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**TAITA TAVETA COUNTY GAZETTE
SUPPLEMENT**

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**THE TAITA TAVETA COUNTY WATER AND
SANITATION BILL, 2016**

A Bill for

**AN ACT of the County Assembly of Taita Taveta to
make provision for Water and Sanitation
Services, creation of the Taita Taveta County
Water Board and Water Services Providers,
water works, storm water management systems,
water conservation and for related purposes**

ENACTED by the County Assembly of Taita Taveta,
as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Taita Taveta County Water and Sanitation Act, 2016 and shall come into operation on such date as the Executive Committee Member may, by notice in the Gazette, appoint and different days may be appointer for the coming into operation of different provisions.

Short title and
commencement

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

Interpretation

“Board” means the Taita Taveta Water and Sanitation Board established under section 8.

“County” means the County Government of Taita Taveta;

“County Executive Committee Member” means the County Executive Member for Water, Irrigation and Sanitation;

“Government” means the Government of Taita Taveta County;

“Inspector” means a person appointed by the County Executive Committee Member under section 9;

“Licencee” means any person who has been issued with a licence under this Act;

“Limits of Supply” in relation to a water services provider means the limits within which a water services provider is for the time being is authorized to supply water;

“Pollution” in relation to a water resource, means any direct or indirect alteration of 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.

“Sanitation” means the provision of on-site sanitation services including latrines, septic tanks and conservancies including the associated exhauster services;

“Supply of water in bulk” means a supply of water to a licensee for distribution by or on behalf of the licensee taking the supply;

“Water resource” means any lake, pond, swamp, marsh, stream, watercourse, estuary, aquifer, artesian basin or other body of flowing or standing water, whether above or below ground;

“Water service” means any service of or incidental to the supply of water or the provision of sewerage;

“Water services provider” means a company, non-governmental organization or other person or body licensed to provide water services under and in accordance with an agreement as stipulated under section 18;

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

3. (1) The purpose of this Act is to provide for the regulation, management, and development of water resources and water and sewerage services in line with the Constitution of Kenya 2010. Purpose of the Act

(2) The Act shall be applied and administered by the county government in line with principles and values set out in Articles 10, 43, 60 and 232 of the Constitution.

PART II — OWNERSHIP USE AND MANAGEMENT OF WATER RESOURCES

4. (1) Every water resource is vested in and held by the national and county government in trust for the people of Kenya.

Ownership of
Water

(2) Every person has the right to clean and safe water in adequate quantities and to reasonable standards of sanitation as stipulated in Article 43 of the Constitution.

(3) Upon the commencement of this Act, no instrument shall be effectual to convey, transfer or vest in any person any right or interest in respect of any water resource, and no interest in such property shall be acquired otherwise than under this Act and any other written law.

5. (1) The County Executive Committee Member shall

Responsibility of
the County
Executive
Committee
Member

- (a) formulate and publish in the gazette a county water and sanitation policy;
- (b) ensure effective exercise and performance by any person of powers and duties granted or imposed under this Act;
- (c) co-ordinate all water institutions in the county;
- (d) undertake county water sectoral planning;
- (e) establish a county water data base and information system which shall be provided by the water institutions and any other relevant institution;
- (f) formulate cross-sectoral co-ordination plans with departments in the country and in the national government;
- (g) prepare an annual water sector report on water services provision and sanitation;
- (h) in consultation with the relevant institutions in the national government put in measures to prevent unlawful abstraction of water resources in the county; and
- (i) formulate a comprehensive inter-sectoral program on sewerage and sludge treatment for decentralized sanitation facilities.

(2) The water policy referred to under subsection (1) shall outline the government's objectives, strategies and plans for management of water and sanitation services.

PART III —ESTABLISHMENT, POWERS AND FUNCTIONS OF TAITA TAVETA WATER RESOURCES BOARD

6. (1) There is established the Taita Taveta Water and Sanitation Board.

Establishment of
the Board

(2) The Board shall be the successor to the water and sanitation companies and other institutions established under the Water Act, 2002 operating in the county immediately before the enactment of this Act.

7. (1) The Board shall consist of —

Composition of
the Board

- (a) a non-executive chairperson appointed by the Governor with the approval of County Assembly;
- (b) the chief officer in the department responsible for water;
- (c) the chief officer in the department responsible for finance;
- (d) six other persons appointed by the county committee executive members through a competitive process—
 - (i) one being a representative of water users in the county;
 - (ii) one being a representative of water service providers;
 - (iii) four being representatives of sub-counties appointed by virtue of their knowledge, expertise and experience in water and sanitation management matters two of whom must be of either gender; and
- (e) the Chief Executive Officer who shall be the secretary of the Board.

(2) A person shall be qualified for appointment as chairperson under subsection (1) (a) if the person—

- (a) holds a relevant degree from a recognized university;
- (b) has knowledge and experience of at least five years in matters relating to water and sanitation services management or other related field;
- (c) meets the requirements of Chapter Six of the Constitution; and

(d) has had a distinguished career in their respective fields

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

- (a) holds a degree from a recognized university;
- (b) has knowledge and experience of at least three years in matters relating to water resources management, water and sanitation services management or any other related field;
- (c) meets the requirements of Chapter Six of the Constitution; and
- (d) has had a distinguished career in their respective fields;

8. The Board shall be responsible for—

Functions of the
Board

- (a) provision and management of water and sanitation services;
- (b) development of county water and sanitation services infrastructure, including water works and public works;
- (c) ensuring adequate water supply system for domestic, industrial, livestock, wildlife and agricultural purposes;
- (d) developing and managing works for water conservation;
- (e) promotion of water harvesting and a water recycling systems;
- (f) promotion of efficient water use and management for sustainable development;
- (g) identification, initiation and promotion of water conservation systems, strategies and programs;
- (h) development and management of public infrastructure for storm water control;
 - (i) maintenance of database and dissemination of information on water and sanitation services; and
 - (ii) maintenance of collaboration and cooperation with other government agencies other county governments in carrying out its functions

9. (1) The County Executive Committee Member may, in consultation with the County Public Service Board appoint water inspectors for purposes of enforcing and ensuring compliance of the provisions of this Act and all relevant laws.

Appointment of
water inspectors

(2) Despite subsection (1), County Executive Committee Member may designate any other officer of the department to perform the functions of an inspector.

10. (1) An inspector or other authorized person appointed by the Executive Committee Member may enter without a warrant on to any land and inspect any water resource located within or accessible from the land concerned, in order to take any measures authorized under this Act for the purpose of—

- (a) conserving or regulating the water resource, or preventing it from pollution or protecting the bed over which it lies or flows; or
- (b) removing any obstruction from, or clearing and deepening, a river bed; or
- (c) preventing the illegal diversion, pollution of the water resource or interference with any water source.

(2) An inspector or authorized person shall not enter into the land or premises without first giving reasonable notice, whether written or verbal, to the landholder or an employee or agent in charge of the land, and such entry shall be at reasonable hours:

Provided that an inspector may enter without giving notice if —

- (a) there is reason to believe that a provision of this Act or other law has been or is about to be contravened;
- (b) the inspector is unable to give notice within a reasonable time having regard to all the circumstances; or
- (c) there are other reasonable grounds for not giving notice.

(3) If so requested by the owner or occupier of the land or premises, the Inspector or other authorized person shall

produce evidence of the right permission, as the case may be, to enter on to the land.

(4) It shall be the duty of any person exercising any powers under this section to do so with reasonable care and diligence.

11. (1) There shall be a Chief Executive Officer of the Board.

Chief Executive
Officer of the
Board

(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 in a relevant field from a recognized university;
- (b) Have had experience in management for a period of not less than five years.

(4) The Chief Executive Officer shall hold office for a period 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.

(5) The Chief Executive Officer shall be an *ex officio* member of the Board but shall have no right to vote at any meeting of the Board.

(6) The Chief Executive Officer shall be responsible for —

- (a) the day to day management of the affairs of the Board;
- (b) the staff of the Board in the performance of the functions and duties;
- (c) the general administration of the Corporation; and
- (d) carry out any other function as may from time to time be assigned by the Board.

12. The Chief Executive Officer may—

Removal of the
Chief Executive
Officer

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

- (b) be removed from office by the executive member on recommendation of the Board for –
 - (i) serious violation of the Constitution or any other written law
 - (ii) gross misconduct, whether in the performance of the functions of the office or otherwise;
 - (iii) physical or mental incapacity to perform the functions of office;
 - (iv) incompetence;
 - (v) bankruptcy.

13. The Board may, in consultation with the County Public Service Board, appoint such officers and other staff as are necessary for proper discharge of its functions under this Act, on such terms and conditions of service as the Board may determine.

Staff of the Board

PART IV— WATER AND SANITATION SERVICES

14. (1) The Board shall progressively ensure that—

Supply of Water

- (a) every person in the county has access to safe and clean water for domestic use within reasonable distance;
- (b) there is accessible water for agricultural, livestock, wildlife and industrial use;
- (c) equitable distribution of water between consumers in urban and rural areas.

(2) The Board may enter into service performance agreements with any entity in carrying out its functions.

15. (1) The Board may erect or develop waterworks and other public works on a public or private property.

Development of
Water Works

(2) Notwithstanding provisions of subsection (1), the Board shall seek consent of the owner of private land or the relevant government agency occupying or in whose custody the public land falls where it seeks to erect any water works or public works and shall provide the prescribed compensation.

(3) The Board shall in collaboration with the department of roads identify and establish specific areas on

any road where public works under this Act may be carried out.

(4) The Board shall seek easements from owner or occupier of any land for construction of water works or public works to be undertaken on such land.

16. A community may initiate a project for water services with approval of the Board. Community Projects

17. (1) The Board may levy tariffs and any appropriate user charges for the purposes of supplying efficient water services. Water Tariffs

(2) The tariffs and user charges levied under this section shall be established in accordance with the principles set out under the County Governments Act, 2012 and any written law.

(3) The tariffs and user charges collected under this section shall not form part of the County Revenue Fund and may be utilized for defraying expenditures of the Board and providing efficient and quality services under this Act.

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

18. (1) Water services in the County shall be provided— Water service providers

by water service providers licensed in accordance with this Act; and

on the basis of an agreement the water services providers and the government pursuant to section 12.

(2) A water service provider licensed under this section shall be a company established under the Companies Act, or other person or agency providing water services as shall be approved by the government.

(3) Every County water services provider shall comply with standards of commercial viability set by the relevant national regulatory agency.

(4) Any company wishing to be licensed as a water service provider shall submit its Memorandum and Articles of Associations that conform to the model developed and

approved by the relevant national regulatory agency.

19. (1) A person shall not—

Prohibited
activities

- (a) interfere with any meter or equipment installed under the authority of the Board;
- (b) install illegal or un authorized water connections;
- (c) install a pipe or connections;
- (d) install a pipe or connection which does not comply with the approved standards.

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

20. (1) A person intending to carry out or maintain any water works shall apply for a permit to the Board.

Permit for water
works

(2) A person who prior to the commencement of this Act was carrying out water works, managing or maintaining any water works shall within sixty days apply for a permit.

(3) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding one hundred thousand or to imprisonment for a term not exceeding one year on to both.

21. (1) An application for a permit under section 20 shall where applicable be accompanied by an environmental impact assessment report in accordance with the Environmental Management and Co-ordination Act, 1999 and shall specify among others—

Application for a
permit

- (a) the purpose and nature of the works to be undertaken;
- (b) the nature of works to be carried out;
- (c) the duration within which the works are expected to be completed.

(2) The Board shall, where the construction of works are to be undertaken on public property or where the works will affect a cross section of the residents, issue a public notice within fourteen days after such an application and invite any person to make comments or object to such an application.

(3) A person may lodge an objection to application for a permit.

(4) Every objection to an application shall be made in writing to the Secretary of the Board setting out the grounds for such an objection.

(5) The Board shall, upon receiving the application send a notice on the objection received to the applicant for a permit.

(6) The Board may, where appropriate conduct public hearings on the objection.

(7) An objector or an applicant for a permit may appear personally or by an advocate at the hearing of an application.

(8) The Board shall consider the application within thirty days of such an application and may where it is satisfied that the applicant has fulfilled all the requirements of this Act or any other written law grant a permit in the prescribed form subject to any such conditions as may be prescribed and upon the applicant paying the prescribed fees.

(9) Where the Board is not satisfied with the application, it may—

reject the application giving reasons and notify the applicant accordingly within thirty days of the decision to reject; or

make comments and recommendations thereon and return it to the applicant within thirty days

(10) An applicant to whom the application is returned under subsection (9) (b) may re-submit the application within sixty days.

(11) On receipt of any revised application under subsection (10), the Board shall, within thirty days determine the application in accordance with this Act and upon such determination, if satisfied, issue a permit.

22. Notwithstanding section 22, the Board shall prescribe the appropriate conditions related to equipment and technology, design, construction, operation and maintenance or waterworks.

Conditions for
water works

23. (1) No person shall provide water services except under the authority of a license issued by the Board.

Requirements for
a license for water
services

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

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

- (a) by a person to employees;
- (b) on the premises of an institution including a hospital, factory, school, hotel, research station or business where the source of supply of the water is lawfully under the control of the institution or is supplied to it in bulk by a licensee;
- (c) to a local community through an arrangement of members of that community; and
- (d) in circumstances which are prescribed by rules made by the executive committee member to be exempt from the requirement for a license.

24. (1) A water service provider shall enter into a written agreement with the Board for purposes of exercise and performance of its powers and functions under the license.

Water service
provision
agreements

(2) An agreement entered into under subsection (1) shall specify the powers and functions under the licence which shall be performed by the water service provider.

(3) A water provision agreement shall make provisions for —

- (a) the indemnity by the water service provider of any liability to the government arising from performance or non-performance of functions conferred by the licence; and
- (b) the maintenance, rehabilitation and development by the water service provider of water and sewerage infrastructure and facilities in the County.

25. (1) An application for a licence shall be made to the Board in the prescribed form.

Application for a
licence

(2) The applicant shall furnish the following particulars—

- (a) evidence of compliance with the national standards set by the national government regulatory agency;
- (b) the technical and financial capability of the applicant to provide the services and perform functions authorized by the licence;
- (c) evidence that the water services to be provided shall be commercially viable;
- (d) the applicants business plans for the provision of sufficient, affordable and sustainable water services;
- (e) performance targets;
- (f) details of planned financial and infrastructural improvements;
- (g) a proposed tariff structure; and
- (h) any other information required by the relevant national water regulatory agency.

(3) The application shall be made by completing and lodging in the prescribed form together with the supporting documentation and the prescribed fee.

(4) The application shall not be granted unless the Board is satisfied that the conditions set out under subsection (2) have been met.

26. (1) An application for a licence shall be the subject of public consultation. Determination of an applicant

(2) Any person opposed to the grant of licence may object in writing to the Board.

(3) The Board shall notify the applicant and any objector of its decision and, in the event of the rejection of an application or objection, as the case may be, of the reasons therefore, and an applicant or objector may, if aggrieved by the decision within thirty days after the date of the notification, appeal to the court.

(4) The Board to determine an application for a licence as soon as practicable after filing of the application but in any case not later than forty-five days.

27. (1) A licence shall authorize and, to the extent provided therein, require, the provision by the licensee of water services specified in the licence.

Nature of water
service licence

(2) There is no property in a licence, and except as provided by this Act, a licence shall not be capable of being sold, leased, mortgaged, transferred, attached otherwise assigned, demised or encumbered.

(3) The Board may require the applicant to deposit a guarantee or other acceptable security for the purpose of securing payment by the applicant of any expenses recoverable from the person, as a licensee, for or towards the costs incurred in discharging the functions of the licensee in cases of default.

(4) Every licensee shall, within twelve months of receipt of the licence, or such longer period as the Board may determine, formulate and present to the Board, a development plan for extending services to the implementation of the plan and a resource mobilization strategy.

28. (1) A licensee shall pay to the government, on issue of the licence and at prescribed intervals thereafter, such licenced fees as the Executive Committee member may determine.

Licensee fees

(2) The fee shall be determined by reference to a schedule of fees published in the *Gazette* from time to time by the Executive Committee member following public consultation.

29. (1) A licence shall be subject to—

Conditions of a
licence

- (a) such conditions as may be prescribed by or under this Act in relation to the licence; and
- (b) such other conditions, not inconsistent with the conditions prescribed, as the national water regulatory agency may impose by endorsement on, or instrument in writing annexed to, the licence.

(2) Rules made under this Act may make provision for imposing conditions on, or with respect to the conditions which are or shall be imposed on licenses generally or any class or description of licenses.

(3) Without prejudice to the generality of subsection (2), such rules may—

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

(4) The imposition of a penalty by a regulation made in accordance with subsection (3) (c) shall not prejudice any remedy for the recovery of damages for any loss, damage or injury sustained by any person by reason of the contravention in respect of which the penalty is imposed.

30. (1) A water services provider shall be responsible for the efficient and economic provision of water services to the extent authorized by the licence.

Duty to provide
water services

(2) For the purpose of the provision of water services, a water services provider, may—

- (a) Purchase, lease or otherwise acquire premises, plant, equipment and facilities;
- (b) Purchase or lease land in accordance with the applicable law.

(3) Every water services provider shall establish a mechanism for handling consumer complaints which meets the standard set by the relevant national water regulatory agency.

31. (1) The Board may enter into a public private partnership for the exercise and performance by another person of some or all of its functions as a licensee with respect to a part or the whole of its area of water service.

Public Private
Partnerships

(2) A public private partnership shall be in writing.

(3) Where the person entering into a public private

agreement with the Board owns or possesses assets or infrastructure used for the provision of water services, the agreement shall set out the terms and conditions under which the assets may continue to be used.

(4) A power or function conferred by a licence or otherwise conferred under this Act, may be exercised or performed by another person acting under an agreement with the licensee and shall be deemed, when exercised or performed by that other person.

32. (1) The Board shall put in place measures for the provision of water services to rural and other areas which are unviable for the provision of water services on a commercial basis. Special provisions
with respect to
unviable rural
areas

(2) The measures taken by the government under subsection (1) shall include developing point sources, small scale piped systems and stand pipes which meet the standards set by the national water regulatory agency and which may be managed by the communities, agencies or private persons based on written contract with the government.

(3) In order to implement its obligation under this section, the Board shall formulate an up to date five year development plan incorporating an investment and financing plan for the provision of water services in unviable rural areas within its area of jurisdiction.

33. (1) The area of a water service shall be prescribed by the licence and shall not be less than the area required for a commercially viable water service. Areas of water
services

(2) The area so prescribed may, subject to the relevant County Governments Act traverse the boundaries of the county.

34. (1) The Government may, in consultation with any other County Government— Supply of Water

- (a) permit the joint provision by two or more licencees of water services on such terms as it may approve; or
- (b) permit the transfer of a water service, or part hereof, or one licensee to another licensee.

(2) Where it appears to the Government to be necessary

for the purpose of securing a commercially viable water service, the Executive Committee Member may, by notice in the Gazette, order such a joint provision of water services or such a transfer of water service and vary the relevant licencees accordingly.

(3) An order made under this section may make incidental and supplementary provisions as the Executive Committee Member deems necessary or expedient for the purpose of carrying out the order.

(4) A licencee aggrieved by the provisions of the order may apply for review to the court.

35. (1) The Executive Committee member may vary the areas of water services—

Variation of areas
of services

- (a) on the application of a licencee whose area of water service is to be varied and with the consent of any other licencees affected; or
- (b) it is satisfied that the licencee is unable to meet the demands for water or is otherwise unable to provide a commercially viable service.

(2) An order made under this section may make such consequential and supplementary provisions as the Executive Committee member deems necessary or expedient for the purpose of carrying out the order.

(3) A licencee aggrieved by the provisions of an order made under this section may appeal to the court.

36. (1) With the consent of the Executive Committee member, and subject to any rules made under this Act and to such conditions as the Executive Committee Member may impose, a licencee may provide water services outside its area of water service.

Provision of water
service outside the
area of supply

(2) Where under this section a licencee (in this section called “the supplying licencee”) is providing water services to premises outside its area, any other licencee within whose area those premises are situated may, in the absence of any agreement to the contrary, at any time give not less than three months’ notice to the supplying licencee that the licencee is able and intends to provide water services to the premises.

Provided that a notice given under this section shall not be valid unless it relates to all the premises to which water services are being provided by the supplying licensee in accordance with this section.

(3) If, at the end of a period of three months notified under subsection (2), the licensee giving the notice commences to supply water to the premises covered by the notice, the supplying licensee shall, except for the purposes of recovering water rates or other charges or expenses lawfully recoverable by licensee, cease to have any rights or duties in respect of providing water services to the premises concerned.

Provided that the supplying licensee shall not remove any pipes, plant or apparatus which licensee is required by the licensee giving the notice to leave in position, and any such pipes, plant or apparatus shall vest in the licensee giving the notice.

(4) The licensee giving notice shall pay to the supplying licensee—

- (a) such portion of any expenses reasonably incurred by it for the purpose of providing water services to the premises referred to in the notice;
- (b) such sum in respect of any pipes, plant or apparatus vested in the licensee giving the notice as may be agreed or, in default of agreement, as may be determined by the Executive Committee member.

(5) While the supplying licensee is in accordance with this section authorized to provide water services outside its area of services, any regulations relating to its water service shall have effect as if the area to which those services were provided were within those limits.

37. (1) If, following a complaint made to or information received by the Executive Committee member, it appears that a licensee—

Default by
licensee

- (a) has failed to discharge any duty imposed upon him by a licence or otherwise under this Act; or
- (b) has failed to give an adequate supply of water, as respects either quantity or quality to any area or any person which it is supplying, or has failed to give any

supply which he is lawfully required to give; or

- (c) having been notified by the Executive Committee member to take such steps as are reasonably practicable in order to remedy any such failure as is mentioned in paragraph (a) or (b), has failed to do so, the Executive Committee member may inquire into the matter.

(2) If, after inquiry, the Executive Committee member is satisfied that there has been any such failure on the part of the licensee in question, it may impose a special regulatory regime on the water services provider for the purpose of remedying the default.

(3) A licensee declared to be in default who is dissatisfied with an order of the Executive Committee member under this section may, within thirty days after receipt of the order, appeal to the court.

(4) A licensee declared to be in default by order under this section who fails to comply with any requirement of the order within the time specified for compliance with the requirement shall be guilty of an offence.

38. (1) If the Executive Committee member is satisfied that, notwithstanding the imposition of measures under a special regulatory regime, the default has not been remedied and is not likely to be remedied by the licensee, shall by notice in the Gazette, order the transfer to another licensee of the water services in question.

Transfer of
functions by
licensee

(2) The order of transfer shall make such provision as appears to the Executive Committee member to be desirable or necessary with respect to any property or assets being used by the defaulting licensee for the purposes of providing the water services.

39. (1) A licensee may enter into an agreement with any person with respect to the execution and maintenance, of such works as the licensee may require for the purpose of protecting the catchment areas, drainage of land, carrying out soil conservation measures or preserving the purity and quantity of water which the licensee is for the time being authorized to take.

Agreements to
protect sources of
water

(2) An agreement under this section may be registered against any land of the person with whom it is made, and shall be binding upon and enforceable against such land or such person or his successor in title.

40. (1) A licensee who is of the opinion that there is a serious deficiency of water available for distribution or that such a deficiency is threatened may, with the approval of the Executive Committee member, for such period as is necessary prohibit or restrict as respects the whole or any part of its limits of supply, the use for any specified purpose of water supplied by him.

Power of licensee to prohibit or restrict use of water

(2) Before prohibition or restriction comes into force, public notice shall be given by the licensee, in one or more newspapers circulating within the affected area or by such other means as the Executive Committee member may approve, of the proposed prohibition or restriction and of the date when it will come into force.

41. (1) A water services provider shall be responsible for the following—

Responsibilities of a water services provider

- (a) provision of water services within the area specified in the licence;
- (b) to ensuring that water services and related works are provided, maintained and upgraded in the area specified;
- (c) collection, treatment and management of storm and waste water;
- (d) collection, treatment and management of sludge regardless of its origin.

42. A licensee may construct and maintain drains, sewers and other works for preventing water from being polluted:

Responsibilities of a water services provider

Provided that before constructing any works the licensee shall, if the proposed works are likely to affect any water resource, obtain the approval of the County Executive Committee Member.

43. (1) A licensee receiving trade effluent into its sewerage system shall ensure that it has in place measures for the receipt and handling of the effluent without causing damage to the sewerage system, a contravention of applicable laws or contravention of standards set by the Executive Committee Member.

Control of trade effluent

(2) No person shall discharge any trade effluent from any trade premises into the sewers of a licensee without the consent of the licensee.

(3) An application for consent shall be made to the licensee and shall state—

- (a) the nature of composition of the trade effluent;
- (b) the maximum quantity of the effluent which it is proposed to discharge on any one day;
- (c) the highest rate at which it is proposed to discharge the effluent; and
- (d) any other information required by the licensee.

(4) The licensee's consent may be given subject to conditions, including conditions requiring pre-treatment and payment to the licensee of charges for the discharge.

(5) Any person who is dissatisfied with the decision of the licensee on an applicant under this section may, within thirty days of the decision, appeal to the Executive Committee Member.

(6) A person who contravenes the provisions of this section shall be guilty of an offense.

(7) In this section, "trade effluent" means any liquid, whether with or without suspended particles, produced as a by-product in the course of any trade or industry.

44. (1) The Executive Committee Member may impose a sewerage services levy on all water services within the area of water services of a licensee, to cover a reasonable part of the cost of disposing of the water supplied within those limits.

Sewerage services
levy

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

45. (1) A water service provider may enter into an agreement with any other person, for supply of water in bulk either within or outside the limits of supply of that water service provider.

Supply of water in
bulk

(2) Where it appears to the Executive Committee Member that—

- (a) It is expedient that—
 - (i) any water service provider should give a supply of water in bulk to another water service provider; and

- (ii) the other water service provider should take such a supply; and

(3) The giving and taking of such a supply cannot be secured by agreement, the Executive Committee Member may, by order served on them, require the water service providers concerned to give and take such supply for such period and on such terms as it may specify.

46. (1) The Executive Committee Member shall in consultation with the relevant national water institutions oversee provision of water by water service providers.

Supervision and
coordination of
water provision

(2) The Executive Committee Member may—

- (a) regulate and co-ordinate water service providers;
- (b) ensure compliance to licensing conditions;
- (c) establish a mechanism for handling complaints from consumers regarding the quality or nature or water services; and
- (d) maintain a county data base or information system on water services.

PART V—COUNTY WATER WORKS AND STORM WATER MANAGEMENT

47. (1) The Board shall in addition to works by the water service providers carry out public works in the County for the following purposes—

Public works by
the Board

- (a) the supply, distribution or apportionment of water for use in the County;
- (b) protection of any water resource, its source or catchment in collaboration with the relevant bodies for that particular purpose;
- (c) water resources development in form of boreholes, dams among others
- (d) storm water management;
- (e) drainage or reclamation of lands;
- (f) irrigation schemes and related works in collaboration with the National Irrigation Board and other relevant bodies;
- (g) construction of water storage systems;
- (h) rehabilitation and restoration of water storage facilities including conservation of wetlands and

forests, water saving technologies, and ground aquifer re-charging;

- (i) recycling treated effluent water;
- (j) conservation of water and improvement of water quality; and
- (k) any other form of water works.

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

Storm water
management plan

(2) There shall be for each town or urban area, a watershed storm water management plan in accordance with the prescribed standards.

(3) 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.

(4) The storm water management plan shall among others—

- (a) identify, survey an inventory existing conditions that affect storm water runoff;
- (b) address issues of peak flows, flooding, ground water recharge, stream erosion and water quality.

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

(6) Any person constructing a road shall ensure that there is a built in storm water management plan and system for that road.

(7) 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.

(8) A person who contravenes this section 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.

49. (1) The owner of a house, property or building shall— Reduction of runoff water

- (a) install rain barrels with sufficient capacity to store water from the building;
- (b) where applicable not permit storm water to become runoff;
- (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 shillings twenty thousand or to imprisonment for a term not exceeding one month.

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

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

(3) No person will 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.

PART VI — SANITATION SERVICES AND POLLUTION CONTROL

51. The Board shall in collaboration with the relevant bodies in the national and county government— Measures for supply of pollution

- (a) set up a cost-effective pollution monitoring program;
- (b) enforce regulations through polluter-pays principle, and other legal and administrative actions set out

under this Act, the Environmental Management and Co-ordination Act and any other law;

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- (c) ensure untreated effluent water is not released in to water resources;
- (d) treat effluent water and re-use or recycle it for irrigation and other purposes in the County; and
- (e) put in place any other lawful measure to control of pollution.

52. The Board shall either directly or through public private partnership—

Provision of sanitation services

- (a) provide necessary sanitation facilities and services;
- (b) construct, operate and maintain extensive system of sewers and treatment facilities to meet applicable discharge requirements.

53. (1) A person or entity shall, when disposing final effluent comply with the guidelines prescribed by Kenya Bureau of Standards.

Compliance with effluent standards

(2) A person who contravenes subsection (1) 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

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

Discharge of contaminated water of effluent

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

- (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 of a term not exceeding two months or both.

55. (1) A person shall not interfere with any sewerage facility or system unless with a written consent of the

Interference with sewerage system

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.

56. (1) Subject to the County Government's 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.

Sewerage tariffs

(2) The tariffs imposed or levied under this section shall be subject to approval by the County Executive Committee.

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

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;
- (b) propose policy or legislative interventions for effective implementation of this Act;
- (c) participate in development of measures, plans and strategies for implementing this Act.

(4) The sector wide forum shall meet at least once every three months.

PART VII—GENERAL PROVISIONS

58. (1) The Executive Committee Member may make Regulations on any matter which is necessary or expedient to be prescribed for carrying out or giving effect to this Act.

Power to make
Regulations

(2) Without prejudice to the generality of subsection (1) the Executive Committee Member may make regulations—

- (a) prescribe guidelines for developing watershed storm management plans;
- (b) prescribe guidelines for sanitation system and standards;

- (c) declare certain areas to be water protected areas;
- (d) prescribe the amount of fees payable under this Act generally or in particular cases;
- (e) prescribe requirements to be met by providers of bottled or mineral water in the county.

59. (1) A person who knowingly—

Offences

- (a) obstructs, interferes with, or diverts water from any watercourse or water resource, or negligently allows any such obstruction, interference, or diversion;
- (b) pollutes or causes to be polluted any water resource;
- (c) carries on agricultural activities within the ten-metre mark along the banks of any water resource;
- (d) defaces, alters, removes or interferes with any county works, commits an offence and shall, upon conviction be liable to a fine not exceeding one hundred thousand shillings or to imprisonment of a term not exceeding twelve months or both.

(2) A person who commits an offence under this Act for which no other penalty is provided shall on conviction be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

MEMORANDUM OF OBJECTS AND REASONS

The main object of this Bill is to outline regulation management and development of water resources and water and sewerage services in line within the precincts of Taita Taveta County pursuant to the functions vested on the County Government.

PART I of the Bill sets preliminary matters.

PART II deals with ownership use of and management of water resource.

PART III deals with establishment, power and functions of Taita Taveta Water Resources Board.

PART IV deals with water and sanitation services.

PART V deals with sanitation services and pollution control.

Dated the 7th September, 2016.

JONES SOLOMON MUGANGA,
Chairperson, Committee on Water, Irrigation and Sanitation Services.

COUNTY ASSEMBLIES FORUM (CAF)
P. O. Box 73552 - 00200,
NAIROBI, KENYA