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THE IRRIGATION BILL, 2017

A Bill for

AN ACT o46 Parliament to promote and regulate the development and management of irrigation in Kenya and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I —PRELIMINARY

1. This Act may be cited as the Irrigation Act, 2017.

Short title.

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

Interpretation.

“agriculture” shall have the meaning assigned to it under section 2 of the Agriculture, Fisheries and Food Authority Act, 2013;

No 13 of 2013.

“Authority” means the National Irrigation Development Authority established under section 7;

“authorized” means authorized by or under this Act;

“Board” means the Board of the Authority established under section 9;

“Cabinet Secretary ” means the Cabinet Secretary for the time being responsible for matters relating to irrigation;

“Chief Executive Officer” means the Chief Executive Officer of the Authority appointed under section 12;

“commercial irrigation farmer” means a farmer who by means of irrigation grows crops primarily for sale;

“county irrigation development unit” means the unit or entity established by a county government to carry out irrigation matters under section 14;

“Department” means State Department of Irrigation;

“farmer” includes a crop, livestock or fish farmer;

“irrigation” means any process, other than by natural precipitation, which supplies water to crops or any other cultivated plants, livestock, aquaculture, and desired forest trees;

“irrigation scheme” means a systematic and orderly irrigation system covering a defined area of land regardless of the type or system of irrigation employed;

“irrigation management transfer” means the transfer to the users of authority and responsibility for both governance and delivery of management services in an irrigation and drainage scheme;

“irrigation service fee” means the rates to be charged to water users for receiving irrigation services;

“irrigation service plan” means the annual plan for water acquisition and distribution, scheme maintenance and repairs, other management tasks, staff and group labour mobilization, budget and irrigation service fee;

“irrigation water user” means a member of a water users’ association who uses water from an irrigation scheme for an approved purpose such as for crops, livestock, and fish farming;

“irrigation water users’ association” means any association established under section 20;

“large scale irrigation scheme” means a scheme which in acreage size covers over three thousand acres, and is implemented by the Authority or other state agency in the case of national schemes in consultation with county government, and is established for national strategic purposes, or such schemes as implemented by a private entity;

“license” means a license issued by the Director or county government under this Act;

“medium scale irrigation scheme” means a scheme which in acreage size covers over one hundred acres to three thousand acres, and is implemented by the Authority, or another state agency in collaboration with county government, or such schemes as implemented by a private entity;

“Ministry” means the Ministry for the time being responsible for matters related to irrigation;

“monitoring and evaluation” means a system of measuring, reporting and interpreting the quantity and quality of inputs provided, actions implemented, immediate outcomes achieved and ultimate impacts realized;

“national irrigation scheme” means an area of land designated as such by the Authority through a notice;

“State department” means the State Department responsible for matters relating to Irrigation;

“smallholder irrigation and drainage scheme” means an irrigation scheme that is developed, owned and managed by communities as irrigation water user groups or individual farmers;

“small scale irrigation scheme” means a scheme which in acreage size covers less than one hundred acres and implemented by a county government, or by the national government through Authority in case of trans boundary or inter county schemes or strategic schemes or such schemes as implemented by a private entity;

“storage” means infrastructure and practices designed to capture and store water for use in agriculture;

“Water Tribunal” means the Water Tribunal established under section 119 of the Water Act, 2016;

No. 43 of 2016.

“water harvesting” means activities where water from rainfall or surface runoff is collected, diverted, stored and utilized; and

“Water Resources Authority” has the meaning assigned to it under section 2 of the Water Act, 2016.

No. 43 of 2016.

3. (1) The provisions of this Act shall apply, as more specifically provided for in the Act, to regulation, development, management, financing, and the provision of support services of and in the entire irrigation sub-sector in Kenya.

Scope of application.

(2) Upon the commencement of this Act, no irrigation development may be carried out in Kenya otherwise than under this Act.

4. The provisions of this Act shall prevail in the case of any inconsistency between this Act and any other legislation in matters relating to irrigation.

Act to prevail in irrigation matters.

5. In discharging functions under this Act, the Cabinet Secretary, any State corporation established under this Act, county governments and any person or persons administering or applying this Act shall be guided by the principles and values set out in Articles 10, 43, 60 and 232 of the Constitution.

Guiding principles.

PART II—REGULATION OF IRRIGATION

6. (1) The Cabinet Secretary shall, in consultation with county governments, regulate and promote the development and proper management of irrigation throughout Kenya and to this extent shall ensure the effective exercise and performance by any authority or person under the authority of the Cabinet Secretary of their powers and duties in relation to irrigation and drainage, including water harvesting and storage for irrigation.

Role of national
government

(2) Without prejudice to the generality of the foregoing, the Cabinet Secretary shall have responsibility with regard to development and management of irrigation to—

- (a) formulate policies, make legislative proposals to Parliament, provide sector regulation, coordination and guidance, and monitoring and evaluation;
- (b) develop general principles, guidelines and standards for promoting development and for the coordination of irrigation planning by the counties;
- (c) establish, through a gazette notice, national, public or strategic schemes of any category as defined in this Act;
- (d) promote the use of efficient irrigation systems across the country;
- (e) subject to resource constraints, ensure availability and adequacy of water for irrigation;
- (f) receive and determine applications for any irrigation projects, including issuance of irrigation licences for irrigation schemes;
- (g) monitor and enforce conditions attached to licenses for all irrigation projects;
- (h) report to Parliament annually, and from time to time as may be necessary, on the state of, and needs for, irrigation development and management in the country;
- (i) maintain storage investments for their proper use implementation; and

- (j) carry out other mandate as may be specified in this Act.

(3) The Cabinet Secretary shall consult and seek the co-operation of other ministries and agencies of the National Government, county governments, as well as non-government entities, so as to encourage broad support for irrigation development and management.

(4) The Cabinet Secretary shall, in consultation with the county governments and other stakeholders, formulate and publish in the *Kenya Gazette*, a national irrigation services strategy, based on, among others, the national irrigation policy for the time being in force.

(5) The Cabinet Secretary shall ensure effective implementation of the national irrigation services strategy and to this end shall institute periodic review of the strategy.

(6) The Cabinet Secretary may exercise any or some of the duties and functions under subsection (1) above directly or through the Authority.

PART III—THE NATIONAL IRRIGATION DEVELOPMENT AUTHORITY

7. (1) There is established an authority to be known as the National Irrigation Development Authority.

Establishment of
the Authority.

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

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing or lending money;
- (d) entering into contracts; and
- (e) doing such other acts necessary for the proper performance of the functions of the Authority.

(3) The headquarters of the Authority shall be in Nairobi.

(4) The Authority may establish such regional, county, catchments or sub-catchment or sub-county level offices as the Board, may consider necessary.

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

Powers and
functions of the
Authority.

- (a) develop and improve irrigation infrastructure for national or public schemes;
- (b) provide irrigation support services to private medium and smallholder schemes, in consultation and cooperation with county governments and other stakeholders;
- (c) provide technical advisory services to irrigation schemes in design, construction supervision, administration, operation and maintenance under appropriate modalities, including agency contracts, as may be elaborated in regulations to this Act.

(2) The Authority shall exercise all such powers necessary to enable it to perform its functions under this Act and, without prejudice to the generality of the foregoing, the Authority may—

- (a) undertake irrigation development, including infrastructure, in national or public and smallholder schemes, including schemes which traverse or straddle more than one county;
- (b) in consultation with county governments, facilitate formation and strengthening of irrigation water users' associations at scheme level for operation, maintenance and management;
- (c) in consultation with the Cabinet Secretary and the Cabinet Secretary for the time being responsible for finance, raise funds for the development of infrastructure in national, public and smallholder schemes under appropriate mechanisms, including under agency contracts;
- (d) in consultation with the Cabinet Secretary and county governments, co-ordinate and plan settlement on national or public irrigation schemes, as well as schemes which traverse or straddle more than one county and determine the number of settlers thereof;
- (e) conduct periodic technical and management audits of irrigation schemes to identify problems

- with scheme infrastructure, governance, management and financing, and recommend solutions to the irrigation water users' associations;
- (f) provide technical advisory services on a commercial basis, on irrigation water management, including water harvesting and storage, and waste water recycling for agricultural use to all schemes under appropriate modalities, including agency contracts;
 - (g) in collaboration with county governments, the private sector, civil society organizations and other stakeholders, provide technical advisory services to community and smallholder irrigation schemes concerning design, construction supervision, administration and maintenance of irrigation infrastructure under appropriate modalities, including agency contracts;
 - (h) facilitate linkages between and among the National Government and county governments, private sector, civil society organizations, communities and other stakeholders for the provision of support services to irrigation water user associations;
 - (i) in collaboration with county governments, gather information and maintain databases on irrigation development and management, including data on irrigation water supplies, demands, projects, irrigated areas, management performance, potential for expansion and human resources;
 - (j) provide land in national irrigation schemes for public purposes;
 - (k) in collaboration with county governments and other stakeholders, promote the marketing and processing of crops, animal and fish products grown or produced on national and other irrigation schemes and to liaise in this regard with other responsible state agencies and organizations;

- (l) prepare and submit to the Cabinet Secretary, through the Principal Secretary, annual and other periodic reports concerning the performance of its mandate and functions; and
- (m) advise the Cabinet Secretary, through the Principal Secretary, on any matter in connection with the development, maintenance, expansion and availability of irrigation support services.

(3) The Authority shall exercise its various powers and functions under this section primarily through the mechanism of agency contracts, unless in the opinion of the Authority and with the permission of the Cabinet Secretary, such powers and functions are best performed directly by the Authority.

9. (1) There shall be a Board of the Authority which shall consist of—

The Board of
Authority.

- (a) a chairperson, who shall be appointed by the President subject to subsection (5);
- (b) the Principal Secretary, State Department of Irrigation or his representative;
- (c) the Principal Secretary responsible for finance or his representative;
- (d) the principal secretary responsible for Agriculture or his representative
- (e) six other members, who shall be appointed by the Cabinet Secretary, and approved by the President, taking into account the various stakeholder interests in irrigation development and management as defined in subsection (2) below.

(2) The members of the Board shall—

- (a) reflect gender and regional balance in accordance with the Constitution; and
- (b) include two representatives of county governments nominated by the Council of Governors and shall be reflective of an appropriate professional, disciplinary and stakeholder mix.

(3) The Chief Executive Officer of the Authority shall be an *ex officio* member of the Board.

(4) The members of the Board shall elect a vice-Chairperson from among themselves:

Provided that where the Chairperson is male, the vice chairperson shall be female and *vice versa*.

(5) A person shall be qualified for appointment as Chairperson of the Board if such a person—

- (a) is a citizen of Kenya;
- (b) meets the requirements of leadership and integrity set out in Chapter 6 of the Constitution; and
- (c) holds relevant academic and professional qualifications including a university degree in any field relevant to or related to irrigation.

(6) The Board may from time to time establish committees for better carrying out of its functions.

10. The conduct of business of the Board shall be in accordance with the Schedule.

Conduct of
business of the
Board.

11. (1) The Board shall have all powers necessary for the proper performance of the functions of the Authority under this Act.

Powers of the
Board.

(2) Without prejudice to the generality of the foregoing the Board shall have power to—

- (a) secure continuing improvement of performance, protect the long term viability, and ensure fiscal discipline of the Authority;
- (b) administer the assets of the Authority in such manner as best promotes the purposes for which the Authority is established;
- (c) ensure protection of the assets and developments of the Authority;
- (d) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Authority;
- (e) receive any grants, gifts, donations or endowment and make legitimate disbursements therefrom;
- (f) invest any funds of the Authority not immediately required for its purposes;

- (g) undertake any activity necessary for the fulfilment of any of the functions of the Authority.

12. (1) There shall be a Chief Executive Officer of the Authority who shall be appointed by the Cabinet Secretary on recommendation of the Board on a competitive basis and on such terms and conditions as may be specified in the instrument of appointment.

Chief Executive Officer.

(2) A person shall be qualified to be appointed as Chief Executive Officer of the Authority if that person —

- (a) is a citizen of Kenya;
- (b) meets the requirements of leadership and integrity set out in Chapter 6 of the Constitution;
- (c) holds relevant academic and professional qualifications including an advanced university degree in irrigation engineering or any field related to irrigation; or
- (d) in addition to relevant academic and professional qualifications including at least a university degree in agricultural engineering, irrigation engineering or any engineering field related to irrigation, has at least fifteen years' experience in the management of a public or private institution, five of which should be at senior management level, or is a distinguished scholar in a discipline relevant to irrigation.

(3) The Chief Executive Officer shall be responsible to the Board for the day-to-day management of the affairs of the Authority and for the performance of any other functions as the Board may direct, and shall be the accounting officer of the Authority.

(4) The Chief Executive Officer shall hold office for a term of three years and is eligible for re-appointment for a further term of three years.

(5) The Chief Executive Officer may be removed from office by the Cabinet Secretary on the recommendation of the Board in accordance with the terms and conditions of service.

13. Subject to the provisions in section 34 regarding transitional arrangements, the Authority may engage such

Other staff.

other officers and staff as it may consider sufficient for the performance of its functions under this Act on such terms and conditions as are provided in approved establishment.

PART IV – RESPONSIBILITY OF COUNTY GOVERNMENTS

14. (1) Each county government may within its area of jurisdiction establish a county irrigation development unit for the better carrying out of the county government's irrigation mandates in accordance with Part 2 of the Fourth Schedule of the Constitution.

Role of county government.

(2) Each county government shall, for purposes of ensuring uniformity and national standards in the irrigation sub-sector, through its legislative and administrative action, implement and act in accordance with the national policy guidelines issued by the Cabinet Secretary and approved by Parliament.

(3) The county irrigation development units established under subsection (1) shall have the following functions—

- (a) formulate and implement county irrigation strategy in collaboration with relevant stakeholders, in line with national policies and strategies;
- (b) develop and maintain an irrigation database and integrate systematic monitoring and evaluation;
- (c) identify community-based smallholder schemes for implementation in line with national guidelines;
- (d) mainstream irrigation related statutory obligations such as those that relate to the environment, water and health;
- (e) provide capacity building for farmers and support establishment of viable farmer organizations, and in particular irrigation water users associations to develop and manage irrigation schemes including actively participating in conflicts resolution within irrigation schemes;
- (f) set up measures to implement adaptation and mitigation to climate change, and enhance sustainable environmental management.

PART V— IRRIGATION SERVICES

15. (1) The Cabinet Secretary shall, subject to water and other resource constraints, and in consultation with county governments, and other stakeholders ensure the adequacy and quality of water for irrigation purposes throughout the country.

Water for
irrigation.

(2) In pursuance of subsection (1), the Cabinet Secretary shall take measures to—

- (a) approve appropriate tariff structures and make arrangements with the Water Resources Authority in respect of requisition of irrigation water in bulk;
- (b) seek advice of the Water Resources Authority on the development of new irrigation water sources, including water harvesting, flood control and storage for irrigation;
- (c) approve appropriate arrangements on inter-catchment transfers of irrigation water in consultation with county governments and Water Resources Authority;
- (d) develop a mechanism on return on investment formula resulting from construction of irrigation schemes using public funds; and
- (e) develop guidelines on private sector involvement at various stages of the irrigation project implementation cycle.

16. (1) The Cabinet Secretary may, in consultation with the National Lands Commission, the Board and county governments, and by notice in the *Kenya Gazette*, designate an area of land, for which an irrigation water permit may be issued by the Water Resources Authority and an irrigation license may be issued.

Setting apart of
land, access rights
etc.

(2) In respect of land, other than public land, in a national or public irrigation scheme, the Cabinet Secretary shall, in accordance with the law for the time being relating to the compulsory acquisition of land, take such steps as may be necessary to acquire the right, title or interest in such land and to vest it in the Department for the purposes of this Act.

(3) In the case of community land forming part of a national or public irrigation scheme, the Cabinet Secretary, on behalf of the Department, may take the land on lease and on terms to be agreed between the Cabinet Secretary and the county government concerned.

(4) In default of agreement between the Cabinet Secretary and the county government as to the terms of a lease under subsection (3) of this section, the relevant provisions of the Land Act, 2012, shall have effect.

No. 6 of 2012.

(5) The Cabinet Secretary shall, in collaboration with county governments support and facilitate access rights to land for all irrigators on national irrigation schemes in order to provide livelihoods for poor and vulnerable persons and groups, and adequate security for investments in land improvement and the irrigation schemes.

(6) The Cabinet Secretary shall, in consultation with county governments, ensure that the design of national or public irrigation schemes and others, takes into account the needs of various irrigation water users, including livestock and fish producers.

17. (1) The Cabinet Secretary shall establish administrative and regulatory framework—

Establishment of Administrative and legal framework for water storage.

- (a) for management and development of water storage infrastructure, and flood control and land reclamation, dams and dykes; and
- (b) for water storage creation requirement on all existing and future irrigation projects.

(2) Despite the provisions under subsection (1), the Cabinet Secretary shall, in consultation with the county governments, ensure that irrigation developments are planned and implemented within the framework of Integrated Water Resources Management, and in accordance with agreements between irrigation and other stakeholders, in such a manner as to reduce water resource conflicts, protect the environment and public health, and share water appropriately and equitably for multiple uses.

18. (1) The Cabinet Secretary shall take legislative and administrative measures to ensure that irrigation research, innovation and training functions are carried out and appropriately coordinated.

Irrigation research, innovation and training.

(2) Each county government may identify priority irrigation research, innovation and training areas and participate in irrigation research, innovation and training processes, in collaboration with the national government.

19. (1) The Cabinet Secretary shall, through the Authority, manage existing and new national or public schemes, except those under county governments, and particularly storage dams, intake, main and secondary systems as necessary.

Management of
irrigation
schemes.

(2) The Cabinet Secretary through the Authority shall provide resources and direction for capacity building and technical services to irrigation water users associations, and other farmer associations to enable them to progressively accept and assume full responsibility for management of national or public schemes under appropriate agency contracts with the National Government or county governments, as the case may be.

(3) Despite any agency contracts between the National Government or county governments and any irrigation water users' association under subsection (2), all assets of the national or public irrigation schemes shall remain vested in the national government or county government as appropriate, which shall also retain regulatory oversight over governance, management and financing of such schemes.

(4) The Cabinet Secretary shall, through the Authority and in collaboration with county governments and relevant stakeholders provide support, subject to availability of resources, and direction for capacity building and technical advisory services to irrigation water users' associations and other farmer associations to enable them to take over governance and management responsibility for smallholder schemes as soon as possible after they are developed.

20. (1) A resident of a catchment area who is a crop farmer, livestock producer, fish pond user, or small rural industry entrepreneur or otherwise uses water for irrigation purposes from a common water source may, together with other members or persons resident in the same area, form or join an irrigation water users association.

Formation of
irrigation water
users'
associations.

(2) Where an association pre-exists an irrigation scheme, the said association may be recognized as the *bona*

fide association to operate and maintain a scheme established in the association's area of coverage, and more than one association may operate and maintain a scheme on appropriate and mutually agreed terms.

(3) An irrigation water users association shall be entitled to set and collect from its members, irrigation service fees based on the actual costs of operation and full maintenance of the scheme:

Provided that the fees referred to in this subsection shall be agreed upon with the members of the association.

(4) An association may enter into cost-sharing agreements with the National Government, county governments, private sector institutions or other farmers' associations for implementing improvements, modernization, establishment or expansion of a scheme, subject to approval by the Cabinet Secretary and concurrence of the National Treasury.

(5) The Cabinet Secretary, in consultation with county governments, may make rules for the establishment and governance of irrigation water users' associations under this section.

PART VI— FINANCIAL PROVISIONS

21. The funds and assets of the Authority shall consist of—

Finances of the Authority.

- (a) such monies as may be appropriated by the National Assembly for the purposes of the Authority;
- (b) any monies or property which may in any manner accrue or vest in the Authority in the course of the exercise of its functions under this Act;
- (c) such monies as may become payable to the Authority by way of fees in respect of services rendered by or through the Board; and
- (d) all monies from any other sources provided, donated or lent to the Authority.

22. (1) At least five months before the commencement of each financial year, the Authority shall cause to be prepared estimates of the revenue and expenditure of the Authority for that year.

Annual estimates.

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

- (a) the payment of salaries, allowances and other charges in respect of the staff of the Authority and the Board of the Authority as the case may be;
- (b) the payment of pensions, gratuities and other charges in respect of retirement benefits which are payable out of the funds of the Authority;
- (c) the acquisition, maintenance, repair and replacement of the equipment and other movable property of the Authority; and
- (d) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance and the replacement of buildings or equipment, or in respect of such other matters as the Board may deem fit.

(3) The annual estimates shall be approved by the Board at least two months before commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary.

(4) No expenditure shall be incurred for the purposes of the Authority except in accordance with the annual estimates approved under subsection (3) or in pursuance of an authorization of the Board given with prior written approval of the Cabinet Secretary and the Cabinet Secretary to the National Treasury.

23. The Board shall ensure that proper books of account of the income, expenditure, assets and liabilities of the Authority are kept, and shall in this regard be subject to the provisions of the State Corporations Act.

Accounts and
Audit.

Cap. 446.

24. (1) The Board shall, within a period of seven months after the end of each financial year, or within such longer period as the Cabinet Secretary may approve, submit to the Cabinet Secretary a report on the operations of the Authority during that year, and the auditor's report, together with the yearly balance sheet and such other statements of account as the Cabinet Secretary shall require, and the Board shall publish them in such manner as the Cabinet Secretary may specify.

Annual reports.

(2) A copy of every auditor's report, balance sheet and other statements of accounts submitted in accordance with subsection (1) shall be sent by the Authority to the Auditor-General, who may at any time examine the accounts, and the Auditor-General shall be entitled to require from the Authority and its auditors such further information and explanation as he may consider necessary.

(3) The financial reports of the Authority with the yearly balance sheet and such other statements of account as the Cabinet Secretary may deem appropriate, together with the auditor's report and any report made by the Auditor-General, shall be submitted through the Principal Secretary and the same shall be laid by the Cabinet Secretary before Parliament as soon as possible after it has been submitted to the Cabinet Secretary and shall constitute an integral part of the Cabinet Secretary's report required under this section.

PART VII—DISPUTE RESOLUTION

25. (1) Disputes related to irrigation and drainage scheme development, management, water allocations and delivery, financing, property, operation and maintenance and other matters shall be resolved within the irrigation water users association or at scheme level wherever possible.

Dispute
resolution.

(2) Each association which is legally registered shall have a Dispute Resolution Committee that consists of at least three members selected by its governing body.

(3) Decisions regarding any dispute contemplated under this section shall be made by the relevant Dispute Resolution Committee within thirty days of the hearing of the dispute in question.

26. (1) If either of the parties involved in a dispute is or are not satisfied with the decision of the Dispute Resolution Committee at the irrigation water users' association or scheme level, or if the dispute involves two or more associations or schemes, the concerned party or parties may appeal to the relevant regional committee.

Appeals.

(2) The regional committee concerned shall appoint a Dispute Resolution Committee with a mandate to settle the dispute.

(3) Decisions regarding a dispute shall be made by the Dispute Resolution Committee within thirty days of the hearing of the dispute in question.

(4) Every legal and administrative effort shall be made by the Dispute Resolution Committee at the catchment level to ensure that most disputes are settled at the scheme or irrigation water users association level.

(5) Any party aggrieved by the decision of a regional committee may appeal to the Water Tribunal and the provisions of the Water Act, 2016, and any rules made there under shall apply accordingly.

(6) Any party aggrieved by the decision of the Water Tribunal may apply for review to the Environment and Land Court which is the superior court competent in irrigation matters.

PART VIII—MISCELLANEOUS AND OFFENCES PROVISIONS

27. (1) The Cabinet Secretary shall, in consultation with the county governments—

Monitoring and
evaluation.

- (a) develop and implement a monitoring and evaluation system for the development, governance, management and financing of irrigation at all levels, and this may include assessment of inputs, immediate outcomes and ultimate impacts based on the results; and
- (b) conduct periodic irrigation management and performance audits in strategically important schemes, and may assess the financial management and quality of governance obtaining in the schemes.

28. No liability shall attach to the Authority or its Board or its members, officers, agents or servants for any loss or damage sustained by any person as a result of any act or omission done or omitted to be done in good faith and without negligence in the performance or exercise of any duty or power imposed or conferred by or under this Act.

Protection from
liability.

29. Any person who wilfully damages an irrigation infrastructure, water course, equipment or other appliances, or steals or otherwise unlawfully tampers or interferes with

Wilful damage.

such infrastructure, watercourse, equipment, or other appliance, commits an offence and shall be liable upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding 24 months or to both such fine and imprisonment.

30. Any person who—

Destructive practices.

- (a) engages in activities or practices which are destructive or potentially destructive to the catchment areas of a river or public water body supplying water to an irrigation scheme; or
- (b) permits or causes animals to damage irrigation areas or infrastructure,

that person commits an offence and shall be liable upon conviction to a fine of not more than five hundred thousand shillings or to imprisonment for a term not exceeding 12 months or to both such fine and imprisonment.

31. Any person who—

Setting fire.

- (a) sets or causes to be set on fire on an irrigation scheme or on any irrigated or drained farm, garden or plot; or
- (b) being a person with responsibility over any aspect of an irrigation scheme, without reasonable excuse or cause, refuses to assist in averting, fighting or extinguishing a fire on an irrigation and or drainage scheme or on any irrigated and or drained farm, garden or plot,

that person commits an offence and shall be liable upon conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding 12 months or to both such fine and imprisonment.

32. Any person who applies or causes to be applied on an irrigation scheme, farm, garden or plot under irrigation any chemicals or substances prohibited under this Act or any other law for the time being in force, commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term of five years or to both such fine and imprisonment.

Harmful chemicals.

PART IX—PROVISIONS ON DELEGATED POWERS

33. (1). The Cabinet Secretary may, in consultation with county governments, make Regulations, for the better carrying out of the purposes and provisions of this Act.

Making of
Regulations.

(2) Without prejudice to the generality of the foregoing, Regulations made under this section may provide for—

- (a) the management of national, public and other irrigation schemes;
 - (b) the standards of good on-farm water management;
 - (c) the regulation of, and tariffs payable for, the use of water on national, public and other irrigation schemes;
 - (d) the control of persons occupying any land comprising or forming part of a national irrigation scheme, the introduction of or the control of settlers on such land, the issue by the Authority as the case may be, of licenses or permits or leases to such persons or settlers, the revocation of such licenses and leases, and the terms and conditions which may be attached to such licenses and leases;
 - (e) the licensing of contractors to perform any function connected with a national or other irrigation scheme;
 - (f) the establishment, operations and governance of irrigation water users' associations;
 - (g) monitoring and evaluation and audits required under the Act; and
 - (h) adherence to environmental and public health matters.
- (3) Any Regulations made under this section may—
- (a) require acts to be performed to the satisfaction of a prescribed authority, may prohibit their performance without the prior approval of a specified authority, and may empower a specified

- authority to impose conditions for the performance of specific acts;
- (b) be made to apply generally to all irrigation schemes or to any specified irrigation or to any specified area or areas thereof;
- (c) provide for such penalty for the breach of any provision thereof, not exceeding a fine of fifty thousand shillings and or imprisonment for one year, as the Cabinet Secretary may regulate from time to time.

PART X—REPEALS AND TRANSITIONAL PROVISIONS

34. (1) The Irrigation Act is repealed.

Repeal of Cap.
347.

(2) Notwithstanding subsection (1) and upon commencement of this Act—

- (a) all the funds, assets and other property, both movable and immovable which were vested in the National Irrigation Board shall, by virtue of this paragraph, vest in the Authority;
- (b) all rights, powers and liabilities which were vested in, imposed on or enforceable against the National Irrigation Board shall, by virtue of this paragraph, be vested in, imposed on or enforceable against the Authority;
- (c) any reference in any written law or in any document or instrument to the National Irrigation Board shall be construed to be a reference to the Authority;
- (d) the annual estimates of the National Irrigation Board for the current financial year shall be deemed to be the annual estimates of the Authority for the remainder of that financial year:

Provided that such estimates may be varied by the Authority in such manner as the Cabinet Secretary may approve.

- (e) the administrative directions made by the National Irrigation Board or by the Cabinet Secretary which were in force before the commencement of this Act shall have force as if

they were directions made by the Authority or the Cabinet Secretary under this Act;

- (f) any person who, immediately before the commencement of this Act, was an officer, agent, or member of staff appointed, seconded or deployed or otherwise employed by the National Irrigation Board shall be deemed to be an employee or otherwise seconded or deployed to the Authority on similar terms or as may be provided by the law.

SCHEDULE

(s. 10)

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

1. The Chairperson or a member of the Board other than an *ex officio* member shall, subject to the provisions of this Schedule, hold office for a period of three years, on such terms and conditions as may be specified in the instrument of appointment, but shall be eligible for re-appointment for a further period of three years.

Tenure of office.

2. The Chairperson or a member other than an *ex officio* member may—

Vacation of office.

- (a) at any time resign from office by notice in writing to the Cabinet Secretary;
- (b) be removed from office by the Cabinet Secretary on the recommendation of the Board if the member—
 - (i) has been absent from three consecutive meetings of the Board without the permission of the Board;
 - (ii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;
 - (iii) is incapacitated by prolonged physical or mental illness; or
 - (iv) is otherwise unable or unfit to discharge his functions.

3. (1) The Board shall meet not less than four times in every financial year and not more than four months shall

Meetings.

elapse between the date of one meeting and the date of the next meeting.

(2) Despite the provisions of subparagraph (1), the Chairperson may, and upon requisition in writing by at least five members, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(3) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days written notice of every meeting of the Board shall be given to every member of the Board.

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

(5) The Chairperson shall preside at every meeting of the Board at which he or she is present but in his or her absence, the members present shall elect one of their number to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the Chairperson.

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

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

(8) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

4. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which contract, proposed contract or other matter is the subject of consideration, he or she shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to

Disclosure of
interest.

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 this paragraph shall be recorded in the minutes of the meeting at which it is made.

5. The affixing of the Common seal of the Authority shall be authenticated by the signature of the Chairperson and the Chief Executive Officer and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of the Chairperson and the Chief Executive Officer:

Common seal.

Provided that the Board shall, in the absence of either the Chairperson or the Chief Executive Officer in any particular matter, nominate one member to authenticate the seal on behalf of either the Chairperson or the Chief Executive Officer.

6. 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.

Contracts and instruments.

MEMORANDUM OF OBJECTS AND REASONS

The principle object of the Bill is to promote and regulate the development and management of irrigation in Kenya.

PART I (Clauses 1-5) of the Bill provides for preliminary matters

PART II (Clause 6) of the Bill provides for the Regulation of Irrigation.

It sets out the powers of National Government in the regulation of irrigation; and particularly the powers and duties of the Cabinet Secretary.

PART III (Clauses 7-13) of the Bill provides for the establishment of the National Irrigation Development Authority, as the successor of the National Irrigation Board ,its powers and functions, establishment of the board, appointment of the Chief Executive Officer, other staff and meetings and procedures of the board of the Authority.

PART IV (Clause 14) of the Bill provides for the role of county governments with respect to the irrigation development and management.

PART V (Clauses 15-20) provides for the Irrigation Services which include; provision for water for irrigation, setting a part of land for irrigation, research, innovation and training, management of irrigation schemes, and formation or governance of irrigation water users' associations.

PART VI (Clauses 21-24) of the Bill provides for the Financial provisions of the Authority including provisions on annual estimates, accounts and audits and annual reports.

PART VII (Clauses 25-26) of the Bill provides for dispute resolution mechanisms in context of irrigation water user associations and provides for mechanisms for appeal and review by the Environment and Land court.

PART VIII (Clauses 27-32) of the Bill provides for the miscellaneous matters which include monitoring and evaluation, protection from liability of the Board or its members, officers, agents or servants and offences arising from violation of various provisions of the Act.

PART IX (Clause 33) of the Bill provides for regulation making authority by the Cabinet Secretary in consultation with the county governments.

PART X (Clause 34) of the Bill repeals Cap. 347 and provides for transition of assets, liabilities, rights and powers of the Board created under Cap. 347 to the proposed Authority.

The Schedule sets out regulations for the conduct of the business and affairs of the Board.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill gives powers to the responsible Cabinet Secretary to make regulations; however, it does not limit fundamental rights and freedoms.

Statement on whether the Bill does not concern county governments

The Bill concerns county governments in terms of Articles 110(1)(a) of the Constitution.

Statements on whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The Bill is a money Bill for the purposes of Article 114 of the Constitution. The enactment of this Bill will occasion additional expenditure of public funds as it seeks to set an Authority.

Dated the 10th November, 2017.

ADEN DUALE,
Majority Leader, National Assembly.