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THE TURKANA COUNTY WATER ACT, 2019

No. 3 of 2019

Date of Assent: 20th May, 2019

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CONDUCT OF THE AFFAIRS OF THE TURKANA WATER COMPANY BOARDS

SCHEDULE II

WATER USER ASSOCIATION COMPLIANCE APPLICATION FORM

THE TURKANA COUNTY WATER ACT, 2019

AN ACT of the County Assembly of Turkana to provide for the regulation and management of water and sewerage services in Turkana County, the development, regulation and management of county public works in relation to water and sewerage systems the implementation of National Government Policies on water conservation in Turkana County and for connected purposes

ENACTED by the County Assembly of Turkana as follows—

PART I—PRELIMINARY

Short title and Commencement

1. This Act may be cited as the Turkana County Water Act 2019, and shall come into operation upon publication in the *Gazette*.

Interpretation

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

"board of directors" means the Board of Directors of a Water Company established in accordance with this Act;

"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;

"community based organization" means a community organizations registered as self-help groups within the County under the Societies Act or other written law;

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

"compliance certificate" means the compliance certificate issued to water user associations under section 20 of this Act;

"compulsory acquisition" has the meaning assigned to it under the Land Act, 2012;

"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 government" means the County Government of Turkana;

"county executive member" means the County Executive Committee Member responsible for water in the County appointed in accordance with section 35 of the County Governments Act, 2012;

"county executive committee" means the County Executive Committee established in Turkana County in accordance with Article 179 the Constitution;

"county forum" means the county multi-sectoral institutional stakeholders forum established under section 9;

"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, 2012;

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

"department" means the Department of Water established as a ministry in Turkana County or as a department in a ministry in Turkana County;

"fund" means the Water Services Fund established under section 50;

"governor" means the Governor of Turkana County;

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

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

"managing director" means the managing director of a water company;

"national policy" means the National Government policies relating to natural resources and environment conservation or any other relevant National policy issued by the Government from time to time;

"national legislation" means a law enacted by the National Parliament in Kenya;

"panel" means the conciliation panel established under section 60;

"pollution" means any direct or indirect alteration of the physical, thermal, chemical or biological properties of the water resource or supply 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 issued in accordance with this Act;

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

"Public Private Partnership" has the meaning assigned to it under the Public Private Partnerships Act, 2013;

"social services department" means the relevant offices within the County, whether under National or County Government for coordinating social services in the County;

"society" has the meaning assigned to it under section 2 of the Societies Act;

"water sector secretariat" means the Institutional Stakeholders Secretariat established under section 16;

"Sub-County Administrator" has the meaning assigned to it under section 50 of the County Governments Act, 2012;

"sub county water sector co-ordination committee forums" means the Sub-County multi-sectoral institutional stakeholders forums established under section 13;

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

"ward" has the meaning assigned to it under section 2 of the County Governments Act, 2012;

"ward administrator" has the meaning assigned to it under section 51 of the County Governments Act, 2012;

"water company" means a Water Service Provider established as a Company by the County;

"water service provider" means any person including a Company or institutional stakeholder engaging in distribution or supply of water services in the County under a license issued in this Act;

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

"waterworks" means any construction, excavation or 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 supply" system means a network of infrastructure including waterworks, water service assets and contracts for the provision of water to persons in a locality in the County;

"water trucking" means the use of heavy commercial vehicles to transport water for domestic uses; and

"water user associations" means private water service providers or community based organizations registered as Societies for the purposes of providing water and sanitation service in particular localities.

Objects and Purpose

3. The objects of this Act is to provide for—

(a) a comprehensive legal framework to establish and regulate water supply, sewerage and sanitation services in the County including—

(i) an effective administration of water supply, sanitation and sewerage services;

(ii) the holding of water works and water service provision assets on behalf of the County;

(iii) the regulation of water use rights;

(b) the co-ordination of the activities of institutional stakeholders in water services provision in the County;

(c) the promotion of public participation in the water services regulation in the County;

(d) the management of public private partnerships for water services in the County;

(e) the coordination of waterworks development in the county; and

(f) matters relating to water and sanitation service provision in the County.

Right to Water and Sanitation

4. (1) Every person in the County has the right to clean and safe water in adequate quantities, and reasonable standards of sanitation.

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

(3) The County government shall put in place measures to ensure the progressive provision of adequate and clean water for livestock

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

Water use rights

5. (1) Upon commencement of this Act, all instruments, property, rights, privileges, or transfers accorded to any person under any written law, in respect of water and sanitation supply in the County, shall be undertaken in accordance with this Act.

(2) Priority in water use rights in the County are—

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

(b) water for livestock and in support of pastoral livelihoods shall be given the second priority;

(c) water for food crops and fodder production including irrigation thereof shall be given the third priority;

(d) water for industrial use shall be given the fourth priority; and

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

(3) The County Executive Member may, upon request in writing, or at his discretion grant a person authority to derogate from the water use priority provided for in subsection (2) due to health, economic or security reasons.

Vulnerable Groups

6. The Department shall take special measures to ensure the provision of water and sanitation services to vulnerable groups, including but not limited to—

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

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

(c) provision of water for pastoralists during times of drought or other pastoralist based disasters; and

(d) the promotion of appropriate hygiene and sanitation programmes among communities.

PART II—MANAGEMENT OF WATER SERVICES

Water Department

7. (1) There is established the Turkana County Water Department, which shall have the overall responsibility of overseeing the provision and management of water supply, sewerage and sanitation services in the County.

(2) The Department shall comprise of—

(a) the County Executive Member, who shall have overall responsibility of the Department;

(b) the Chief Officer;

(c) directors recruited and assigned to the Department by the County Public Service Board;

(d) sub-County water officers appointed by the County Public Service Board; and

(e) other officers appointed by the County Public Service Board.

(3) The Department shall decentralize its services to the lowest possible unit of the county's administration to ensure the provision of safe and adequate water and effective sanitation services throughout the County.

Functions of the Department

8. (1) The functions of the Department shall be to—

(a) develop policy, regulations and standards to guide the provision, management and use of water, sewerage and sanitation services in the County;

(b) undertake and regulate the development of waterworks in the County including—

(i) storm water harvesting systems;

(ii) drainage systems;

(iii) water supply systems;

(iv) sewerage systems;

(v) approval of water project designs in the County;

(vi) construction and rehabilitation of livestock watering structures;

(c) regulate water and sanitation services in line with the County and National Government standards, including the development of service provision agreements;

(d) issue guidelines for water tariffs;

(e) offer guidance on water and sanitation services planning in the County Planning framework including—

(i) the County Integrated Development Plan;

(ii) the County Water and Sanitation Sectoral Plan;

(iii) the County Annual Development Plan;

(iv) the County Fiscal Strategy Paper; and

(v) the County Agricultural Sector Plan;

(f) enter into and co-ordinate public private partnerships for waterworks development in the County;

(g) co-ordinate institutional stakeholders in the County;

(h) co-ordinate relationships with National Government institutions and institutions of other county governments involved in matters relating to water supply sewerage and sanitation services provision;

(i) regulate and co-ordinate water user associations in the County;

(j) promote awareness on the legal and policy framework among all stakeholders in the water sector;

(k) develop performance management plans for Water Service Providers in the County;

(l) in consultation with the county government's monitoring and evaluation unit, develop a public charter for accountability in delivery of services in the water sector;

(m) hold water, sewerage and sanitation assets on behalf of the County Government;

(n) oversee emergency water trucking; and

(o) perform any other function as may be assigned by the County Executive Committee or by any other written law.

(2) (a) The County Executive Member may establish a Unit within the Department to deal with matters relating to the management of water for livestock.

(b) The functions of the Unit shall include—

(i) advising the Department on the establishment of livestock water sources in rangelands including water pans, rock catchments, and dams;

(ii) ensuring the management of livestock solid wastes for the benefits of rangeland sustainability;

(iii) capacity building of the rangeland community on proper qualitative quantitative and sustainable use of rangeland waters for pastoral livelihood support;

(iv) ensuring the establishment of bio security measures at the livestock water resources point as a basic component of the livestock waterworks;

(v) ensuring the protection of livestock water resources from adverse impact;

(vi) advising on policy regulations and standards to guide the provision, management and the use of livestock water supply and its sanitation services; and

(vii) performing any other function as may be assigned by the County Executive Committee or by any other written law.

PART III—STAKEHOLDERS PARTICIPATION

County Forum

9. (1) There is established a County Water Sector Co-ordination Committee Forum that shall be a consultation forum for all the Institutional Stakeholders in the County on matters related to water and sanitation.

(2) The membership of the County forum will be open to all county stakeholders in the water sector and in particular shall include—

(a) representatives of the County Departments of Water, Agriculture and Irrigation;

(b) representatives of the County Department of Health Services;

(c) representatives of the County Department of Livestock and Pastoral Economy;

(d) representatives of the County Department of Education;

(e) representatives of the County Department of Lands and Urban Planning;

(f) representatives of the County Department of Planning and Economic Development;

(g) representatives of the County Department of Environment and Natural Resources;

(h) county Public Administration;

(i) all Non-Governmental Organizations, Faith Based Organizations and Community Based Organizations implementing water and sanitation services;

(j) private Sector entities involved in water and sanitation services;

(k) water User Associations;

(l) water Service Providers;

(m) water Resources Users Associations;

(n) international Development Partners;

(o) relevant National Government ministries.

County Co-ordination Committee

10. (1) There is established the County Water Sector Co-ordination Committee which shall comprise of the following persons—

(a) the Chief Officer and the Chief Officer responsible for Health Services who shall be the Co- chairpersons;

(b) one representative from the Department responsible for public administration in the County;

(c) one representative from the Department responsible for agriculture in the County;

(d) one representative from the Department responsible for livestock in the County;

(e) the Managing Director of the Water Company formed under Section 27;

(f) one Sub-County Water User Association representative from each Sub-County appointed in the manner provided for in this Act;

(g) one representative of Institutional Stakeholders from each Sub-County, appointed in the manner provided for in this Act;

(h) not more than two persons being one man and one woman, who are not employed by the County Government appointed by the County Executive Member to represent special interests.

(2) The members of the County Water Sector Co-ordination Committee shall appoint a secretary from their membership.

(3) The County Water Sector Co-ordination Committee may appoint technical working groups as may be necessary for the better performance of its functions.

(4) The County Executive Member may co-opt a person with relevant technical expertise to participate in the County Water Sector Co-ordination Committee.

(5) The membership of the County Water Sector Multi-Stakeholder Co-ordination Committee shall be non-remunerative, provided that the members referred to in sub-section (1) (f), (g) and (h) shall be entitled to an allowance in accordance with the guidelines issued by the County Executive Member responsible for finance in the County.

Functions of the County Co-ordination Committee

11. The functions of the County Water Sector Co-ordination Committee shall be to—

(a) organize meetings of the County forum;

(b) provide technical advice to the County Forum;

(c) monitor and evaluate the performance of institutional stakeholders and report to the County forum;

(d) co-ordinate the activities of Institutional Stakeholders in the County;

(e) develop guidelines on the activities to be undertaken by Institutional Stakeholders in the County;

(f) provide a forum for reporting the activities of institutional stakeholders;

(g) deliberate on issues related to water supply and sanitation services presented by County and Sub-County Multi Sector Stakeholder Forums;

(h) assign duties to institutional stakeholders based on the project priority list;

(i) advise the County Government on relationships with Institutional Stakeholders;

(j) accredit persons and institutions seeking to act as Institutional Stakeholders in the County;

(k) advise on policy matters relating to water, health and sanitation in the County;

(l) provide linkages between the County Executive Committee and the Institutional Stakeholders in the County;

(m) any other duty assigned to the Forum by the County Executive Committee; and

(n) maintaining periodic water analysis data.

Conduct of the affairs of the County Co-ordination Committee

12. (1) The County Water Sector Co-ordination Committee shall convene at least one meeting each quarter of the year.

(2) The County Water Sector Co-ordination Committee shall develop its own guidelines for the conduct of meeting which shall be approved by the County Executive Member.

Sub-County Forums

13. (1) There is established Sub-County Water Sector Co-ordination Committee Forums.

(2) The Sub-County Water Sector Co-ordination Committee shall comprise of—

(a) the Sub-County Water Officer and the Sub-County Health Officer who shall be the Co-Chairpersons of the forum;

(b) One representatives each from the Departments of Livestock, Agriculture, Lands, Environment and Natural resources working in the County;

(c) the Sub-County Administrator;

(d) one representative of each of the institutional stakeholder ward forums in the Sub-County appointed in accordance with this Act;

(e) one representative of the Water User Association from each Ward appointed in accordance with this Act; and

(f) not more than two persons being one man and one woman, who are not employed by the County Government appointed by the County Executive Member to represent special interests.

(3) The members of the Sub-County Water Sector Co-ordination Committee shall elect a Secretary who shall not be a County Government employee.

(4) The Sub-County Water Sector Co-ordination Committee shall hold not more than one meeting every quarter of the year.

(5) The conduct of the affairs of the Sub-County Water Sector Co-ordination Committee shall be determined by guidelines developed by the County Executive Member.

(6) The members referred to in sub-section (2) (c), (d) and (e) shall be entitled to an allowance in accordance with the guidelines issued by the County Executive Member responsible for finance in the County.

Functions of the Sub-County Water Sector Co-ordination Committee Forum

14. The functions of the Sub-County Water Sector Co-ordination Committee shall be to—

(a) provide a forum for reporting the activities of institutional stakeholders within the Sub-County;

(b) deliberate on issues related to water supply and sanitation services in the Sub-County;

(c) recommend persons and institutions seeking accreditation to act as Institutional Stakeholders in the Sub-County;

(d) provide linkages between the County Executive Committee and the Institutional Stakeholders in the Sub-County; and

(e) any other duty assigned to the Forum by the County Executive Member.

Appointment of Institutional Stakeholders and Water User Associations Members

15. (1) The County Executive Member shall develop regulations for the appointment of representatives of Institutional Stakeholders and Water User Associations for the County and Sub-County Water Sector Co-ordination Committee.

(2) The County Executive Member may develop regulations for the formation, membership and functions of the Ward Water Sector Co-ordination Committee.

County Secretariat

16. (1) The County Executive Member shall designate staff within the Water Department to form a County Water Sector Secretariat.

(2) The functions of the County Water Sector Secretariat shall be to—

(a) co-ordinate the registration of Institutional Stakeholders;

(b) compile a report of the activities of Institutional Stakeholders in each ward and Sub-County every financial year and submit the same to the County Assembly;

(c) organize and provide secretarial services for the meetings of the County and Sub-County Water Sector Co-ordination Committees;

(d) develop a budget to be approved by the County Executive Member for the activities of the—

(i) county and Sub-County Water Sector Co-ordination Committees;

(ii) water User Associations;

(e) provide an information desk for receiving and compiling data from Institutional Stakeholders on the Water Services Sector in the County; and

(f) perform any other responsibility relevant to the co-ordination of the activities and functions Institutional Stakeholders in the County.

(3) Institutional Stakeholders may hire staff at their own cost to provide technical support as part of the Stakeholders Secretariat.

(4) Not later than three months after the end of each financial year, The County Executive Member shall prepare and submit the report referred to in subsection (2)(b) to the County Assembly.

Registration and Reporting of Institutional Stakeholders

17. (1) Institutional Stakeholders in the County shall register with the Stakeholder Secretariat and provide relevant details including—

(a) information on the organization's identity;

(b) the main sources of funds of the organization;

(c) the key staff of the organization;

(d) the current contact details of the organizations; and

(e) the nature of projects undertaken by the organization.

(2) Institutional stakeholders shall furnish the County institutional stakeholders forum with reports on their activities every financial year.

(3) The County Executive Member shall publish regulations for the better administration of this section.

Registration of Water User Associations

18. (1) The Department shall develop modalities for registering water user associations to participate in water service provision and the collaborative management of water resources and related facilities in the County;

(2) Water user associations shall either be duly registered as water resource user associations or community based organizations under national legislation.

(3) An application for registration as a water user association shall be in writing and based on regulations governing registration of water user associations.

(4) A potential water user association shall only be registered upon meeting the criteria set out in regulations developed under sub section 3.

Functions of Water User Associations

19. (1) The functions of water user associations shall include—

(a) providing consumer feedback on the performance of water service providers in their respective areas of jurisdiction;

(b) facilitating public participation for water services related issues;

(c) advising the department on water project priorities within their respective jurisdictions;

(d) assisting in the implementation of County and National Government policies on water conservation;

(e) participating in water and sanitation health education within their respective jurisdictions; and

(f) resolving conflicts involving use of water resources within their respective jurisdictions;

(g) any other function assigned by the County Executive Member or by any other law.

(2) The Department shall develop regulations on the conduct of the affairs of Water User Associations including—

(a) the eligibility for registration;

(b) the procedure for registration;

(c) the identity of Water User Association;

(d) the Constitution for Water User Associations;

(e) the qualifications, elections, transition and removal of leaders;

(f) the membership of Water User Association;

(g) the jurisdiction of Water User Association;

(h) the meetings of Water User Association;

(i) reporting of the activities of Water User Associations; and

(j) any other issues relevant to the performance of the functions of the Water User Associations.

Compliance Certificates

20. (1) Water User Associations shall, every financial year, make application to the County Executive Member for a compliance certificate.

(2) The application referred to under sub-section (1) shall be made in accordance with the forms set out in the Second Schedule.

(3) The Department shall conduct an inspection within a period of twenty one days upon receipt of an application in sub-section (1), and may—

(a) issue a compliance certificate to the Water User Association; or

(b) decline to issue a compliance certificate to the Water User Association stating the reasons for declining and any possible remedial measures.

(4) The compliance certificate shall entitle the Water user Association to participate in the water service provision governance structure under the County Government.

(5) No Water User Association shall receive any support from the County Government or structures under this Act without a compliance certificate.

Sub-County representation of Water User Associations

21. (1) The Sub-County Water Officer shall convene a forum in the respective Sub-County for Water User Associations in the Sub-County, whose purpose shall be to elect a Sub-County Water User Associations representative.

(2) The forum in sub-section (1) shall be attended by the chairpersons of the Water User Associations in the respective Ward.

(3) The County Executive Member shall issue regulations for the better administration of this Part.

Financial support for Water User Association

22. (1) Water User associations with compliance certificates shall be eligible for financial support from the County Government subject to compliance with relevant regulations under this Act.

(2) Each Water User Association shall submit to the County Executive Member an annual report on its activities and as guided by regulations.

PART IV—WATER SUPPLY AND SEWERAGE SERVICES

Establishment of Water Supply and Sewerage Systems

23. (1) The Department shall supervise the maintenance of existing water supply and sewerage systems and where necessary, oversee the establishment of new water supply and sewerage systems in the County.

(2) The County Executive Member shall put in place proper transition and saving measures to ensure efficient and effective functioning of existing water supply systems.

(3) The Department shall establish sewerage systems in the County.

(4) The Department shall ensure that each Water Supply and Sewerage System—

(a) is appropriately staffed by a water company or respective water service provider;

(b) has access to equipment for emergency water trucking;

(c) has adequate waterworks for continuous water supply and sewerage services; and

(d) appropriate waterworks for pastoral livelihoods.

(5) The establishment of a water supply and sewerage system shall be determined by—

(a) the appropriate rangeland management plans for the County or respective area to allow the preservation of pastureland;

(b) provision of water and sewerage services to large clusters of populations;

(c) walking distances to water points; and

(d) any other consideration relevant to the establishment of sustainable water supply in the County as may be prescribed by the County Executive Member.

(6) A Water Users Association may make an application to the Department for the establishment of a Water Supply and Sewerage System in a respective region.

(7) The County Executive Member shall issue regulations for the better administration of this Part.

Water and Sewerage Services Companies

24. (1) The County Government may establish one or more Water and Sewerage Services Companies to serve as water and sewerage service providers for urban and rural areas in the County.

(2) The shareholding of the Water and Sewerage Services Companies shall be held entirely by the County Government.

(3) A Water and Sewerage Services Company shall have a Board of Directors who shall be appointed by the County Executive Member.

(4) The Board of Directors shall comprise of the following members—

(a) A Chairperson, not being an employee of the County Government, who shall be nominated and appointed by the Governor with the approval of the County Assembly;

(b) three persons representing special interests in the County as follows—

(i) one person representing women;

(ii) one person representing the youth; and

(iii) one person representing persons with disabilities;

(c) one person representing Institutional Stakeholders in the County;

(d) the Chief Officer in charge of Water Services in the County;

(e) the Chief Officer in charge of Livestock;

(f) the Chief officer in charge of Health in the County; and

(g) the Chief Officer in charge of Finance in the County;

(h) the Chief Officer in charge of Land and Environmental matters in the County;

(i) the Chief Officer in charge of Agriculture in the County.

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

(a) is a resident of Turkana County;

(b) holds at least a degree qualification from a university recognized in Kenya; and

(c) has knowledge and experience of at least three years in matters relating to water and natural resource management or any other related field.

(6) Members of the Board referred to under sub-section 3(d) to (i) may attend to board matters in person or through their appointed representatives who shall be senior County public officers at a level no lower than that of a Director.

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

(8) The memorandum of association and articles of association of the companies shall conform to the provisions of the Companies Act, 2015.

(9) The members of the Board appointed pursuant to Section 24 (a) (b) (c) above shall hold office for a term not exceeding two (2) years renewable only once.

Functions of the Water and Sewerage Service Companies

25. (1) The water companies established and registered under this Act shall be responsible for the maintenance, operation and management of water supply and sewerage services in the areas under their jurisdiction as shall be determined by the Department.

(2) In addition to functions assigned under subsection (1), a water company shall be responsible for—

(a) provision of water supply and sewerage services in urban and rural areas;

(b) management of water supply systems in rural areas;

(c) collection of water use revenues in the Sub-County;

(d) collection of water use data in the Sub-County

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

(f) management of any water resources owned by the County;

(g) implementing pro-poor policies as regards access to water;

(h) maintaining a database with regard to water and sewerage services;

(i) Providing regular reports on its performance as required by the County Department responsible for Water services delivery.

Service Provision Agreements

26. (1) The Department shall develop service provision agreements for the water companies which shall be the basis for assessing the performance of the Board of Directors.

(2) The Service Provision Agreements shall contain time based deliverables such as—

(a) the population coverage of the Water Company;

(b) periodic water quality information;

(c) asset management;

(d) consumer feedback;

(e) revenue collection; and

(f) any other relevant issue.

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

Managing Director

27. (1) There shall be a Managing Director for each Water Company.

(2) The Managing Director shall be appointed by the Board of Directors through a competitive recruitment process.

(3) To qualify for appointment as a Managing Director, a person shall—

(a) be a Kenyan Citizen.

(b) be a holder of at least a Masters' degree.

(c) have experience of not less than ten years' experience in senior management.

(d) meet the requirements of Chapter Six of the Constitution.

(4) The Managing Director shall hold office for a maximum of two consecutive contract terms of three years each.

(5) The Managing Director shall be subject to the direction of the Board and shall have the following functions—

(a) be responsible for day to day management of the affairs of the Water Company;

(b) be responsible for the direction of the affairs and transactions of the Water Company the exercise, discharge and performance of the objectives, functions, duties and the general administration of the Water Company;

(c) be the accounting officer of the Water Company;

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

Removal of the Managing Director

28. (1) The Managing Director may—

(a) at any time resign from office by issuing a one month notice in writing to the chairperson of the Board of Directors;

(b) be removed from office by the executive member on recommendation of the Board of Directors on either of the following grounds—

(i) breach of terms and conditions of employment contract;

(ii) violation of the Constitution or any other written law;

(iii) gross misconduct, whether in the performance of the functions of the office or otherwise;

(iv) physical or mental incapacity to perform the functions of office;

(v) incompetence;

(vi) bankruptcy.

(2) The Managing Director may only be removed from office under sub-section (2) after being accorded an opportunity to be heard.

Staff of the Water Company

29. (1) The Board of Directors may appoint such officers and other staff as are necessary for proper discharge of its functions under this Act, upon such terms and conditions of service as it may be determined by the County Public Service Board.

(2) The staff appointed under sub-section (1) shall be competitively recruited in line with the organization structure developed by the Water Company and approved by the County Public Service Board.

(3) The recruitment and appointment of staff shall take cognizance of regional, ethnic and gender balance including affording equal opportunities to persons with disabilities, youth, marginalized groups and ethnic and other minorities in the County.

(4) A Water Company shall assign staff for purposes of basic operation and maintenance of a Water Supply System.

(5) The Water Company may consult with a Water User Association when assigning staff under this Part.

The common seal of the company

30. (1) The common seal of the Water Company shall be kept in the custody of the Managing Director or of such other person as the Board of Directors may direct, and shall not be used except upon the order of the Board of Directors.

(2) The common seal of the Water Company, when affixed to a document and duly authenticated, shall be judicially and officially noticed, and unless the contrary is proved, any necessary order or authorization by the Board under this section shall be presumed to have been duly given.

(3) The common seal of the Water Company shall be authenticated by the signature of the chairperson of the Board of Directors or the Managing Director.

(4) The Board of Directors shall, in the absence of either the chairperson or the Managing Director, in any particular matter, nominate one member of the Board to authenticate the seal of the Water Company on behalf of either the chairperson or the Managing Director.

Private water service providers

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

(2) A water service provider—

(a) shall be responsible for the provision of water supply and sanitation services within limits specified in the permit; and

(b) may be contracted to develop or install waterworks for purposes of the provision of water supply and sanitation services.

(3) No person shall, unless issued with a permit by the County Government under the Act—

(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, in the County.

(4) A person who provides water services in contravention of this section commits an offence.

(5) Nothing in this section prohibits—

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

(b) the provision of water services on the premises of any hospital, factory, school, hotel, 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.

Community Owned Water Operators

32. (1) The County may allow the establishment of Community Owned Water operators.

(2) Community owned water operators—

(a) shall be responsible for the provision of water supply in rural areas within limits specified in the permit;

(b) shall be responsible for the management of boreholes and other community water points such as water pans and other water points as may be permitted;

(c) may form Water User Associations; and

(d) may charge such fees for their services as shall be prescribed by the County Executive Member.

Regulations for Community Owned Water Operators

33. The County Executive Member shall develop regulations and guidelines for the formation, membership, governance, management and reporting obligations of Community Owned Water operators.

Water service provider permits

34. (1) The Department may issue permits for private water service providers.

(2) The County Executive 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 of health facilities;

(b) the acceptable quality of water as may be determined by the department and in line with national legislation, policies and standards;

(c) water service provision tariff ceilings; and

(d) public consultation and, where applicable, environmental impact assessment in accordance with the relevant national legislation on environment management.

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

Cancellation or Variation of Permits

35. (1) The Department may cancel or vary the terms of the permit if the permit holder—

(a) contravenes any condition of the permit, or

(b) fails to make beneficial use of the permit as determined by the Department.

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

Water Quality Control

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

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

(a) setting standards for water quality in line with national legislation;

(b) establishment of a water quality control laboratory;

(c) liaison with National Government agencies with relevant expertise on water and sanitation quality control; and

(d) publicizing information on water quality in the County and taking necessary steps to ensure that such information is readily available.

(3) Water service providers shall conform to water quality standards established by the Department.

PART V—WATER WORKS

Waterworks Regulation and Development

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

(2) The water works referred to under sub-section (1) include—

(a) water supply systems;

(b) storm water management systems;

(c) surface runoff control systems;

(d) water harvesting and storage facilities;

(e) water pans;

(f) dams;

(g) sewerage and waste-water drainage systems; and

(h) any other waterworks in the County.

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

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

(5) The Department shall monitor the standards for waterworks developed in the County by any person.

Water Project Design Approval

38. (1) The Department shall approve all water project designs that are to be implemented in the County.

(2) The Department may re-design a project submitted for approval by any person.

(3) Any person(s) who implements a project that has not been approved by the Department commits an offence.

(4) The County Executive Member may issue regulations for the better administration of this Part, including the qualification of persons.

Compulsory Acquisition of Land

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

(2) In undertaking compulsory acquisition of land referred to under subsection (1), the County shall comply with the provisions of the Land Act, 2012.

Easement for Waterworks

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

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

National Government Licenses and Permits

41. (1) Subject to national legislation governing water services, the County Executive Member shall facilitate quick access and provision of National Government permits and licenses necessary for the development of waterworks in the County.

(2) The County Executive Member shall initiate discussions with relevant National Government institutions under this Part to ensure expedient issuing of National Government permits and licenses.

PART VI—WATER CONSERVATION

Water User Association Projects

42. (1) Water user associations may prepare budgets for water conservation projects within their jurisdiction each financial year.

(2) The institutional stakeholder secretariat shall provide funding for the conservation activities of the water user associations, from funds allocated to it by the Water Fund under section 46(3)(b).

(3) The County Executive Member shall develop regulations for the better administration of this Part.

Borehole Site Identification and Drilling

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

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

(3) A person shall not undertake any borehole drilling activity without a permit issued in accordance with the national legislation governing the use of water resources.

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

(5) The borehole site identification report developed under subsection (4) shall guide borehole drilling activities in the County.

Water Pollution Control

44. (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 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.

Water Catchment Conservation

45. The Department shall in accordance to national government policies, identify water catchment areas in the County and undertake appropriate measures including land use policies to protect water catchment areas in the County.

Storm Water Management

46. (1) The Department shall in collaboration with relevant County or National Government departments promote sound water and land use practices.

(2) The Department shall in collaboration with urban area administrators develop and implement a storm water management plan for each town or urban area, which shall among other things—

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

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

(3) The County Government shall not approve any construction of a building, physical infrastructure or a road unless the construction has a storm water management plan to be implemented.

(4) A person who contravenes sub-section (3) commits an offence.

Riparian Buffers

47. (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 Department shall, in collaboration with other county and National Government agencies mobilize residents to develop or restore riparian buffers along rivers, waterways or any water body within the county.

(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 sub-section (3) commits an offence.

PART VII—PUBLIC PRIVATE PARTNERSHIPS

Public Private Partnerships for Water Services

48. (1) Subject to provisions of the Public Private partnerships Act,2013 a county water company may enter into a public private partnership agreement for the exercise and performance of any of its functions.

(2) The County water company shall serve as the contracting authority when instituting a public private partnership under this section.

(3) In establishing a public private partnership under this section, the managing director shall be part of the contract node.

Public Private Partnerships for Waterworks.

49. (1) Subject to provisions of the Public Private partnerships Act, 2013, the Department 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.

(3) In establishing a public private partnership under this section, the Chief Officer shall be part of the contract node.

Public Private Partnerships Policy

50. (1) The County Executive 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 participation.

PART VIII—FINANCIAL PROVISIONS

County Water Services Fund

51. (1) There is established a Fund to be known as the Turkana County Water Service Fund established and administered in accordance with 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 Turkana County Assembly; which shall not be less than ten percent of the department's annual development budget;

(b) revenues from permits issued under this Act;

(c) water supply management revenues;

(d) revenues from penalties and compensation given under this Act; and

(e) grants and donations from lawful sources.

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

(a) financing water services delivery;

(b) financing the Activities of the County institutional stakeholders forum, Sub-County Forums and Water User Associations;

(c) development of water infrastructure; and

(d) payment of compensation and liability arising from duties performed under this Act.

Water Company Revenues

52. (1) The balance of revenues collected by the Water Companies after defraying the operational costs shall be paid into the County Revenue Fund.

(2) The pricing of water supply and sanitation services by the Water companies shall be such as to facilitate the sustainable provision of water supply.

Accounts and Audit

53. The Fund Administrator shall—

(a) prepare accounts for the fund for each financial year;

(b) not later than three months after the end of each financial year, submit financial statements relating to those accounts to the Auditor-General;

(c) present the financial statements to the County Assembly upon approval by the County Executive Member; and

(d) perform any other duty in fulfillment of the provisions of Section 116 of the Public Finance Management Act, 2012.

PART IX—OFFENCES

Obstruction of officers

54. (1) A person shall not hinder or interrupt, or cause be hindered or interrupted, any permit holder, or his or her employee, contractor or agent, in the lawful exercise or performance of any powers and functions under this Act.

(2) A person who contravenes sub-section (1) commits an offence under this Act.

Proceedings for offences

55. Without prejudice to the rights of any person to bring proceedings in respect of an offence, the County Executive Member or the Water Companies 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

56. (1) Where, by an 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 the person, 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, person or body in any court of competent jurisdiction as a debt from the person to whom the order was given.

General Penalty

57. A person who is guilty of an offence under this Act, or under any rules or regulations made under this Act, shall upon conviction, if no other penalty is prescribed in respect of the offence, be liable to a fine not exceeding Kenya shillings one million or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

PART X—MISCELLANEOUS

Regulations

58. The County Executive Member shall develop and publish regulations for matters relevant to the performance of functions under this Act including—

(a) issuance and cancellation of permits under this Act;

(b) regulation of Water Service Providers, including guidelines for rural water service providers;

(c) regulation of Water User Associations;

(d) regulation of Institutional stakeholders;

(e) establishment of Water Supplies and Sewerage Systems;

(f) waterworks development; and

(g) issuance of periodic guidelines for consumer water tariffs guidelines for rural water service providers;

Transition Plan

59. (1) The County Executive member shall publish a transition plan for water supply in the County in the County Gazette within six months after this Act comes into force.

(2) The plan shall include the following information—

(a) the criteria for identifying water supply assets whose ownership belongs to the County and not to individual communities or persons;

(b) water supply assets owned by the County, whether utilized by the County or not;

(c) information on urban and rural areas already being served by a Water Service Provider other than a Water Company;

(d) procedures for taking over Water Supply assets owned by the County Government but managed by water service providers other than a water company;

(e) the dates for effecting management over water supply systems owned by the County Government but not currently utilized by the County Government.

(3) The County Executive member shall ensure that public participation is properly conducted under this part.

Protection from Liability

60. 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 or her personal capacity to any action, suit, claim or demand whatsoever.

Public Participation

61. (1) Procedures undertaken under this Act that directly affect community interests shall be subject to public participation.

(2) The Department 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 legislation governing public participation.

(3) The County Executive Member shall develop regulations to govern public participation under this Act.

Inclusion of Special Interest Groups

62. (1) The appointment of persons to serve in any body established under this Act shall take cognizance of regional, ethnic and gender balance including affording equal opportunities to persons with disabilities, youth, marginalized groups and ethnic and other minorities in the County.

(2) The Department shall take special measures to ensure that vulnerable groups are represented in public participation forums referred to in Part III of this Act.

Conciliation Panel

63. (1) Any conflict arising from the Transition Plan established pursuant to section 59, 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 hear and resolve the conflict.

(3) The mediation panel appointed in sub-section (2) shall comprise of—

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

(b) an official of an Institutional Stakeholder with experience in conflict resolution;

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

(4) The County Public Service Board shall recruit 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 for Resolving Conflicts

64. (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 thumbprints of persons affected.

(2) The County Secretary shall forward the form in sub-section (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 opinions and interested parties in a period of three weeks.

(5) The conciliation panel shall then prepare a report of its findings and recommendations 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

65. The County Executive Member responsible for Finance shall issue guidelines prescribing the allowances payable to members of the panel.

SCHEDULE I (s10)

CONDUCT OF THE AFFAIRS OF THE TURKANA WATER COMPANY BOARDS

Meetings

1. (1) The meetings of the Board shall be convened at least six times every year by the chairperson, but not more than eighteen times in a financial year.

(2) The chairperson may at any time convene a special meeting of the Board and shall do so within one month of receipt by him or her of a written request signed by at least two members.

(3) In the absence of the chairperson from any Board meeting, the members present shall elect one of their members to preside, and such member shall, as concerns that meeting, have all the powers and attributes of the chairperson under this Act.

(4) At every meeting of the Board, the member presiding shall have a casting as well as a deliberative vote.

(5) The quorum for the meetings of the board shall be two thirds of the membership.

Committees

2. (1) The Board may establish such committees, as it may deem appropriate to perform such functions and responsibilities as it may determine.

(2) The Board shall appoint the chairperson of a committee established under subparagraph (1) from amongst its members.

(3) The Board may where it deems appropriate, invite any person to attend the deliberations of any of its committees.

(4) All decisions by the committees appointed under sub-section (1) shall be ratified by the Board.

Declaration of Interest

3. (1) A member who has an interest in any contract, or other matter present at a meeting shall at the meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof 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.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A member of the Board who contravenes subparagraph (1) shall cease to be a member of the Board upon direction of the County Executive Member.

(4) The County Executive Member shall make arrangements for the appropriate departmental representation with regard to sub-section (2).

Contracts and Instruments

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

SCHEDULE II (CA1)

FORM 1

WATER USER ASSOCIATION COMPLIANCE APPLICATION FORM

Name of Water User Association	
Number of Members	Chairperson
	Sccretary
	Treasurer
	Other officials
	Number of women in leadership
	Number of youths in leadership
	Number of persons with disabilities
Region covered	