the Executive Member on the necessary policy to be adopted for sustainable water resources management.

Appointment of Director

11. (1) The directorate shall be headed by the director who shall be appointed by the County Public Service Board.

(2) To be eligible for appointment as a director, a person shall—

(a) possess a degree in water engineering, water resource management, environment management or any related fields from a recognized university; and

(b) have had experience in water resource management for a period of not less than five years.

(3) The directorate shall be under the direction of the County Executive and Chief Officer responsible for water matters.

Officers

12. The County Executive may establish the following offices as administrative units of the department—

(a) the offices of the county water director or directors;

(b) sub-county water officers; and

(c) other officers constituted by the County Executive on the basis of a need.

Compliance Officers

13. (1) The county may recruit compliance officers to enforce provisions of this Act and Regulations issued under this Act.

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

Board of the Company

14. There is established a board to be known as Elgeyo/Marakwet County Water and Sanitation Services Board.

Composition of the Board

15. (1) The Board shall consist of—

(a) a non-executive chairperson appointed by the Governor and approved by the County Assembly;

(b) the chief officer for the time being responsible for water services who shall be the secretary;

(c) the chief officer for the time being responsible for finance;

(d) the chief executive office of the Elgeyo/Marakwet Water Services and Sanitation Corporation;

(e) and one representative of water service providers.

(2) A person shall be qualified for appointment as Chairperson or Member appointed under subsection (1) if the person—

(a) holds a degree from a recognized university;

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

(c) meets the requirements of chapter six of the Constitution.

Functions of the Board

16. The functions of the Board shall be—

(a) Solving dispute arising from water sector in the county;

(b) Subject to any other written law regulate water and sanitation services in the county;

(c) reviewing and advising on the appropriate governance and management of the institutions established under this Act;

(d) in co-operation with other Government agencies regulate development of infrastructure and systems for water and sanitation services in the county;

(e) issue authorization to any person intending to carry out any water and sanitation works similar to the public works defined under this Act;

(f) regulate use or access to land for the purposes of water conservation;

(g) issue permits and regulate the provision of sanitation services;

(h) ensure compliance with the established standards related to water and sanitation , and works;

(i) receive and address complaints from water consumers and any person affected by a decision of the corporation or the department;

(j) maintain data and information related to water and sanitation services and disseminate it to the public; and

(k) maintain collaboration and cooperation with other Government Agencies other governments in carrying out its functions.

Conduct of Business

17. (1) The conduct and regulation of the business and affairs of the Services Board shall be as set out in the Schedule.

(2) Except as provided in the Schedule, the Services Board may regulate its own procedure.

Remuneration of the Board

18. The remuneration of the Members of the board shall be as determined by the County Treasury in consultation with the County Public Service Board.

PART III—WATER SERVICE SUPPLY AND MANAGEMENT

County Water Service Provider

19. (1) The county may establish a company as a County Water Service Provider.

(2) The company established in subsection (1) above shall have at least two members who shall be office holders in the county.

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

(a) water service provision and sanitation management in urban areas;

(b) management of village water units in rural areas;

(c) collection of water use revenues in the county;

(d) collection of water use data in the county;

(e) management of water works developed by the department;

(f) management of any water use resource owned by the county;

(g) formulate and implement pro-poor policies as regards access to water; and

(h) maintain database related to water and sewerage services.

Establishment of an Authority as a Water Service Provider

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

(a) suing and being sued;

(b) purchasing, holding and disposing of movable and immovable property; and

(c) doing all such other things as may be done by a body corporate.

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

(3) A County Gazette Notice issues under subsection (1) shall state the following issues—

(a) the project or village unit that the Authority will manage;

(b) the officials of the Authority;

(c) the conduct of the affairs of the Authority; and

(d) The duration of existence the Authority.

Functions of the Corporation

21. The functions of the corporation shall be to—

(a) provide and manage water and sanitation services in the prescribed urban areas;

(b) develop adequate water supply system for domestic and industrial, purposes in the urban areas;

(c) promote or develop and manage water recycling systems in urban areas;

(d) promote efficient water use and management for sustainable development in the urban areas;

(e) identify, initiate and promote water conservation systems, strategies and programs in urban areas;

(f) maintain database rerated to water and sanitation services;

(g) disseminate information related to water and sanitation services; and

(h) maintain collaboration and co-operation with other Government agencies other county governments in carrying out its functions.

Board of the corporation

22. (1) The management of the corporation shall vest in the board.

(2) The Board of the corporation shall consist of—

(a) a non-Executive Chairperson appointed by the Governor and approved by the County Assembly;

(b) the chief officer for the time being responsible for water services;

(c) the chief officer for the time being responsible for finance

(d) two persons nominated by water users in the urban areas in accordance with the prescribed procedure and appointed by the Executive Member, one of whom must be of the opposite gender;

(e) one person appointed by the Executive Member through a competitive process by virtue of their knowledge, expertise and experience in matters related to water and sanitation management.

(3) A person shall be qualified for appointment as Chairperson or Member appointed under subsection (2) (e) if the person—

(a) holds a degree from a recognized university;

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

(c) meets the requirements of Chapter Six of the Constitution.

(4) A person shall be qualified for appointment as a Member under subsection (2)(d) if the person—

(a) possesses at least a diploma from a recognized institution;

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

(c) meets the requirements of Chapter Six of the Constitution.

Board of the corporation

23. The functions of the Board shall be to—

(15) Ensure proper and efficient exercise of the powers and performance of the functions of the corporation;

(16) Advice the management of the corporation generally on the exercise of the powers and the performance of the functions of the corporation;

(17) Approve the estimates of the revenue and expenditure of the corporation; and

(18) Perform such other functions as are provided for under this Act or any other written law.

Conduct of Business

24. The conduct and regulation of the business and affairs of the board of the corporation shall be as set out in the Schedule.

(1) Except as provided in the Schedule, the Board of the corporation may regulate its own procedure.

Chief Executive Officer

25. (1) There shall be a Chief Executive Officer of the company.

(2) The Chief Executive Officer shall be appointed by the Executive Member on recommendation of the board and recruited through a competitive process.

(3) To qualify for appointment as a Chief Executive Officer, a person must—

(a) possess a degree from a recognized university;

(b) have had experience in management for a period of not less than five years.

(3) The Chief Executive Officer shall hold office for a period of three years, on such terms and conditions of employment as the board may determine, and shall be eligible for re-appointment for a further and final term of three years.

(4) The Chief Executive Officer shall be an *ex-officio* member of the board of the corporation and shall have no right to vote at any meeting of the board.

(5) The Chief Executive Officer shall be—

(a) subject to the direction of the board, be responsible for day to day management of the affairs of the company;

(b) in consultation with the board, be responsible for the direction of the affairs and transactions of the company, the exercise, discharge and performance of its objectives, functions and duties and the general administration of the company;

(c) carry out any other duty as may from time to time be assigned by the board.

Removal of the Chief Executive Officer

26. 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 the office

(iv) incompetence;

(v) bankruptcy

Officers of the Corporation

27. The board of the corporation may appoint such officers as are necessary for proper discharge of its functions under this Act, upon such terms and conditions of service as it may determine

The Common Seal of the Company

28. (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.

Remuneration of the Board of the Corporation

29. The remuneration of the Members of the board of the corporation shall be as determined by the County Treasury.

Application to County Water Service Provider other than Company

30. The provisions on the appointment and procedures of the board and the Chief Executive Officer of the company, including recruitment of staff, shall apply in the same manner to a water service provider established by the county which is not a company.

Village Water Units

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

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

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

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

(b) a Village Water Unit shall be established in a village with less than seventy households;

(c) a Village Water Unit shall be established in a village with a functional Community Natural Resource Committee;

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

Community Natural Resource Committee

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

(2) Community Natural Resource Committees in the county may undertake the following aspects of water supply management—

(a) preparing water use schedules for use in the Village Water Units;

(b) regulating inter-community water use access;

(c) community feedback in the village water units;

(d) conflict resolution mechanisms in the Village Water Units; and

(e) any other duty assigned to the Community Natural Resource Committees by the County Executive or the department.

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

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

Community Projects

33. A community may initiate a project for water services with the approval of the Services Board.

County Scheme

34. (1) The corporation or directorate may, with the approval of the Executive Member, initiate a County Scheme to provide services under this Act for public benefit.

(2) Where the corporation or directorate deems necessary to establish such a scheme or related public works on private property or land, the County Government may purchase the property or in accordance with the laws governing compulsory acquisition seeks such compulsory acquisition.

Water use Tariffs

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

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

Water use Reports

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

Customer Feedback

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

Private Water Service Providers

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

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

(a) provide water services to more than twenty households; or

(b) supply—

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

(ii) more than one hundred thousand litres of water a day for any purpose, except under the authority of a permit.

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

(4) Nothing in this section prohibits—

(a) the provision of water services by a person to his employees; or

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

Water Service Provider Permits

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

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

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

(b) the acceptable quality of water as 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 Quality Control

40. (1) The County Executive shall establish mechanisms for water quality control in the county, including but not limited to—

(a) establishment of a water quality control laboratory;

(b) liaison with national government agencies with relevant expertise on consumer quality control'; and

(c) publishing information on water quality in the county and taking necessary steps to ensure that such information is readily available.

(2) Water Service Providers shall conform to water quality standards established by the department.

PART IV— WATER AND SOIL CONSERVATION

Water Conservation

Water Conservation

41. (1) The Services Board shall, in consultation with National Land Commission and County Land Management Board, declare area to be a water area for the purpose of conserving water.

(2) The Services Board may impose such conditions and requirements regulating or prohibiting certain activities in relation to the water conservation area.

Conservation of Water Catchment

42. The Directorate may—

(a) Collaborate with National Government or the county governments in conservation and protection of water sources and catchments of strategic importance to the county, which are located outside the county;

(b) support financing of water catchment protection;

(c) support and enforce reserve flow maintenance;

(d) in collaboration with other agencies, develop policies and strategies on water storage management at household, farm and industrial levels and ensure their implementation; and

(e) in collaboration with water resource users associations, participate in development and monitoring of implementation of sub catchment management plans.

Conservation guidelines

43. Subject to any written law, the Executive Member shall, in consultation with National Government prescribe guidelines for water conservation.

Soil Conservation

Soil conservation

44. The Executive Member shall, in collaboration with other entities, develop and implement policies and strategies for soil conservation and sustainable management of wetlands.

Flood Flow Management

45. The Executive Member shall—

(a) Prescribe rules for flood flow management; and

(b) Insatiate community programs for managing flood flow.

Demarcation of Riparian Land

46. (1) Any riparian land shall be demarcated and protected.

(2) The County department responsible for land shall, in consultation with the directorate and County Land Management Board ensure that this section is implemented.

Prohibited Activities on Riparian Land

47. A person shall not carry any of the following activities on riparian land—

(a) Tillage or cultivation;

(b) Clearing of indigenous trees or vegetables;

(c) Building of structures

(d) Disposal of any form of waste within the riparian land;

(e) Excavation of soil or development of quarries;

(f) Planting of exotic species that may have adverse effect to the water resources; or

(g) Any other activity that in the opinion of the department may degrade the water resource.

PART V—WATER WORKS

Water Works Permit

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

(2) Any person who undertakes waterworks constructions and development for which a permit is required under subsection (1) commits an offence under this Act.

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

(a) the county shall adhere to the procedures under the Intergovernmental Relations Act, 2012 relating to intergovernmental conflicts;

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

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

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

Development and Maintenance of County Water works

49. (1) The County Executive shall develop waterworks for water service provision in the county including but not limited to—

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

(b) designing, documentation, post contracting, and project management of county water works;

(c) providing technical assistance to community initiated projects, Public Benefit Organizations, National Government Agencies and persons other than the county engaging in water works development in the county;

(d) repair and maintenance of county owned and operated waterworks;

(e) construction of water pans and other waterworks for food security enhancement in the county;

(f) any other waterworks development related role assigned or undertaken by the county.

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

Storm Water Management System

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

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

(a) is liable to penalties issued under this Act; and

(b) may be directed by the County Executive to remedy such damage or obstruction by any suitable means including pulling down a building or other construction at the persons own cost.

(3) Where a person who may be liable under subsection (2) above proper ownership titles and adherence to physical planning laws in place before the coming into force of this Act, the County Executive may apply the Compulsory Acquisition Provisions under this Act.

Storm Water Engagement and Land Use Practices

51. The Department shall in collaboration with relevant county or national government departments and local residents promote sound water and land use practices.

Storm Water Management Plan

52. (1) For the purposes of this section, a water catchment means an area of land, that water can drain across, over, or under to a common point on a stream, river, lake or wetland.

(2) There shall be for each town or urban area, a watershed Storm Water Management Plan in accordance with the prescribed standards.

(3) The Storm Water Management Plan shall among others—

(a) identify, survey and inventory existing conditions that affect storm water runoff; and

(b) address issues of peak flows, flooding, ground water recharge, stream erosion and water quality.

(4) The town administrator or an officer responsible for managing an urban area shall, ensure that the Storm Water Management Plan is developed and implemented through a consultative process.

(5) A person or entity engaged in land development activity, construction of a building or any physical infrastructure that is exposed to water precipitation or an owner of such constructed infrastructure shall develop and implement a Storm Water Management Plan on a sub-catchment basis in accordance with the prescribed standards.

(6) A person constructing a road shall ensure that there is a built in Storm Water Management Plan and system for that road.

(7) The county department responsible for roads shall ensure that road construction plans include a storm water management plan.

(8) Any construction of a building, physical infrastructure or a road shall not be approved unless the construction has a Storm Water Management Plan to be implemented.

(9) A person who contravenes this subsection (6) and (8) commits an offence and shall—

(a) if a corporate body be liable to a fine of five hundred thousand shillings; or

(b) if an individual to a fine not exceeding fifty thousand shillings or imprisonment for a term not exceeding three months or to both.

Reduction of Runoff Water

53. (1) A proprietor of a building shall—

(a) install rain barrels with sufficient capacity to store water from the building;

(b) where applicable, not permit storm water to become runoff; and

(c) reuse or recycle storm water collected for other purposes in the premises.

(2) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one month.

Riparian Buffers

54. (1) For the purposes of this section, a riparian buffer means an area around or situated next to bodies of water that act as buffers or cushions to that water body.

(2) The directorate shall, in collaboration with other government agencies and local residents, mobilize residents to develop or restore riparian buffers along rivers, waterways or any water body.

(3) A person shall not interfere with a restored riparian buffer in a way that exposes it to run off water.

(4) A person who contravenes subsection (2) commits an offence and shall—

(a) if a corporate body be liable to a fine not exceeding shillings five hundred thousand shillings; and

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

Compulsory Acquisition of Land

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

(2) The county shall abide by the provisions of the Land Act, 2O12 when undertaking compulsory acquisition under subsection (l) above.

Easement for Waterworks

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

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

PART VI— SANITATION SERVICES AND POLUTION CONTROL

Master Plan

57. The directorate shall, in collaboration with other county and national government departments and local residents, prepare a medium and long term sanitation services Master plan.

Provision of Sanitation Services

58. The corporation shall either directly or through public private partnership—

(a) provide necessary sanitation services in kthe urban areas;

(b) construct, operate and maintain extensive system of sewers and treatment facilities to meet applicable discharge requirements.

Waste Water Management

59. The department shall—

(a) develop strategies and policies to promote treated waste water and dried sludge re-use;

(b) in co-operation with relevant Government agencies will periodically carry out effluent quality analysis to ensure efficacy of the waste water management facilities.

Compliance with Effluent Standards

60. (1) A person or entity shall, when disposing final effluent comply with the guidelines prescribed by the relevant government authority.

(2) A person who contravenes subsection (1) commits an offence and shall—

(a) if a corporate body be liable to a fine not exceeding five hundred thousand shillings; and

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

Discharge of Contaminated Water or Effluent

61. (1) A person shall not discharge or dispose any contaminated water or effluent unless in accordance with the prescribed guidelines and standards.

(2) if a corporate body be liable to a fine not exceeding five hundred thousand shillings.

(3) If an individual be liable to a fine f fifty thousand shillings or to imprisonment for a term not exceeding two months

Interference with Sewerage System

62. (1) No person shall interfere with any sewerage facility or system unless with a written consent of the corporation 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 shall be liable to a fine not exceeding shillings five hundred thousand or to imprisonment for a term not exceeding three years.

Sewerage Tariffs (No. 17 of 2012)

63. (1) Subject to the County Governments Act and any written law, the corporation may impose tariffs or levy sewerage services levy on water or sanitation 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.

Sector Wide Forum

64. (1) The directorate shall constitute and convene the water and sanitation services sector wide forum.

(2) The sector wide forum shall consist of all stakeholders in the water and sanitation sector as shall be prescribed.

(3) The roles of the sector wide forum shall be—

(a) review and deliberate on water resources management and sanitation services; propose policy or legislative interventions for effective implementation of this Act; and

(b) participate in development of measures, plans and strategies for implementing this Act.

(4) The Sector Wide Forum shall meet at least once every quarter.

PART VII—CONSERVATION

Borehole Site Identification

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

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

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

Drilling of Boreholes

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

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

Water Pollution Control

67. (1) No person shall throw or convey, or cause or permit to be thrown or conveyed, any rubbish, dirt, refuse, effluent, trade waste or other offensive or unwholesome matter or thing into or near to any water resource in such manner as to cause, or be likely to cause, pollution of the water resource.

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

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

Monitoring Wells

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

National Water Conservation Policies

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

PART VIII— WATER HARVESTING

Roof Catchment

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

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

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

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

Construction of Water Pans

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

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

Storm Water Harvesting Systems

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

(2) Development and construction of storm water management systems in the county shall be supervised by the department.

PART IX—PUBLIC PRIVATE PARTNERSHIPS

Public Private Partnerships for Water Services

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

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

(3) In establishing a public private partnership under this part, the County Executive and the Chief Officer or their respective representatives shall be part of the Contract Node.

Public Private Partnerships for Waterworks

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

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

Public Private Partnerships Policy

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

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

(a) projects identified for public private partnerships;

(b) citizen participation and community involvement in public private partnerships;

(c) engagement of the youth and women;

(d) reporting on public private partnerships in the county; and

(e) any other issue that is relevant to such public private partnership

PART X— WATER DISASTER MANAGEMENT

Disaster Management Strategy

76. The County Executive Committee shall develop a water related Disaster Management Strategy which shall contain the following information—

(a) early drought warning responses strategy;

(b) flood control response strategy;

(c) short term interventions;

(d) long term interventions;

(e) cross county issues on water related disaster management;

(f) stakeholder participation; and

(g) any other issue relevant to water related disaster management.

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

Water Trucking

77. (l) Water Trucking shall be a measure of last resort in responding to drought management in the county.

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

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

Cross County Disaster Management

78. (l) The County Executive shall undertake necessary measures to facilitate the establishment of a cross county disaster management mechanism including an Authority with neighbouring counties.

(2) The mechanism or Authority established in subsection (1) above shall facilitate cross county disaster management response including—

(a) access to water point in the counties by communities from neighboring counties;

(b) conflict resolution; and

(c) development of cross county water related Disaster Management Strategies.

PART XI—OFFENCES

Obstruction of Officers

79. (1) No person shall wilfully hinder or interrupt, or cause be hindered or interrupted, any permit holder, or his employee, contractor or agent, in the lawful exercise or performance of any powers and functions under this Act.

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

Proceedings for Offences

80. Without prejudice to the rights of any person to bring proceedings in respect of an offence, the County Executive, the Company, a county water service provider or compliance officers may institute and maintain criminal proceedings in any court against any person accused of an offence under this Act or under any rules or Regulations made under this Act.

Remedy of Defaults

81. (1) Where, by his act or omission a person contravenes any requirement or prohibition made or imposed by or under this Act, then, without affecting any other liability of the person under this Act or otherwise in respect of the contravention, the county may, by order served on the person concerned, require him, within a reasonable time specified in the order—

(a) to remedy the contravention;

(b) to clean up any pollution or make good any other detriment identified in the order which was caused to any water resource by reason of the contravention; and

(c) to remove or destroy any works, plant or machinery employed for the purposes of the contravention.

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

General Penalty

82. (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

83. The County Executive 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) water works development.

Transition Plan

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

(2) The plan shall contain the following information—

(a) the criteria for identifying water service provision and supply 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.

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

Protection from Liability

85. 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.

Liability for Damages

86. The provisions of (above section) shall not relieve the corporation of the liability to pay compensation or damages to any person for any injury to him or her, his or her property or any of his or her interests caused by the exrcise of any power conferred by this Act or any other written law or by the failure, wholly or partially, of any works.

Public Participation

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

(2) The Corporation shall, in carrying out its functions-

(a) provide public education and awareness on efficient and sustainable water use; and

(b) invest in water source protection and conservation.

Conciliation Panel

88. (1) Any conflict arising from the Transition Plan established pursuant to section 55, or the performance of any function under this Act, shall in be resolved by mediation in the first instance.

(2) The Governor shall in the case of any conflict appoint a conciliation panel of at least three persons, who are not employed by the County Government, to determine the conflict

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

(a) an advocate of the High Court of Kenya who shall Chairperson of the panel ;

(b) an official of a Public Benefit Organization with experience in conflict resolution;

(c) a religious leader from the community with a minimum qualification of a bachelor's degree from a recognized university

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

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

Procedure for Resolving Conflicts

89. (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 three 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

90. The finances of the conciliation panel, including the allowances of the conciliation panel shall be managed by the county secretary in consultation with the county treasury.

PART XIII—FINANCIAL PROVISIOS

Funds of the Corporation

91. (1) The funds and assets of the corporation shall consist of-

(a) such moneys as may be appropriated by County Assembly for the purposes of the corporation;

(b) revenues realized from investments undertaken by the corporation;

(c) such gifts, grants or monies received from any lawful source; or

(d) All monies borrowed from securities market or received as loans to the corporation.

(2) The Corporation shall apply the money provided under this section for the furtherance of its purpose and performance of the functions of the corporation and as prescribed under this Act.

Annual Estimates

92. (1) At least three months before the commencement of each financial year, the corporation shall cause to be prepared annual estimates of the corporation for that year.

(2) The annual estimates shall make provision for all estimated expenditure of the corporation for the financial year and in particular, the estimates shall provide for the—

(a) allocations for investments related to the functions of the corporation;

(b) recurrent expenditure related to provision of water and sanitation services;

(c) payment of the salaries, allowances and other charges in respect of the staff of the corporation;

(d) payment of allowances and other charges in respect of members of the board of the corporation;

(e) payment of pensions, gratuities and other charges in respect of members of the board of the corporation and staff of the corporation;

(f) proper maintenance of the buildings and grounds of the corporation;

(g) maintenance, repair and replacement of the equipment and other property of the corporation; and

(h) creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Board of the corporation may deem appropriate.

(3) The annual estimates shall be approved by the board of the corporation before the commencement of the financial year to which they relate and, once approved, the sum provided in the estimates shall be submitted to the County Executive Committee for final approval.

Accounts

93. The board of the corporation shall cause to be kept proper books and records of accounts and assets of the corporation.

Financial Reports and Audit

94. Within a period of three months after the end of each financial year, the board of the corporation shall submit to the Auditor-General, the accounts of the corporation together with—

(a) a statement of financial position as at the thirtieth day of June;

(b) a statement of comprehensive income;

(c) a statement of cash flow for the year ended;

(d) a summary of significant accounting policies and other explanatory information; and

(e) other financial statements applicable to similar institutions.

Public Audit Act

95. The accounts of the corporation shall be audited and reported upon in accordance with the provisions of the public audit act.

Funds of the Services Board and the Department

96. The funds of the Services Board and the department shall be appropriated by the County Assembly.

SCHEDULE

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD OF CORPORATION AND SERVICES BOARD

Tenure of Office

1. Any Member of the board, other than Chief Officers shall, subject to the provisions of this Schedule, hold office for a term of three years, on such terms and conditions as may be specified in the instrument of appointment, and shall be eligible for re-appointment for a further and final term of three years.

Vacation of Office

2. A member of the Board may—

(a) at any time resign from office by notice in writing to the Executive Member;

(b) be removed from office by the Executive Member if the Member—

(i) has been absent from three consecutive meetings of the board without the permission of the Chairperson;

(ii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;

(iii) is convicted of an offence involving dishonesty or fraud;

(iv) is adjudged bankrupt or enters into a composition scheme of arrangement with his creditors;

(vi) is incapacitated by prolonged physical or mental illness or is deemed otherwise unfit to discharge his duties as a Member of the corporation; or

(vii) fails to comply with the provisions of this Act relating to disclosure;

(viii) gross misconduct;

(ix) violation of the constitution and any other written law.

Meetings

3. (1) The board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding the provisions of subparagraph (l), the Chairperson and upon requisition in writing by at least seven members shall, convene a special meeting of the board any time for the transaction of the business of the board.

(3) Unless three quarters of the total Members of the board otherwise agree at least, fourteen days' Written Notice of every meeting of the board shall be given to every member of the board.

(4) The quorum for the conduct of the business of the Board shall be five members including the Chairperson or the person Presiding.

(5) The chairperson shall preside at every meeting of the board at which he is present but, in his absence, the Members present shall elect one of their numbers to preside, who shall, with respect to that meeting and the business transacted thereat, all the powers of the Chairperson.

(6) Unless a unanimous decision is reached a decision on any matter before the board shall be by a majority of votes of the Members present and voting and, in the case of an equality of votes, the chairperson or the person presiding shall have a casting vote.

(7) Subject to subparagraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

Conflict of Interest

4. If a Member id directly or indirectly interested in any contract, proposed contract or other matter before the board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, that meeting member shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter:

Provided that, if the majority of the members present are of the opinion that the experience or expertise of such member is vital to the deliberations of the meeting, the board may permit the member to participate in the deliberations subject to such restrictions as it may impose but such member shall not have the right to vote on the matter in question.

(1) A Member of the board shall be considered to have a conflict of interest for the purposes of this Act if he acquires any pecuniary or other interest that could conflict with the proper performance of his duties as a member or employee of the board.

(2) Where the board becomes aware that a member has a conflict of interest in relation to any matter before the board, the board shall direct the Member to refrain from taking part, or taking any further part, in the consideration, or determination of the matter.

(3) If the Chairperson has a conflict of interest he shall, in addition to complying with the other provisions of this section, disclose the conflict that exists to the Executive Member in writing.

(4) Upon the board becoming aware of any conflict of interest, it shall make a determination as to, to whether in future the conflict is likely to interfere ,significantly with the proper and effective performance of functions and duties of the member or the board and the Member with conflict of interest shall not vote on this determination.

(5) Where the board determines that the conflict is likely to interfere significantly with the Member's proper and effective performance as provided for in subparagraph (1), the Member shall resign unless the Member has eliminated the conflict to the satisfaction of the board within thirty days.

(6) The board shall report to the Chief Executive Officer any determination by the board that a conflict is likely to interfere significantly with performance as above and whether or not the conflict has been eliminated to the satisfaction of the board.

(7) The annual report of the board shall disclose details of all conflicts of interest and determinations arising during the period covered by the report.

(8) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

(9) A member of the board who contravenes subparagraph (1) commits an offence and is liable to imprisonment for a term not exceeding six, months, or to a fine not exceeding one hundred thousand shillings, or both.

Execution of Interest

5. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may enter into or executed on behalf of the board by any person generally.

Minutes

6. The Board shall cause minutes of all resolutions and proceedings of meetings of the board to be entered in books kept for that purpose.

MEMORANDUM OF OBJECTS

The provision of water services and sanitation was devolved as a function of the County governments under the Fourth Schedule of the Constitution, following the promulgation of the Constitution of Kenya, 2010.

Provisions on Water Conservation, County Public Works and Water and Sanitation have been confirmed as a function of the Elgeyo/Marakwer County Government through Kenya Gazette Supplement No. 116 of 9th August, 201.

This Bill therefore seeks operationalize water service provision and supply management in Elgeyo/Marakwet County; to make provision for regulating water service providers; water works; ensure compliance to set down water quality standards; control of pollution in water bodies and related matters.

TICH CHEBOI,

ZACHARIA MAGUT,

Members of the County Assembly.