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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – THIRD SESSION – 2024

DIRECTORATE OF DEPARTMENTAL COMMITTEES
DEPARTMENTAL COMMITTEE ON BLUE ECONOMY, WATER AND
IRRIGATION

REPORT ON THE CONSIDERATION OF THE SENATE AMENDMENTS TO THE
WATER (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO. 33 OF 2023)

THE NATIONAL ASSEMBLY	
DATE:	18 APR 2024
TABLED BY:	Hon Bowen Kangogo, MP Chairperson, Blue Economy, Water & Irrigation
CLERK OF THE TABLE:	A. Chibuko

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

APRIL, 2024

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LIST OF ABBREVIATIONS AND ACRONYMS

MP	-	Member of Parliament
MDAs	-	Ministries, Department and Agencies
PPP	-	Public Private Partnership
WASPA	-	Water & Sanitation Providers Association
WSPs	-	Water Service Providers
WWDAs	-	Water Works Development Agencies
WASREB	-	Water Service Regulatory Board

LIST OF ANNEXURES

1. Report adoption Schedule
2. Minutes
3. Letter inviting stakeholders for meetings with the Committee
4. Stakeholder submissions

CHAIRPERSON'S FOREWORD

This report contains proceedings of the Departmental Committee on Blue Economy, Water and Irrigation on its consideration of the Senate Amendments Water (Amendment) Bill (*National Assembly Bills No. 33 of 2023*).

The National Assembly considered the Water (Amendments) Bill, 2023 (National Assembly Bill No. 33 of 2023) and passed it with amendments on 23rd August, 2023 and forwarded the same to the Senate for concurrence Pursuant to the provisions of Standing Order 144. The Senate considered the Bill and passed it with amendments on 7th March, 2024.

The Senate amendments to the Bill were subsequently were referred to the Departmental Committee on Blue Economy, Water and Irrigation for consideration and reporting back to the House.

In considering the amendments, the Committee invited the Cabinet Secretary for the Ministry of Water, Sanitation and Irrigation together with the Council of Governors to get their views on the proposed amendments to the Bill by the Senate. The Committee held a meeting on Monday 8th April, 2024 at Holiday Inn in Kiambu County. All the stakeholders were in support of the Bill seeking to provide for operationalizing Public Private Partnership in the water sector indicating that once effected, these amendments will support the effort of the Ministry to increase water and sewerage coverage for all.

The Committee considered the proposed amendments to the Bill and recommended that the House approves Clauses 9, and 10 and further rejects the proposed amendments to Clauses 2, 3, 4, 5,7,11 and 12.

On behalf of the Departmental Committee on Blue Economy, Water and Irrigation and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Senate Amendment to the Water Amendment Bill (*National Assembly Bill No. 33 of 2023*) with recommendation that the Bill be **approved and rejects some of the Senate amendments to the Bill as reported by the Committee.**

Hon. Bowen David Kangogo, M.P.
Chairperson, Departmental Committee on Blue Economy, Water and Irrigation

PART I

PREFACE

1.0 Establishment of the Committee

1. The Departmental Committee on Blue Economy, Water and Irrigation is one of the twenty Departmental Committees of the National Assembly established under **Standing Order 216** whose mandates pursuant to the **Standing Order 216 (5)** are as follows:
 - i. **To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;**
 - ii. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
 - iii. *On a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
 - iv. To study and review all legislation referred to it;
 - v. *To study, assess and analyze the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - vi. *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - vii. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
 - viii. *To examine treaties, agreements and conventions;*
 - ix. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - xi. *To examine any questions raised by Members on a matter within its mandate.*

1.1 Subject of the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider matters of: use and regulation of water resources, irrigation, fisheries development including promotion of aquaculture, fish farming, marine fisheries, the sustainable use of ocean resources for economic growth and improved livelihoods, except seaports and marine transport.
3. In executing its mandate, the Committee oversees the following government ministries and departments and agencies (MDAs), namely:
 - i. The State Department for Water and Sanitation
 - ii. The State Department for Irrigation
 - iii. The State Department for Blue Economy and Fisheries

1.2 Committee Membership

4. The Departmental Committee on Blue Economy, Water and Irrigation was constituted by the House on 27th October, 2022 and comprises of the following Members:

Chairperson

Hon. Bowen David Kangogo, MP - Chairperson

Marakwet East Constituency
United Democratic Alliance Party

Vice- Chairperson

Hon. Kemero Maisori Marwa, MP - **Vice- Chairperson**
Kuria East Constituency
United Democratic Alliance Party

Hon. Stanley Muiruri Muthama, MP
Lamu West Constituency
Jubilee Party

Hon. Tandaza Kassim Sawa, MP
Matuga Constituency
Amani National Congress

Hon. Chepkwony Charity Kathambi, MP
Njoro Constituency
United Democratic Alliance Party

Hon. William Kamket, MP
Tiaty Constituency
Kenya African National Union

Hon. Buyu Rozaah Akinyi, MP
Kisumu West Constituency
Orange Democratic Party

Hon. Eng. Paul Nzengu, MP
Mwingi North Constituency
Wiper Democratic Party

Hon. Were Charles Ong'ondo, MP
Kasipul Constituency
Orange Democratic Party

Hon. Dorothy Muthoni Ikiara, MP
Nominated
United Democratic Alliance Party

Hon. Nebart Bernard Muriuki, MP
Mbeere South Constituency
Independent Member

Hon. Mnyazi Amina Laura, MP
Malindi Constituency
Orange Democratic Movement

Hon. Adow Mohamed Aden, MP
Wajir South Constituency
Orange Democratic Party

Hon. Eric Wamumbi, MP
Mathira Constituency
United Democratic Alliance Party

Hon. George Gachagua, MP
Ndaragwa Constituency
United Democratic Alliance Party

1.3 Committee Secretariat

5. The Committee is facilitated by the following staff:

Mr. Nicodemus K. Maluki
Clerk Assistant I/Head of Secretariat

Ms. Ivy Kageha
Clerk Assistant III

Dr. Benjamin Ngimor
Principal Fiscal Analyst

Ms. Lynette Otieno
Senior Legal Counsel

Ms. Veron D. Aluoch
Research Officer III

Ms. Joyce Wachera
Hansard Officer III

Ms. Maryan Gabow
Protocol Officer

Ms. Fridah Ngari
Media Relations Officer

Mr. Eugene Luteshi
Audio Officer

Mr. Allan Gituku
Sergeant At – Arms

PART II

2.0 BACKGROUND INFORMATION ON THE WATER AMENDMENT BILL, 2023 (NATIONAL ASSEMBLY BILLS NO. 33 OF 2023)

6. The Water (Amendment) Bill (National Assembly Bill No. 33 of 2023) was published on 4th July, 2023 and read a First Time on 26th July, 2023. The Bill seeks to provide for operationalizing Public Private Partnership in the water sector.
7. The Bill was considered by the National Assembly and passed with amendments on 23rd August 2023. Pursuant to Standing Order 144 the Bill was forwarded for consideration by the Senate. The Senate considered the Bill and passed it with amendments on 7th March, 2024.
8. In this regard, the Senate amendments were subsequently committed to the Departmental Committee on Blue Economy, Water and Irrigation for consideration and reporting to the House.

PART III

3.0 OVERVIEW OF THE SENATE AMENDMENTS TO THE WATER (AMENDMENT) BILL (*NATIONAL ASSEMBLY BILL NO. 33 OF 2023*)

9. The following amendments of the Water (Amendment) Bill, 2023 (National Assembly Bill No. 33 of 2023) were passed by the Senate on Thursday, 7th March 2024:

CLAUSE 3

10. **THAT Clause 3** of the Bill be amended –

- (a) in the proposed new paragraph (g) by inserting the words “subject to the economic efficiency criteria set by the Regulatory Board” at the end of the paragraph; and
- (b) in the proposed new paragraph (h) by inserting the words “subject to the economic efficiency criteria set by the Regulatory Board” at the end of the paragraph.

CLAUSE 4

11. **That Clause 4** the Bill be amended by deleting clause 4 and inserting the following new clause 4–

4. Section 68 of the principal Act is amended by inserting the following new paragraphs immediately after paragraph (b)—

(ba) operate water works and provide bulk water services by entering into a bulk water purchase agreement —

- (i) with an investor in accordance with the provisions of the Public Private Partnerships Act, 2021, subject to the economic efficiency criteria set by the Regulatory Board and after conducting public participation and consulting the relevant county government whose area of jurisdiction the water works is located; or
- (ii) with a water services provider subject to the economic efficiency criteria set by the Regulatory Board; or

(bb) operate water works and provide bulk water services as a bulk water services provider until such a time as the water works development agency transfers responsibility for the operation and management of water works to a county government or water service provider in whose area of jurisdiction the water works is located.

CLAUSE 5

12. **THAT** the Bill be amended in the proposed new section 68A(2) by deleting the words “with the approval of the Cabinet Secretary,” appearing immediately after the words “necessary thereafter”—

CLAUSE 6

13. **THAT, Clause 6** of the Bill be amended—

- (a) in paragraph (a), by deleting the new proposed subsection (1) and inserting the following new proposed subsection (1) —
 - 1) As soon as possible, following the commissioning of waterworks, the waterworks development agency shall enter into an agreement with a county government, a joint committee, cross-county water service provider, or water service provider to provide water services within whose area of jurisdiction the services are located.
- (b) by deleting paragraph (b) and inserting the following new paragraph-
 - (b) in subsection (2), by deleting the words "authority" appearing after the words "the joint committee" and inserting therefor the words "cross-county water service providers";
- (c) by deleting paragraph (c) and inserting the following new paragraph-
 - (c) in subsection (3), by deleting the words " the authority" appearing after the words "the joint committee" and inserting therefor the words "cross-county water service providers"

CLAUSE 7

14. **THAT, Clause 7 of the Bill** be amended—

- a) by deleting paragraph (a) and inserting the following new paragraph—
 - (a) by inserting a new paragraph immediately after paragraph (b)
 - (ba) evaluate and recommend bulk water tariffs and approve the imposition of such tariffs in line with consumer protection standards for use of water for domestic, commercial and irrigation purposes;
 - (bb) evaluate and recommend tariffs for irrigation purposes;
 - (b) in paragraph (b) by deleting the proposed new paragraph (c) and substituting therefor the following new paragraph—
 - (c) issue licenses, set conditions for water services provision, and accredit water service providers and bulk water service providers.

CLAUSE 9

15. **THAT, Clause 9** of the Bill be amended in paragraph (b) in the proposed new subsection (3) by deleting the words "provision of water services" appearing immediately after the words "infrastructure used for the" and inserting therefor the Words "contracted function"

CLAUSE 10

16. **THAT Clause 10** of the Bill be amended by deleting the proposed subsection (4) and inserting therefor the following new subsection—

- (4) Despite any provisions in this Act, bulk water supply services which are primarily intended to supply water in bulk to a water services provider in a county or counties other than the county in which the bulk water abstraction works are located, shall be undertaken by bulk water service providers licensed under this section.

CLAUSE 11

17. **THAT Clause 11** of the Bill be deleted

CLAUSE 12

18. **THAT**, clause 12 of the Bill be amended in the proposed new section 119 (2) by inserting the following new paragraph immediately after paragraph (c) —

- (d) two persons, a man and a woman, who possess a degree from a university recognized in Kenya and at least five years' experience in a relevant field, nominated by the Council of County Governors.

CLAUSE 2

19. **THAT Clause 2** of the Bill be amended—

(a) by deleting paragraph (a) and inserting the following new paragraph—

(a) by inserting the following new definitions in the proper alphabetical sequence —

"bulk water service provider" means a water service provider, contracting authority, or any other person providing bulk water services in accordance with a license issued by the Regulatory Board for the service areas specified in the license;

"contracting authority" means—

(a) at the national government level, a state department, agency or state corporation which intends to have its functions undertaken by a private party; or

(b) at the county level, the county government, county agency or county corporation which intends to have its functions undertaken by a private party;

"joint committee" means a committee established by the national or county government consisting of the national government and a county government or two or more county governments;

"private party" means a party that enters into a project agreement with a contracting authority and is responsible for undertaking a project on behalf of the contracting authority under this Act;

(b) in Paragraph (b) by deleting the proposed definition of "bulk water" and substituting therefor with the following new definition—

“bulk water” means supply of water in bulk by a bulk water services provider to a water service providers for retail;

(c) by deleting Paragraph (c)

PART IV

3 PUBLIC PARTICIPATION/ STAKEHOLDERS CONSULTATIONS

20. The National Assembly considered the Water (Amendment) Bill, 2023 (National Assembly Bill No. 33 of 2023) and passed it with amendments on 23rd August, 2023 and forwarded the same to the Senate for concurrence Pursuant to the provisions of Standing Order 144. The Senate considered the Bill and passed it with amendments on 7th March, 2024. The Senate amendments to the Bill were subsequently referred to the Departmental Committee on Blue Economy, Water and Irrigation for consideration and reporting back to the House.
21. In this regard, the Committee held a consultative meeting with the Cabinet Secretary Ministry of Water, Sanitation and Irrigation together with Council of Governors to deliberate on the Senate Amendments to the Water (Amendment) Bill, 2023 on Monday, 8th April, 2024 at Holiday Inn Hotel, Kiambu County.

3.1 THE MINISTRY OF WATER, SANITATION AND IRRIGATION

22. The Cabinet Secretary for Water, Sanitation and Irrigation Mr. Zachariah Waweru, EGH appeared before the Committee on Monday 8th April, 2024 and submitted on the Senate Amendments to the Water Amendment Bill, 2023 as follows:

CLAUSE 3

23. **THAT Clause 3** of the Bill be amended –
 - a) in the proposed new paragraph (g) by inserting the words “subject to the economic efficiency criteria set by the Regulatory Board” at the end of the paragraph; and
 - b) in the proposed new paragraph (h) by inserting the words “subject to the economic efficiency criteria set by the Regulatory Board” at the end of the paragraph.

Observation

24. Senate amendments proposes to amend the Bill to provide that bulk water storage agreements entered into by the National Water Storage Authority should be subject an economic efficiency criteria set by the regulatory board i.e. the Water Service Regulatory Board (WASREB).
25. The Public Private Partnerships Act which came into effect on December 23, 2021, is the principal law governing PPPs in Kenya. Section 32 of the Act provides an elaborate legal and institutional framework for the carrying out and approval of a feasibility study which determines the viability of the project. There is already a legal and institutional framework in place fairly robust to ensure the financial integrity of the PPP projects. **The Senate amendment is unnecessary. It is proposed that Clause 3 of the Bill be retained as is in the Bill.**

CLAUSE 4

26. That Clause 4 the Bill be amended by deleting clause 4 and inserting the following new clause 4—
4. Section 68 of the principal Act is amended by inserting the following new paragraphs immediately after paragraph (b)—
- (ba) operate water works and provide bulk water services by entering into a bulk water purchase agreement —
- i) with an investor in accordance with the provisions of the Public Private Partnerships Act, 2021, subject to the economic efficiency criteria set by the Regulatory Board and after conduction public participation and consulting the relevant county government whose area of jurisdiction the water works is located; or
- ii) with a water services provider subject to the economic efficiency criteria set by the Regulatory Board; or
- (bb) operate water works and provide bulk water services as a bulk water services provider until such a time as the water works development agency transfers responsibility for the operation and management of water works to a county government or water service provider in whose area of jurisdiction the water works is located.

Observation

27. The Bill proposes an amendment to the Act to expand the mandate of the agencies by allowing the agencies to:
- a) Enter into PPPs for supply of bulk water as per the PPP Act
- a) Enter into agreements with other water services providers for bulk water supply
- b) Operate as a water services provider until the agency transfers responsibility for the operation of water works to a county government or a water services provider
28. The proposed amendment by Senate provides for the requirement for public participation and consultation with the relevant county government in bulk water supply by the water works agencies in both arrangements. It further requires that the agreement both be subjected to an “economic efficiency criteria set by the WASREB.
29. The requirement for public participation has been provided for in the PPP Act, 2021. Under Section 22 of the Act, the contracting authority has a duty to ensure public participation and in projects implementation.
30. Subjecting the PPP agreement to an economic efficiency criteria set by the Regulatory Board, there is an elaborate legal and institutional framework in place both under the PPP Act and the Water Act, 2016 to ensure the financial integrity of the PPP projects, safeguard consumer interests and guarantee equitable access to water and sanitation services at fair prices. **The proposed amendment by Senate to (ba) (I) should NOT therefore be sustained. The provisions in the Bill should be retained as is.**

31. Accordingly, the PPP Act in which bulk water supply agreements between the water works development agencies and investors under the PPP framework is anchored caters for the public participation requirement.
32. The Water Act, 2016 provides for consumer protection and ensuring water services provision is affordable, efficient and equitable. Further, the Bill, under section 72 (b), Clause 7 the mandate of the regulatory board is enhanced to evaluate and approve imposition of bulk water tariffs in line with consumer protection standards. **The proposed amendment by Senate to (ba) (ii) should NOT therefore be sustained. The provisions in the Bill should be retained as is**

CLAUSE 5

33. THAT the Bill be amended in the proposed new section 68A(2) by deleting the words “with the approval of the Cabinet Secretary,” appearing immediately after the words “necessary thereafter”—

Observation

34. Section 72 of the Water Act, 2016 empowers the Regulatory Board to publish regulatory standards without the approval of the Cabinet Secretary. The Ministry agreed to the proposed amendment of Clause 5

CLAUSE 6

35. **THAT, Clause 6** of the Bill be amended—
 - (d) in paragraph (a), by deleting the new proposed subsection (1) and inserting the following new proposed subsection (1) —
 - 2) As soon as possible, following the commissioning of waterworks, the waterworks development agency shall enter into an agreement with a county government, a joint committee, cross-county water service provider, or water service provider to provide water services within whose area of jurisdiction the services are located.
- (b) by deleting paragraph (b) and inserting the following new paragraph-
 - (b) in subsection (2), by deleting the words "authority" appearing after the words “the joint committee” and inserting therefor the words “cross-county water service providers”;
- (c) by deleting paragraph (c) and inserting the following new paragraph-
 - (c) in subsection (3), by deleting the words " the authority" appearing after the words “the joint committee” and inserting therefor the words “cross-county water service providers”

Observation

36. The amendment to Section 69 of the Act mainly sought to clarify that completed water works to be handed over to counties exclude national public water works. The Act provides that hand over agreements for completed water works shall be between the

water works development agencies and the county government, the joint committee or authority of the county governments within whose area the water works is located jointly with the water service provider

37 The Bill also seeks to omit reference to joint committees and authorities in the process since the roles of the committee in the process has not been defined.

38 The transfer/ handover envisaged by the Bill under section 69 will be for the County public works and services.

39 **Based on the above information, the proposed amendment by Senate should NOT be sustained. Clause 6 of the Bill be retained as is.**

CLAUSE 7

40 **THAT, Clause 7 of the Bill be amended—**

(e) by deleting paragraph (a) and inserting the following new paragraph—

(a) by inserting a new paragraph immediately after paragraph (b)

(ba) evaluate and recommend bulk water tariffs and approve the imposition of such tariffs in line with consumer protection standards for use of water for domestic, commercial and irrigation purposes;

(bb) evaluate and recommend tariffs for irrigation purposes;

(f) in paragraph (b) by deleting the proposed new paragraph (c) and substituting therefor the following new paragraph—

(g) issue licenses, set conditions for water services provision, and accredit water service providers and bulk water service providers.

Observation

41 The Bill proposes amendments to Section 72 of the Water Act by introducing a new mandate for the Water Services Regulatory Board (WASREB) to evaluate and approve water, sewerage and bulk water tariffs for domestic, commercial and irrigation purposes. The regulator evaluates the tariff and approves the impositions of the tariff in line with consumer protection standards. **The Ministry proposes that Clause 7 (ba) be retained as is in the Bill**

CLAUSE 10

42 **THAT Clause 10 of the Bill be amended by deleting the proposed subsection (4) and inserting therefor the following new subsection—**

- (4) Despite any provisions in this Act, bulk water supply services which are primarily intended to supply water in bulk to a water services provider in a county or counties other than the county in which the bulk water abstraction works are located, shall be undertaken by bulk water service providers licensed under this section.

Observation

43. Clause 10 of the Bill seeks to amend Section 100 of the Water Act which deals with supply of bulk water. The bill proposes that all bulk water supply services to a water services provider in a county or multiple county different from where the bulk water abstraction is situated shall be undertaken by water works development agencies established under Section 65 of the Water Act. With the proposed amendments to the Bill by Senate which has provided and defined "bulk water service provider" it follows therefore that bulk water supply will be undertaken by a bulk water supplier. The definition has been expanded to include counties. **The Ministry has no objection to the proposed amendment to this clause.**

CLAUSE 11

44. **THAT Clause 11 of the Bill be deleted**

Observation

45. Clause 11 of the Bill proposes an amendment to Section 114 of the Water Act to expand the mandate of the Water Sector Trust Fund by broadening the scope of entities to which the fund caters. Currently the Act mandates the fund to provide financial support to counties in the provision of water and sanitation services and to assist in financing the development and management of water services in the marginalized and underserved areas. **Although the proposal by Senate is to retain the provision in the Act, the Ministry propose that the Section be amended to allow financing by the fund to all water sector institutions.**

CLAUSE 12

46. **THAT**, clause 12 of the Bill be amended in the proposed new section 119 (2) by inserting the following new paragraph immediately after paragraph (c) —

(h) two persons, a man and a woman, who possess a degree from a university recognized in Kenya and at least five years' experience in a relevant field, nominated by the Council of County Governors.

Observation

47. Clause 12 of the Bill seeks to amend Section 119 of the Water Act which establishes the Water Tribunal. The Act established the tribunal but did not provide for composition of the tribunal members. The proposed amendments to section therefore seek to cure this gap in the law.
48. Senate propose that the two persons appointed under category (c) be nominated by the Council of Governors.

49. The tribunal set up under the Act was established to hear disputes relating concerning implementation of the Act. As an arbiter, it would be prudent that the membership of the tribunal be as neutral as possible. It is for this simple reason that the proposed amendment by the Senate in this regard should not be sustained. **The Ministry proposes that Clause 12 of the Bill be retained as is.**

CLAUSE 2

50. **THAT Clause 2** of the Bill be amended—
- (b) by deleting paragraph (a) and inserting the following new paragraph—
 - (d) by inserting the following new definitions in the proper alphabetical sequence —
 - "**bulk water service provider**" means a water service provider, contracting authority, or any other person providing bulk water services in accordance with a license issued by the Regulatory Board for the service areas specified in the license;
 - "contracting authority" means—
 - (a) at the national government level, a state department, agency or state corporation which intends to have its functions undertaken by a private party; or
 - (b) at the county level, the county government, county agency or county corporation which intends to have its functions undertaken by a private party;
 - "joint committee" means a committee established by the national or county government consisting of the national government and a county government or two or more county governments;
 - "private party" means a party that enters into a project agreement with a contracting authority and is responsible for undertaking a project on behalf of the contracting authority under this Act;
 - (e) in Paragraph (b) by deleting the proposed definition of "bulk water" and substituting therefor with the following new definition—
 - "bulk water" means supply of water in bulk by a bulk water services provider to a water service providers for retail;
 - (f) by deleting Paragraph (c)

Observation

51. The proposed amendments to the water act include critical definitions and interpretations which will open up several water sector institutions to be capable of benefitting from the PPP funding option and also to be bankable. The proposed definition by senate of a bulk water service provider will allow government and its agencies to be bulk water service providers. **The Ministry is satisfied with the proposed definition and has no objection to its inclusion in the Bill.**
52. The Bill defines a "contracting authority" to mean a national or county government body seeking to delegate its function to a private party. **The Ministry has no objection to the addition of "county agency" to the list.** Reference to a "joint committee" is made under Sections 69 of the Water Act which provides for handover process of completed water

works on Commissioning. The Act is elaborate on how the hand over process of water works is to be undertaken. The roles of water works development agency, county government water services provider or cross-county water services provider are clear.

53. Inclusion of a joint committee whose role has not been defined is ambiguous. **The Ministry therefore objects the inclusion or definition of the joint committees**
54. The proposed definition of "**private party**" is in tandem with the PPP Act. **The Ministry therefore has no objection to its inclusion in the Bill**
55. The Ministry has no objection to this proposal for amendment given the new definition of a bulk water service provider will allow national government agencies to enter into PPPs. In view of the proposed new definition of a bulk water service provider, this provision in the Bill can be deleted as recommended by Senate.

3.2 COUNCIL OF GOVERNORS

56. The Governor for Laikipia County His Excellency, Hon. Joshua Irungu on behalf of the Council of Governors appeared before the Committee on Monday 8th April 2024 and submitted on both general and specific comments on the Senate Amendments to the Water Amendment Bill, 2023 as follows: -
57. The Council was agreeable to most of the amendments by the Senate as they include County Water Service Providers (WSPs) in bulk water service provision arrangements, entrenchment of cross- country WSPs in the law and requirement for consultation of country Governments before Water Works Development Agencies (WWDAs) engage investors.
58. The Council noted that WWDAs may choose to enter into bulk water purchase agreements with either investors or WSPs. They raised concerns of threat of private investors getting more opportunities due to economies of scale. The council urged the Committee to entrench a certain percentage of opportunities for county WSPs to ensure equity and motivate these entities to become commercially viable.
59. There is need to align the Water Act, Cap 372 2016 as a whole to the Constitution by reviewing the roles of various institutions that claw back on the functions of the County Governments. There is need also to harmonize and mainstream the role of County Governments in the entire chain of institutional framework of provision, regulation and overall management of water.
60. The Council presented on its specific comment on the amendment as follows:-
61. **Amend the proposed Section 68(ba) (i) and the proviso to**
 - i) With an investor in accordance with the provisions of the Public Private Partnership Act, Cap 430, subject to the economic efficiency criteria set by the Regulatory Board and after conducting public participation and obtaining a no objection issued by County Government whose area of jurisdiction the water works is located.

Observation

62. Consultation of County Government is not sufficient because the jurisdiction of WWDAs is limited until such a time as responsibility for operation and management of the water works is handed over to the County Government. The WWDA therefore needs a no objection from the relevant County Government before entering into bulk water purchase agreements with investors.

PART V

4 COMMITTEE OBSERVATIONS

63. Having considered the Senate Amendments to Water Amendment Bill, 2023 the Committee made the following observations:

CLAUSE 3

64. **THAT Clause 3** of the Bill be amended –

- (c) in the proposed new paragraph (g) by inserting the words “subject to the economic efficiency criteria set by the Regulatory Board” at the end of the paragraph; and
- (d) in the proposed new paragraph (h) by inserting the words “subject to the economic efficiency criteria set by the Regulatory Board” at the end of the paragraph.

Committee Observation

65. **The Public Private Partnerships Act which came into effect on 23rd December, 2021 is the principal law governing PPPs in Kenya.**
66. **Section 32 of the Act provides an elaborate legal and institutional framework for the carrying out and approval of a feasibility study which determines the viability of the project.**
67. **The Act applies to all projects agreements undertaken under both the National and County level PPP projects.**

Committee Recommendation

Amendment Rejected

CLAUSE 4

68. **That Clause 4 the Bill be amended by deleting clause 4 and inserting the following new clause 4-**
5. Section 68 of the principal Act is amended by inserting the following new paragraphs immediately after paragraph (b)—
- (ba) operate water works and provide bulk water services by entering into a bulk water purchase agreement —
 - (iii) with an investor in accordance with the provisions of the Public Private Partnerships Act, 2021, subject to the economic efficiency criteria set by the Regulatory Board and after conduction public participation and consulting the relevant county government whose area of jurisdiction the water works is located; or
 - (iv) with a water services provider subject to the economic efficiency criteria set by the Regulatory Board; or

(bb) operate water works and provide bulk water services as a bulk water services provider until such a time as the water works development agency transfers responsibility for the operation and management of water works to a county government or water service provider in whose area of jurisdiction the water works is located.

Committee Observation

69. There is an elaborate legal and institutional framework in place both under the PPP Act and the Water Act Cap 372 to ensure the financial integrity of the PPP projects, safeguard consumer interests and guarantee equitable access to water and sanitation services at fair prices. Further National public water works should not be transferable to a county government.

**Committee Recommendation
Amendment Rejected**

CLAUSE 5

70. THAT the Bill be amended in the proposed new section 68A(2) by deleting the words “with the approval of the Cabinet Secretary,” appearing immediately after the words “necessary thereafter”—

Committee Observation

Section 72 of the Water Act Cap 372 empowers the Regulatory Board to publish regulatory standards without the approval of the Cabinet Secretary. For consistency in the provisions of the law the Senate amendment is welcomed. However there is need for further amendment to remove requirement for publication in the *Gazette* as these are only standard guidelines and not regulations.

Committee Recommendation

Amendment Rejected

CLAUSE 6

71. THAT, Clause 6 of the Bill be amended—

(e) in paragraph (a), by deleting the new proposed subsection (1) and inserting the following new proposed subsection (1) —

3) As soon as possible, following the commissioning of waterworks, the waterworks development agency shall enter into an agreement with a county government, a joint committee, cross-county water service provider, or water service provider to provide water services within whose area of jurisdiction the services are located.

(b) by deleting paragraph (b) and inserting the following new paragraph-

(b) in subsection (2), by deleting the words "authority" appearing after the words "the joint committee" and inserting therefor the words "cross-county water service providers";

(c) by deleting paragraph (c) and inserting the following new paragraph-

(c) in subsection (3), by deleting the words " the authority" appearing after the words "the joint committee" and inserting therefor the words "cross-county water service providers"

Committee Observation

72. **The Act provides that hand over agreements for completed water works shall be between the Water Works Development Agencies and the County Government, the joint committee or authority of the County Governments within whose area the water works is located jointly with the water service provider The Bill also seeks to omit reference to joint committees and authorities in the process since the roles of the committee in the process has not been defined.**

Committee Recommendation Amendment Rejected

CLAUSE 7

73. **THAT, Clause 7 of the Bill be amended—**

(i) by deleting paragraph (a) and inserting the following new paragraph—

(a) by inserting a new paragraph immediately after paragraph (b)

(ba) evaluate and recommend bulk water tariffs and approve the imposition of such tariffs in line with consumer protection standards for use of water for domestic, commercial and irrigation purposes;

(bb) evaluate and recommend tariffs for irrigation purposes;

(j) in paragraph (b)by deleting the proposed new paragraph (c) and substituting therefor the following new paragraph—

(k) issue licenses, set conditions for water services provision, and accredit water service providers and bulk water service providers.

Committee Observation

74. **The Bill proposes amendments to Section 72 of the Water Act by introducing a new mandate for the Water Services Regulatory Board (WASREB) to evaluate and approve water, sewerage and bulk water tariffs for domestic, commercial and irrigation purposes**

75. The regulator evaluates the tariff and approves the impositions of the tariff in line with consumer protection standards.

Committee Recommendation
Amendment rejected

CLAUSE 9

76. **THAT, Clause 9** of the Bill be amended in paragraph (b) in the proposed new subsection (3) by deleting the words “provision of water services” appearing immediately after the words “infrastructure used for the” and inserting therefor the Words “contracted function”

Committee Observation

77. The proposed amendment enhances clarity and ensures precise use of assets and infrastructure within Public-Private Partnerships agreements

Committee Recommendation

Amendment agreed to

CLAUSE 10

78. **THAT Clause 10** of the Bill be amended by deleting the proposed subsection (4) and inserting therefor the following new subsection—

(4) Despite any provisions in this Act, bulk water supply services which are primarily intended to supply water in bulk to a water services provider in a county or counties other than the county in which the bulk water abstraction works are located, shall be undertaken by bulk water service providers licensed under this section.

Committee Observation

79. **Clause 10 of the Bill seeks to amend Section 100 of the Water Act which deals with supply of bulk water. The bill proposes that all bulk water supply services to a water services provider in a county or multiple county different from where the bulk water abstraction is situated shall be undertaken by water works development agencies established under Section 65 of the Water Act. The proposed amendments to the Bill by Senate which has provided and defined “bulk water service provider” it follows therefore that bulk water supply will be undertaken by a bulk water supplier. The definition has been expanded to include counties.**

Committee Recommendation

Amendment agreed to

CLAUSE 11

80. **THAT Clause 11** of the Bill be deleted

Committee Observation

81. **Clause 11 of the Bill proposes an amendment to Section 114 of the Water Act to expand the mandate of the Water Sector Trust Fund by broadening the scope of entities to which the fund caters. Currently the Act mandates the fund to provide financial support to counties in the provision of water and sanitation services and to assist in financing the development and management of water services in the marginalized and underserved areas.**

Committee Recommendation

Amendment rejected

CLAUSE 12

82. **THAT, clause 12 of the Bill be amended in the proposed new section 119 (2) by inserting the following new paragraph immediately after paragraph (c) —**

- (1) two persons, a man and a woman, who possess a degree from a university recognized in Kenya and at least five years' experience in a relevant field, nominated by the Council of County Governors.

Committee Observation

83. **Clause 12 of the Bill seeks to amend Section 119 of the Water Act which establishes the Water Tribunal. The Act established the tribunal but did not provide for composition of the tribunal members. The proposed amendments to section therefore seek to cure this gap in the law.**

84. **Senate propose that the two persons appointed under category (c) be nominated by the Council of Governors.**

85. **The tribunal set up under the Act was established to hear disputes relating to implementation of the Act. As an arbiter, it would be prudent that the membership of the tribunal be as neutral as possible.**

Committee Recommendation

Amendment rejected

CLAUSE 2

86. **THAT Clause 2 of the Bill be amended—**

- (c) by deleting paragraph (a) and inserting the following new paragraph—
- (g) by inserting the following new definitions in the proper alphabetical sequence —

"bulk water service provider" means a water service provider, contracting authority, or any other person providing bulk water services in accordance with a license issued by the Regulatory Board for the service areas specified in the license;

"contracting authority" means—

(a) at the national government level, a state department, agency or state corporation which intends to have its functions undertaken by a private party; or

(b) at the county level, the county government, county agency or county corporation which intends to have its functions undertaken by a private party;

"joint committee" means a committee established by the national or county government consisting of the national government and a county government or two or more county governments;

"private party" means a party that enters into a project agreement with a contracting authority and is responsible for undertaking a project on behalf of the contracting authority under this Act;

(h) in Paragraph (b) by deleting the proposed definition of "bulk water" and substituting therefor with the following new definition—

"bulk water" means supply of water in bulk by a bulk water services provider to a water service providers for retail;

(i) by deleting Paragraph (c)

87. **The Committee agreed to the proposed definition by Senate of a bulk water service provider which will allow government and its agencies to be bulk water service providers.**

88. **The Committee agreed to the insertion of new definition of a "contracting authority" to mean a national or county government body seeking to delegate its function to a private party.**

89. **The Committee agreed to the addition of the county agency**

90. **The Committee rejected proposed amendment on reference to a "joint committee" under Sections 69 of the Water Act which provides for handover process of completed water works on Commissioning. The Act is elaborate on how the hand over process of water works is to be undertaken. The roles of water works development agency, county government water services provider or cross-county water services provider are clear.**

91. **The Committee agreed to the proposed definition of Private party which is in tandem with the PPP Act.**

92. **The Committee agreed to the new definition of bulk water because it will allow national government agencies to enter into PPPs.**

93. **The Committee further in the view of the proposed new definition of bulk water service provider agreed to delete Paragraph (c)**

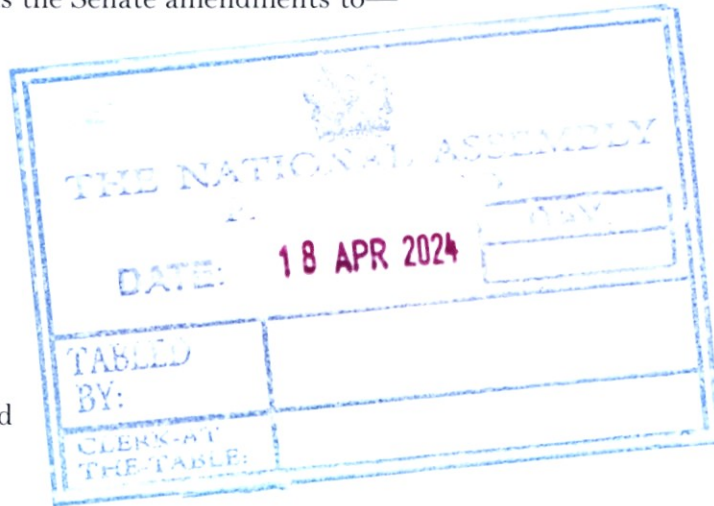
PART VI

5 COMMITTEE RECOMMENDATIONS

94. Having considered the Senate amendments to the Water (Amendment) Bill 2023, the Committee recommends that;

- 1) The House agrees with the proposed Senate Amendments to—
 - (i) clause 10; and
 - (ii) clause 9.

- 2) The House rejects the Senate amendments to—
 - (i) Clauses 2;
 - (ii) clause 3;
 - (iii) clause 4;
 - (iv) clause 5;
 - (v) clause 7;
 - (vi) clause 11; and
 - (vii) clause 12.



SIGNED.....*David Bowen Kangogo*..... DATE.....*18/4/2024*.....

HON. DAVID BOWEN KANGOGO, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON BLUE ECONOMY,
WATER AND IRRIGATION

PROPOSED ANNEXURES

- 1. Adoption List**
- 2. Minutes**
- 3. Presentations**

ANNEX ONE:

REPORT
ADOPTION
SCHEDULE



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
13TH PARLIAMENT - THIRD SESSION - 2024
DEPARTMENTAL COMMITTEE ON BLUE ECONOMY, WATER AND IRRIGATION
MEMBERS ATTENDANCE SCHEDULE

DATE: 16TH APR 2024 START: 10:32AM END: 11:10AM

VENUE: COMMITTEE ROOM, 4TH FLOOR CONTINENTAL HOUSE, PARLIAMENT

AGENDA: ADOPTION OF THE COMMITTEE REPORT ON THE SENATE AMENDMENTS TO THE WATER (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO 33 OF 2023)

NO.	NAME	SIGNATURE
1.	Hon. Bowen David Kangogo, MP – Chairperson	
2.	Hon. Kemero Maisori Marwa Kitayama, MP – Vice- Chairperson	
3.	Hon. Chepkwony Charity Kathambi, MP	
4.	Hon. William Kamket, MP	
5.	Hon. Buyu Rozaah Akinyi, MP	
6.	Hon. Eng. Nzengu Paul Musyimi, MP	
7.	Hon. Eng. Tandaza Kassim Sawa, MP	VIRTUAL
8.	Hon. Were Charles Ong'ondo, MP	
9.	Hon. Gachagua George, MP	
10.	Hon. Eric Wamumbi, MP	
11.	Hon. Dorothy Muthoni Ikiara, MP	
12.	Hon. Eng. Nebart Bernard Muriuki, MP	
13.	Hon. Eng. Muiruri Muthama Stanley, MP	VIRTUAL
14.	Hon. Mayazi Amina Laura, MP	
15.	Hon. Adow Mohamed Aden, MP	

Forwarded by:

Signed:
Mr. Nicodemus K. Maluki
First Clerk Assistant – Committee Clerk

Date: 16/4/2024

Approved by:

Signed: Date:
Mr Peter K. Chemweno,
Director
Directorate of Departmental Committee

12

ANNEX TWO:

COMMITTEE

MINUTES



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
13TH PARLIAMENT - THIRD SESSION – 2024

**MINUTES OF THE 18TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
BLUE ECONOMY, WATER AND IRRIGATION HELD ON TUESDAY 16TH APRIL,
2024 AT THE COMMITTEE ROOM, 4TH FLOOR CONTINENTAL HOUSE,
PARLIAMENT BUILDINGS AT 10.00 AM**

PRESENT

- | | | |
|---|---|-------------------|
| 1. Hon. Bowen David Kangogo, MP | - | Chairperson |
| 2. Hon. Kemero Maisori Marwa Kitayama, MP | - | Vice- Chairperson |
| 3. Hon. William Kamket, MP | | |
| 4. Hon. Eng. Nzengu Paul Musyimi, MP | | |
| 5. Hon. Eng. Tandaza Kassim Sawa, MP | | |
| 6. Hon. Were Charles Ong'ondo, MP | | |
| 7. Hon. Dorothy Muthoni Ikiara, MP | | |
| 8. Hon. Eng. Muiruri Muthama Stanley, MP | | |
| 9. Hon. Mnyazi Amina Laura, MP | | |

APOLOGIES

1. Hon. Chepkwony Charity Kathambi, MP
2. Hon. Buyu Rozaah Akinyi, MP
3. Hon. Gachagua George, MP
4. Hon. Eric Wamumbi, MP
5. Hon. Eng. Nebart Bernard Muriuki, MP
6. Hon. Adow Mohamed Aden, MP

**IN- ATTENDANCE – NATIONAL ASSEMBLY
COMMITTEE SECRETARIAT**

- | | |
|---------------------------|--------------------------|
| 1. Mr. Nicodemus Maluki | First Clerk Assistant |
| 2. Ms. Ivy Kageha | Third Clerk Assistant |
| 3. Ms. Lynette Otieno | Senior Legal Counsel |
| 4. Dr. Benjamin Ng'imor | Principal Fiscal Analyst |
| 5. Mr. Eugene Apaa | Research Officer |
| 6. Ms. Fridah Ngari | Media Relations Officer |
| 7. Ms. Joyce Wachera | Hansard Officer |
| 8. Mr. Eugene Luteshi | Audio Officer |
| 9. Ms. Carren Langat | Pupil |
| 10. Ms. Abigael Mwangi | Pupil |
| 11. Mr. Shekhuna Abubakar | Intern |

MIN.NO.DC/ BEW&I/092/2024: PRELIMINARIES

The Chairperson called the meeting to order at thirty- two minutes past ten o'clock and prayed. He thereafter requested all present to make a self-introduction.

AGENDA:

The agenda of the meeting was presented as follows:

1. Prayers

2. Preliminaries/Introductions
 - i. Adoption of the Agenda
 - ii. Remarks by the Chairperson
3. Confirmation of Minutes/Matters Arising
4. **Agenda: Consideration and adoption of the report on the Senate Amendments to the Water (Amendment) Bill, (National Assembly Bill No. 33 of 2023)**
5. Any other Business
6. Adjournment/Date of the next meeting

MIN.NO.DC/ BEW&I/093/2024: ADOPTION OF THE AGENDA

The Committee unanimously adopted the agenda of the day.

MIN.NO.DC/ BEW&I/094/2024: CONFIRMATION OF THE PREVIOUS MINUTES

This agenda item was deferred to the next meeting.

MIN.NO.DC/ BEW&I/095/2024: CONSIDERATION AND ADOPTION OF THE REPORT ON THE SENATE AMENDMENTS TO THE WATER (AMENDMENT) BILL, (NATIONAL ASSEMBLY BILL NO. 33 OF 2023)

The Committee considered and unanimously adopted the report on the Senate Amendments to the Water (Amendment) Bill, (National Assembly Bill No. 33 of 2023) with the following observations and recommendations:

Committee Observation

CLAUSE 3

1. **THAT Clause 3** of the Bill be amended –
 - (a) in the proposed new paragraph (g) by inserting the words “subject to the economic efficiency criteria set by the Regulatory Board” at the end of the paragraph; and
 - (b) in the proposed new paragraph (h) by inserting the words “subject to the economic efficiency criteria set by the Regulatory Board” at the end of the paragraph.

Committee Observation

2. **The Public Private Partnerships Act which came into effect on 23rd December, 2021 is the principal law governing PPPs in Kenya.**
3. **Section 32 of the Act provides an elaborate legal and institutional framework for the carrying out and approval of a feasibility study which determines the viability of the project.**
4. **The Act applies to all project agreements undertaken under both the National and County level PPP projects.**

Committee Recommendation

Amendment Rejected

CLAUSE 4

5. **That Clause 4 the Bill be amended by deleting clause 4 and inserting the following new clause 4-**

4. Section 68 of the principal Act is amended by inserting the following new paragraphs immediately after paragraph (b)—

(ba) operate water works and provide bulk water services by entering into a bulk water purchase agreement —

(i) with an investor in accordance with the provisions of the Public Private Partnerships Act, 2021, subject to the economic efficiency criteria set by the Regulatory Board and after conduction public participation and consulting the relevant county government whose area of jurisdiction the water works is located; or

(ii) with a water services provider subject to the economic efficiency criteria set by the Regulatory Board; or

(bb) operate water works and provide bulk water services as a bulk water services provider until such a time as the water works development agency transfers responsibility for the operation and management of water works to a county government or water service provider in whose area of jurisdiction the water works is located.

Committee Observation

6. **There is an elaborate legal and institutional framework in place both under the PPP Act and the Water Act Cap 372 to ensure the financial integrity of the PPP projects, safeguard consumer interests and guarantee equitable access to water and sanitation services at fair prices. Further National public water works should not be transferable to a county government.**

Committee Recommendation

Amendment Rejected

CLAUSE 5

7. **THAT the Bill be amended in the proposed new section 68A (2) by deleting the words “with the approval of the Cabinet Secretary,” appearing immediately after the words “necessary thereafter”—**

Committee Observation

8. **Section 72 of the Water Act Cap 372 empowers the Regulatory Board to publish regulatory standards without the approval of the Cabinet Secretary. For consistency in the provisions of the law the Senate amendment is welcomed. However, there is need for further amendment to remove requirement for publication in the *Gazette* as these are only standard guidelines and not regulations.**

Committee Recommendation

Amendment Rejected

CLAUSE 6

9. **THAT, Clause 6** of the Bill be amended—
- (a) in paragraph (a), by deleting the new proposed subsection (1) and inserting the following new proposed subsection (1) —
 - 1) As soon as possible, following the commissioning of waterworks, the waterworks development agency shall enter into an agreement with a county government, a joint committee, cross-county water service provider, or water service provider to provide water services within whose area of jurisdiction the services are located.
 - (b) by deleting paragraph (b) and inserting the following new paragraph-
 - (b) in subsection (2), by deleting the words "authority" appearing after the words "the joint committee" and inserting therefor the words "cross-county water service providers";
 - (c) by deleting paragraph (c) and inserting the following new paragraph-
 - (c) in subsection (3), by deleting the words " the authority" appearing after the words "the joint committee" and inserting therefor the words "cross-county water service providers"

Committee Observation

10. **The Act provides that hand over agreements for completed water works shall be between the Water Works Development Agencies and the County Government, the joint committee or authority of the County Governments within whose area the water works is located jointly with the water service provider The Bill also seeks to omit reference to joint committees and authorities in the process since the roles of the committee in the process has not been defined.**

**Committee Recommendation
Amendment Rejected**

CLAUSE 7

11. **THAT, Clause 7 of the Bill be amended—**
- (a) by deleting paragraph (a) and inserting the following new paragraph—
 - (a) by inserting a new paragraph immediately after paragraph (b)
 - (ba) evaluate and recommend bulk water tariffs and approve the imposition of such tariffs in line with consumer protection standards for use of water for domestic, commercial and irrigation purposes;
 - (bb) evaluate and recommend tariffs for irrigation purposes;
 - (b) in paragraph (b)by deleting the proposed new paragraph (c) and substituting therefor the following new paragraph—

- (c) issue licenses, set conditions for water services provision, and accredit water service providers and bulk water service providers.

Committee Observation

- 12. **The Bill proposes amendments to Section 72 of the Water Act by introducing a new mandate for the Water Services Regulatory Board (WASREB) to evaluate and approve water, sewerage and bulk water tariffs for domestic, commercial and irrigation purposes**
- 13. **The regulator evaluates the tariff and approves the impositions of the tariff in line with consumer protection standards.**

Committee Recommendation

Amendment rejected

CLAUSE 9

- 14. **THAT, Clause 9 of the Bill be amended in paragraph (b) in the proposed new subsection (3) by deleting the words “provision of water services” appearing immediately after the words “infrastructure used for the” and inserting therefor the Words “contracted function”**

Committee Observation

- 15. **The proposed amendment enhances clarity and ensures precise use of assets and infrastructure within Public-Private Partnerships agreements**

Committee Recommendation

Amendment agreed to

CLAUSE 10

- 16. **THAT Clause 10 of the Bill be amended by deleting the proposed subsection (4) and inserting therefor the following new subsection—**

- (4) **Despite any provisions in this Act, bulk water supply services which are primarily intended to supply water in bulk to a water services provider in a county or counties other than the county in which the bulk water abstraction works are located, shall be undertaken by bulk water service providers licensed under this section.**

Committee Observation

- 17. **Clause 10 of the Bill seeks to amend Section 100 of the Water Act which deals with supply of bulk water. The bill proposes that all bulk water supply services to a water services provider in a county or multiple county different from where the bulk water abstraction is situated shall be undertaken by water works development agencies established under Section 65 of the Water Act. The proposed amendments to the Bill by Senate which has provided and defined “bulk water service provider” it follows therefore that bulk water supply will be undertaken by a bulk water supplier. The definition has been expanded to include counties.**

Committee Recommendation
Amendment agreed to

CLAUSE 11

18. **THAT Clause 11** of the Bill be deleted

Committee Observation

19. **Clause 11 of the Bill proposes an amendment to Section 114 of the Water Act to expand the mandate of the Water Sector Trust Fund by broadening the scope of entities to which the fund caters. Currently the Act mandates the fund to provide financial support to counties in the provision of water and sanitation services and to assist in financing the development and management of water services in the marginalized and underserved areas.**

Committee Recommendation
Amendment rejected

CLAUSE 12

20. **THAT, clause 12 of the Bill be amended in the proposed new section 119 (2) by inserting the following new paragraph immediately after paragraph (c) —**

- (d) two persons, a man and a woman, who possess a degree from a university recognized in Kenya and at least five years' experience in a relevant field, nominated by the Council of County Governors.

Committee Observation

21. **Clause 12 of the Bill seeks to amend Section 119 of the Water Act which establishes the Water Tribunal. The Act established the tribunal but did not provide for composition of the tribunal members. The proposed amendments to section therefore seek to cure this gap in the law.**
22. **Senate proposes that the two persons appointed under category (c) be nominated by the Council of Governors.**
23. **The tribunal set up under the Act was established to hear disputes relating to implementation of the Act. As an arbiter, it would be prudent that the membership of the tribunal be as neutral as possible.**

Committee Recommendation
Amendment rejected

CLAUSE 2

24. **THAT Clause 2 of the Bill be amended—**
(a) by deleting paragraph (a) and inserting the following new paragraph—
(a)by inserting the following new definitions in the proper alphabetical sequence —

"bulk water service provider" means a water service provider, contracting authority, or any other person providing bulk water services in accordance with a license issued by the Regulatory Board for the service areas specified in the license;

"contracting authority" means—

(a) at the national government level, a state department, agency or state corporation which intends to have its functions undertaken by a private party; or

(b) at the county level, the county government, county agency or county corporation which intends to have its functions undertaken by a private party;

"joint committee" means a committee established by the national or county government consisting of the national government and a county government or two or more county governments;

"private party" means a party that enters into a project agreement with a contracting authority and is responsible for undertaking a project on behalf of the contracting authority under this Act;

- (b) in Paragraph (b) by deleting the proposed definition of "bulk water" and substituting therefor with the following new definition—
"bulk water" means supply of water in bulk by a bulk water services provider to a water service providers for retail;
- (c) by deleting Paragraph (c)

25. **The Committee agreed to the proposed definition by Senate of a bulk water service provider which will allow government and its agencies to be bulk water service providers.**
26. **The Committee agreed to the insertion of new definition of a "contracting authority" to mean a national or county government body seeking to delegate its function to a private party.**
27. **The Committee agreed to the addition of the county agency**
28. **The Committee rejected proposed amendment on reference to a "joint committee" under Sections 69 of the Water Act which provides for handover process of completed water works on Commissioning. The Act is elaborate on how the hand over process of water works is to be undertaken. The roles of water works development agency, county government water services provider or cross-county water services provider are clear.**
29. **The Committee agreed to the proposed definition of Private party which is in tandem with the PPP Act.**
30. **The Committee agreed to the new definition of bulk water because it will allow national government agencies to enter into PPPs.**
31. **The Committee further in the view of the proposed new definition of bulk water service provider agreed to delete Paragraph (c)**

COMMITTEE RECOMMENDATIONS

32. Having considered the Senate amendments to the Water (Amendment) Bill 2023, the Committee recommends that;

- 1) The House agrees with the proposed Senate Amendments to—
 - (i) clause 10; and
 - (ii) clause 9.

- 2) The House rejects the Senate amendments to—
 - (i) Clause 2;
 - (ii) Clause 3;
 - (iii) Clause 4;
 - (iv) Clause 5;
 - (v) Clause 7;
 - (vi) Clause 11; and
 - (vii) Clause 12.

MIN.NO.DC/ BEW&I/096/2024:

ANY OTHER BUSINESS

The following issues arose under this agenda item:

- i. The Chairperson informed the Committee that a Statement by Hon. Mary Maingi MP for Mwea Constituency was referred to the Committee on Thursday, 11th April, 2024 regarding flooding in Mwea Irrigation Scheme. The Committee resolved to visit the site and thereafter invite the Cabinet Secretary to respond to the Statement.

- ii. The Committee agreed to propose another date for inspection visit to KEWI. The Secretariat to liaise with the Ministry on the appropriate.

- iii. Meeting with the Cabinet Secretary, Ministry of Water, Sanitation and Irrigation regarding Thwake and Soin Koru Multi- purpose Dams. The Committee directed the Secretariat to liaise with Ministry and agree on a possible date.

- iv. Request for a statement by Hon. Mary Maingi, MP regarding flooding in Mwea Irrigation Scheme. The Committee resolved to undertake an inspection visit and then invite the Cabinet Secretary, Ministry of Water, Sanitation and Irrigation for response. The Secretariat was requested to facilitate.

- v. The Chairperson informed that the Committee that he had received an invitation to the 10th World Water Forum in Bali, Indonesia which is set to happen in on 18th – 25th May, 2024. The Committee will propose the list of participants later.

MIN.NO.DC/ BEW&I/097/2024:

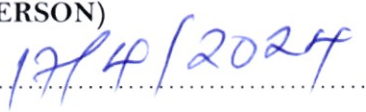
ADJOURNEMENT

There being no other business, the Chairperson adjourned the meeting at nine minutes past eleven o'clock. The next meeting will be held on notice.



Signed.....

**HON. BOWEN DAVID KANGOGO, MP
(CHAIRPERSON)**



Date.....



**REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
13TH PARLIAMENT - THIRD SESSION – 2024**

**MINUTES OF THE 17TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
BLUE ECONOMY, WATER AND IRRIGATION HELD ON TUESDAY 9TH APRIL,
2024 AT THE HOLIDAY INN NAIROBI, TWO RIVERS MALL AT 10.00 AM**

PRESENT

- | | | |
|---|---|--------------------------|
| 1. Hon. Bowen David Kangogo, MP | - | Chairperson |
| 2. Hon. Kemero Maisori Marwa Kitayama, MP | - | Vice- Chairperson |
| 3. Hon. William Kamket, MP | | |
| 4. Hon. Buyu Rozaah Akinyi, MP | | |
| 5. Hon. Eng. Tandaza Kassim Sawa, MP | | |
| 6. Hon. Gachagua George, MP | | |
| 7. Hon. Eric Wamumbi, MP | | |
| 8. Hon. Dorothy Muthoni Ikiara, MP | | |
| 9. Hon. Eng. Nebart Bernard Muriuki, MP | | |
| 10. Hon. Eng. Muiruri Muthama Stanley, MP | | |
| 11. Hon. Mnyazi Amina Laura, MP | | |

APOLOGIES

1. Hon. Chepkwony Charity Kathambi, MP
2. Hon. Eng. Nzengu Paul Musyimi, MP
3. Hon. Were Charles Ong'ondo, MP
4. Hon. Adow Mohamed Aden, MP

**IN- ATTENDANCE – NATIONAL ASSEMBLY
COMMITTEE SECRETARIAT**

- | | |
|---------------------------|------------------------------------|
| 1. Mr. Nicodemus Maluki | First Clerk Assistant |
| 2. Ms. Ivy Kageha | Third Clerk Assistant |
| 3. Ms. Lynette Otieno | Senior Legal Counsel |
| 4. Ms. Fridah Ngari | Media Relations Officer |
| 5. Ms. Maryan Ahmed Gabow | Public Comms. And Protocol Officer |
| 6. Mr. Eugene Luteshi | Audio Officer |
| 7. Ms. Joan Wasike | Office Assistant |

MIN.NO.DC/ BEW&I/087/2024: PRELIMINARIES

The Chairperson called the meeting to order at thirty minutes past ten o'clock and prayed. He thereafter requested all present to make a self-introduction.

AGENDA:

The agenda of the meeting was presented as follows:

1. Prayers
2. Preliminaries/Introductions
 - i. Adoption of the Agenda
 - ii. Remarks by the Chairperson

3. Confirmation of Minutes/Matters Arising
4. **Agenda: Committee Recommendations on the Senate Amendments to the Water (Amendment) Bill, (National Assembly Bill No. 33 of 2023)**
5. Any other Business
6. Adjournment/Date of the next meeting

MIN.NO.DC/ BEW&I/088/2024: ADOPTION OF THE AGENDA

The Committee unanimously adopted the agenda of the day.

MIN.NO.DC/ BEW&I/089/2024: CONFIRMATION OF THE PREVIOUS MINUTES

This agenda item was deferred to the next meeting.

MIN.NO.DC/ BEW&I/090/2024: CONSIDERATION OF THE COMMITTEE OBSERVATIONS AND RECOMMENDATIONS ON THE SENATE AMENDMENTS TO THE WATER (AMENDMENT) BILL, (NATIONAL ASSEMBLY BILL NO. 33 OF 2023)

1. Having considered the Senate Amendments to Water Amendment Bill, 2023 the Committee made the following observations:

CLAUSE 3

2. **THAT Clause 3** of the Bill be amended –
 - (a) in the proposed new paragraph (g) by inserting the words “subject to the economic efficiency criteria set by the Regulatory Board” at the end of the paragraph; and
 - (b) in the proposed new paragraph (h) by inserting the words “subject to the economic efficiency criteria set by the Regulatory Board” at the end of the paragraph.

Committee Observation

3. **The Public Private Partnerships Act** which came into effect on 23rd December, 2021 is the principal law governing PPPs in Kenya.
4. **Section 32 of the Act** provides an elaborate legal and institutional framework for the carrying out and approval of a feasibility study which determines the viability of the project.
5. **The Act applies to all projects agreements undertaken under both the National and County level PPP projects.**

Committee Recommendation

Amendment Rejected

CLAUSE 4

6. **That Clause 4 the Bill be amended by deleting clause 4 and inserting the following new clause 4–**
 4. Section 68 of the principal Act is amended by inserting the following new paragraphs immediately after paragraph (b)—

(ba) operate water works and provide bulk water services by entering into a bulk water purchase agreement —

(i) with an investor in accordance with the provisions of the Public Private Partnerships Act, 2021, subject to the economic efficiency criteria set by the Regulatory Board and after conduction public participation and consulting the relevant county government whose area of jurisdiction the water works is located; or

(ii) with a water services provider subject to the economic efficiency criteria set by the Regulatory Board; or

(bb) operate water works and provide bulk water services as a bulk water services provider until such a time as the water works development agency transfers responsibility for the operation and management of water works to a county government or water service provider in whose area of jurisdiction the water works is located.

Committee Observation

7. **There is an elaborate legal and institutional framework in place both under the PPP Act and the Water Act Cap 372 to ensure the financial integrity of the PPP projects, safeguard consumer interests and guarantee equitable access to water and sanitation services at fair prices. Further National public water works should not be transferable to a county government.**

Committee Recommendation

Amendment Rejected

CLAUSE 5

8. **THAT** the Bill be amended in the proposed new section 68A(2) by deleting the words “with the approval of the Cabinet Secretary,” appearing immediately after the words “necessary thereafter”—

Committee Observation

Section 72 of the Water Act Cap 372 empowers the Regulatory Board to publish regulatory standards without the approval of the Cabinet Secretary. For consistency in the provisions of the law the Senate amendment is welcomed. However there is need for further amendment to remove requirement for publication in the *Gazette* as these are only standard guidelines and not regulations.

Committee Recommendation

Amendment Rejected

CLAUSE 6

9. **THAT, Clause 6** of the Bill be amended—

(a) in paragraph (a), by deleting the new proposed subsection (1) and inserting the following new proposed subsection (1) —

- 1) As soon as possible, following the commissioning of waterworks, the waterworks development agency shall enter into an agreement with a county government, a joint committee, cross-county water service provider, or water service provider to provide water services within whose area of jurisdiction the services are located.
 - (b) by deleting paragraph (b) and inserting the following new paragraph-
 - (b) in subsection (2), by deleting the words "authority" appearing after the words "the joint committee" and inserting therefor the words "cross-county water service providers";
 - (c) by deleting paragraph (c) and inserting the following new paragraph-
 - (c) in subsection (3), by deleting the words " the authority" appearing after the words "the joint committee" and inserting therefor the words "cross-county water service providers"

Committee Observation

10. **The Act provides that hand over agreements for completed water works shall be between the Water Works Development Agencies and the County Government, the joint committee or authority of the County Governments within whose area the water works is located jointly with the water service provider The Bill also seeks to omit reference to joint committees and authorities in the process since the roles of the committee in the process has not been defined.**
Committee Recommendation

Amendment Rejected

CLAUSE 7

11. **THAT, Clause 7 of the Bill be amended—**

- (a) by deleting paragraph (a) and inserting the following new paragraph—
 - (a) by inserting a new paragraph immediately after paragraph (b)
 - (ba) evaluate and recommend bulk water tariffs and approve the imposition of such tariffs in line with consumer protection standards for use of water for domestic, commercial and irrigation purposes;
 - (bb) evaluate and recommend tariffs for irrigation purposes;
 - (b) in paragraph (b) by deleting the proposed new paragraph (c) and substituting therefor the following new paragraph—
 - (c) issue licenses, set conditions for water services provision, and accredit water service providers and bulk water service providers.

Committee Observation

12. **The Bill proposes amendments to Section 72 of the Water Act by introducing a new mandate for the Water Services Regulatory Board (WASREB) to evaluate and approve water, sewerage and bulk water tariffs for domestic, commercial and irrigation purposes**

13. **The regulator evaluates the tariff and approves the impositions of the tariff in line with consumer protection standards.**

Committee Recommendation

Amendment rejected

CLAUSE 9

14. **THAT, Clause 9** of the Bill be amended in paragraph (b) in the proposed new subsection (3) by deleting the words “provision of water services” appearing immediately after the words “infrastructure used for the” and inserting therefor the Words “contracted function”

Committee Observation

15. The proposed amendment enhances clarity and ensures precise use of assets and infrastructure within Public-Private Partnerships agreements

Committee Recommendation

Amendment agreed to

CLAUSE 10

16. **THAT Clause 10** of the Bill be amended by deleting the proposed subsection (4) and inserting therefor the following new subsection—

- (4) Despite any provisions in this Act, bulk water supply services which are primarily intended to supply water in bulk to a water services provider in a county or counties other than the county in which the bulk water abstraction works are located, shall be undertaken by bulk water service providers licensed under this section.

Committee Observation

17. **Clause 10 of the Bill seeks to amend Section 100 of the Water Act which deals with supply of bulk water. The bill proposes that all bulk water supply services to a water services provider in a county or multiple county different from where the bulk water abstraction is situated shall be undertaken by water works development agencies established under Section 65 of the Water Act. The proposed amendments to the Bill by Senate which has provided and defined “bulk water service provider” it follows therefore that bulk water supply will be undertaken by a bulk water supplier. The definition has been expanded to include counties.**

Committee Recommendation

Amendment agreed to

CLAUSE 11

18. **THAT Clause 11** of the Bill be deleted

Committee Observation

19. **Clause 11 of the Bill proposes an amendment to Section 114 of the Water Act to expand the mandate of the Water Sector Trust Fund by broadening the scope of entities to which the fund caters. Currently the Act mandates the fund to provide**

financial support to counties in the provision of water and sanitation services and to assist in financing the development and management of water services in the marginalized and underserved areas.

Committee Recommendation

Amendment rejected

CLAUSE 12

20. THAT, clause 12 of the Bill be amended in the proposed new section 119 (2) by inserting the following new paragraph immediately after paragraph (c) —

(d) two persons, a man and a woman, who possess a degree from a university recognized in Kenya and at least five years' experience in a relevant field, nominated by the Council of County Governors.

Committee Observation

21. **Clause 12 of the Bill seeks to amend Section 119 of the Water Act which establishes the Water Tribunal. The Act established the tribunal but did not provide for composition of the tribunal members. The proposed amendments to section therefore seek to cure this gap in the law.**
22. **Senate propose that the two persons appointed under category (c) be nominated by the Council of Governors.**
23. **The tribunal set up under the Act was established to hear disputes relating to implementation of the Act. As an arbiter, it would be prudent that the membership of the tribunal be as neutral as possible.**

Committee Recommendation

Amendment rejected

CLAUSE 2

24. **THAT Clause 2 of the Bill be amended—**
(a) by deleting paragraph (a) and inserting the following new paragraph—
(a) by inserting the following new definitions in the proper alphabetical sequence —

"bulk water service provider" means a water service provider, contracting authority, or any other person providing bulk water services in accordance with a license issued by the Regulatory Board for the service areas specified in the license;

"contracting authority" means—

- (a) at the national government level, a state department, agency or state corporation which intends to have its functions undertaken by a private party; or
- (b) at the county level, the county government, county agency or county corporation which intends to have its functions undertaken by a private party;

"joint committee" means a committee established by the national or county government consisting of the national government and a county government or two or more county governments;

"private party" means a party that enters into a project agreement with a contracting authority and is responsible for undertaking a project on behalf of the contracting authority under this Act;

- (b) in Paragraph (b) by deleting the proposed definition of "bulk water" and substituting therefor with the following new definition—
"bulk water" means supply of water in bulk by a bulk water services provider to a water service providers for retail;
- (c) by deleting Paragraph (c)
25. **The Committee agreed to the proposed definition by Senate of a bulk water service provider which will allow government and its agencies to be bulk water service providers.**
26. **The Committee agreed to the insertion of new definition of a "contracting authority" to mean a national or county government body seeking to delegate its function to a private party.**
27. **The Committee agreed to the addition of the county agency**
28. **The Committee rejected proposed amendment on reference to a "joint committee" under Sections 69 of the Water Act which provides for handover process of completed water works on Commissioning. The Act is elaborate on how the hand over process of water works is to be undertaken. The roles of water works development agency, county government water services provider or cross-county water services provider are clear.**
29. **The Committee agreed to the proposed definition of Private party which is in tandem with the PPP Act.**
30. **The Committee agreed to the new definition of bulk water because it will allow national government agencies to enter into PPPs.**
31. **The Committee further in the view of the proposed new definition of bulk water service provider agreed to delete Paragraph (c)**

COMMITTEE RECOMMENDATIONS

32. The Committee made the following recommendations to the Senate amendments to the Water (Amendment) Bill 2023:
- 1) The House agrees with the proposed Senate Amendments to—
- (i) clause 10; and
 - (ii) Clause 9.
- 2) The House rejects the Senate amendments to—
- (i) Clauses 2;
 - (ii) clause 3;
 - (iii) clause 4;
 - (iv) clause 5;

(v) clause 7;

(vi) clause 11; and

(vii) clause 12.

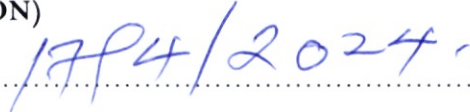
MIN.NO.DC/ BEW&I/091/2024:

ADJOURNEMENT

There being no other business, the Chairperson adjourned the meeting at twenty- five minutes past twelve o'clock. The next meeting will be held on notice.

Signed.....

**HON. BOWEN DAVID KANGOGO, MP
(CHAIRPERSON)**

Date.....



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
13TH PARLIAMENT - THIRD SESSION – 2024

**MINUTES OF THE 16TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
BLUE ECONOMY, WATER AND IRRIGATION HELD ON MONDAY 8TH APRIL,
2024 AT THE HOLIDAY INN NAIROBI, TWO RIVERS MALL AT 3.00 PM**

PRESENT

- | | | |
|---|---|--------------------------|
| 1. Hon. Bowen David Kangogo, MP | - | Chairperson |
| 2. Hon. Kemero Maisori Marwa Kitayama, MP | - | Vice- Chairperson |
| 3. Hon. William Kamket, MP | | |
| 4. Hon. Buyu Rozaah Akinyi, MP | | |
| 5. Hon. Eng. Tandaza Kassim Sawa, MP | | |
| 6. Hon. Gachagua George, MP | | |
| 7. Hon. Eric Wamumbi, MP | | |
| 8. Hon. Dorothy Muthoni Ikiara, MP | | |
| 9. Hon. Eng. Nebart Bernard Muriuki, MP | | |
| 10. Hon. Eng. Muiruri Muthama Stanley, MP | | |
| 11. Hon. Mnyazi Amina Laura, MP | | |

APOLOGIES

1. Hon. Chepkwony Charity Kathambi, MP
2. Hon. Eng. Nzengu Paul Musyimi, MP
3. Hon. Were Charles Ong'ondo, MP
4. Hon. Adow Mohamed Aden, MP

**IN- ATTENDANCE – NATIONAL ASSEMBLY
COMMITTEE SECRETARIAT**

- | | |
|---------------------------|------------------------------------|
| 1. Mr. Nicodemus Maluki | First Clerk Assistant |
| 2. Ms. Ivy Kageha | Third Clerk Assistant |
| 3. Ms. Lynette Otieno | Senior Legal Counsel |
| 4. Ms. Fridah Ngari | Media Relations Officer |
| 5. Ms. Maryan Ahmed Gabow | Public Comms. And Protocol Officer |
| 6. Mr. Eugene Luteshi | Audio Officer |
| 7. Ms. Joan Wasike | Office Assistant |

**IN- ATTENDANCE – COUNCIL OF GOVERNORS AND STATE DEPARTMENT
FOR WATER AND SANITATION**

- | | |
|----------------------------|----------------------------|
| 1. H.E Joshua W. Irungu | Governor, Laikipia County |
| 2. Mr. Brian Muthoka | programme Lead, Water, Env |
| 3. Ms. Naomi Kefa | Legal Officer |
| 4. Ms. Carolyne Menin | Legal Officer- MOWS&I |
| 5. Ms. Rose A. O. Nyakwana | DCSC- MOWS&I |

MIN.NO.DC/ BEW&I/083/2024: PRELIMINARIES

The Chairperson called the meeting to order at five minutes past three o'clock and prayed. He thereafter requested all present to make a self-introduction.

AGENDA:

The agenda of the meeting was presented as follows:

1. Prayers
2. Preliminaries/Introductions
 - i. Adoption of the Agenda
 - ii. Remarks by the Chairperson
3. Confirmation of Minutes/Matters Arising
4. **Agenda: Meeting with the Council of Governors to consider the Senate Amendments to the Water (Amendment) Bill, (National Assembly Bill No. 33 of 2023)**
5. Any other Business
6. Adjournment/Date of the next meeting

MIN.NO.DC/ BEW&I/084/2024: ADOPTION OF THE AGENDA

The Committee unanimously adopted the agenda of the day.

MIN.NO.DC/ BEW&I/085/2024: CONFIRMATION OF THE PREVIOUS MINUTES

This agenda item was deferred to the next meeting.

MIN.NO.DC/ BEW&I/086/2024: MEETING WITH THE COUNCIL OF GOVERNORS TO CONSIDER THE SENATE AMENDMENTS TO THE WATER (AMENDMENT) BILL, (NATIONAL ASSEMBLY BILL NO. 33 OF 2023)

1. The Governor for Laikipia County His Excellency, Hon. Joshua Irungu on behalf of the Council of Governors appeared before the Committee and submitted on both general and specific comments on the Senate Amendments to the Water Amendment Bill, 2023 as follows: -
2. The Council was agreeable to most of the amendments by the Senate as they include County Water Service Providers (WSPs) in bulk water service provision arrangements, entrenchment of cross-country WSPs in the law and requirement for consultation of country Governments before Water Works Development Agencies (WWDAs) engage investors.
3. The Council noted that WWDAs may choose to enter into bulk water purchase agreements with either investors or WSPs. They raised concerns of threat of private investors getting more opportunities due to economies of scale. The council urged the Committee to entrench a certain percentage of opportunities for county WSPs to ensure equity and motivate these entities to become commercially viable.
4. There is need to align the Water Act, Cap 372 2016 as a whole to the Constitution by reviewing the roles of various institutions that claw back on the functions of the County Governments. There is need also to harmonize and mainstream the role of

County Governments in the entire chain of institutional framework of provision, regulation and overall management of water.

5. The Council presented on its specific comment on the amendment as follows:-

6. **Amend the proposed Section 68(ba) (i) and the proviso to**

- i) With an investor in accordance with the provisions of the Public Private Partnership Act, Cap 430, subject to the economic efficiency criteria set by the Regulatory Board and after conducting public participation and obtaining a no objection issued by County Government whose area of jurisdiction the water works is located.

Observation

7. Consultation of County Government is not sufficient because the jurisdiction of WWDAs is limited until such a time as responsibility for operation and management of the water works is handed over to the County Government. The WWDA therefore needs a no objection from the relevant County Government before entering into bulk water purchase agreements with investors.

MIN.NO.DC/ BEW&I/087/2024:

ADJOURNEMENT

There being no other business, the Chairperson adjourned the meeting at twenty- five minutes past four o'clock. The next meeting will be held on the next day at ten o'clock.

Signed.....

**HON. BOWEN DAVID KANGOGO, MP
(CHAIRPERSON)**

Date.....



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
13TH PARLIAMENT - THIRD SESSION – 2024

**MINUTES OF THE 15TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
BLUE ECONOMY, WATER AND IRRIGATION HELD ON MONDAY 8TH APRIL,
2024 AT THE HOLIDAY INN NAIROBI, TWO RIVERS MALL AT 10.00 AM**

PRESENT

- | | | |
|---|---|--------------------------|
| 1. Hon. Bowen David Kangogo, MP | - | Chairperson |
| 2. Hon. Kemero Maisori Marwa Kitayama, MP | - | Vice- Chairperson |
| 3. Hon. William Kamket, MP | | |
| 4. Hon. Buyu Rozaah Akinyi, MP | | |
| 5. Hon. Eng. Tandaza Kassim Sawa, MP | | |
| 6. Hon. Gachagua George, MP | | |
| 7. Hon. Eric Wamumbi, MP | | |
| 8. Hon. Dorothy Muthoni Ikiara, MP | | |
| 9. Hon. Eng. Nebart Bernard Muriuki, MP | | |
| 10. Hon. Eng. Muiruri Muthama Stanley, MP | | |
| 11. Hon. Mnyazi Amina Laura, MP | | |

APOLOGIES

1. Hon. Chepkwony Charity Kathambi, MP
2. Hon. Eng. Nzengu Paul Musyimi, MP
3. Hon. Were Charles Ong'ondo, MP
4. Hon. Adow Mohamed Aden, MP

**IN- ATTENDANCE – NATIONAL ASSEMBLY
COMMITTEE SECRETARIAT**

- | | |
|---------------------------|------------------------------------|
| 1. Mr. Nicodemus Maluki | First Clerk Assistant |
| 2. Ms. Ivy Kageha | Third Clerk Assistant |
| 3. Ms. Lynette Otieno | Senior Legal Counsel |
| 4. Ms. Fridah Ngari | Media Relations Officer |
| 5. Ms. Maryan Ahmed Gabow | Public Comms. And Protocol Officer |
| 6. Mr. Eugene Luteshi | Audio Officer |
| 7. Ms. Joan Wasike | Office Assistant |

IN- ATTENDANCE – STATE DEPARTMENT FOR WATER AND SANITATION

- | | |
|----------------------------|-----------------------------|
| 1. Mr. Zacharia M. Njeru | Cabinet Secretary |
| 2. Mr. Julius Korir | Principal Secretary- MOWS&I |
| 3. Eng. S.A.O Alima | Water Secretary - MOWS&I |
| 4. Mr. Julius Hunga | MOWS&I |
| 5. Ms. Carolyne Menin | Legal Officer- MOWS&I |
| 6. Ms. Rose A. O. Nyakwana | DCSC- MOWS&I |
| 7. Mr. Samuel Mwangi | MOWS&I |
| 8. Ms. Eunice Mbithi | MOWS&I |
| 9. Ms. Esther Kamau | MOWS&I |

10. Mr. Geoffrey Rono
11. Mr. Mwangi Wahihia

MOWS&I
MOWS&I

MIN.NO.DC/ BEW&I/077/2024: PRELIMINARIES

The Chairperson called the meeting to order at ten minutes past ten o'clock and prayed. He thereafter requested all present to make a self-introduction.

AGENDA:

The agenda of the meeting was presented as follows:

1. Prayers
2. Preliminaries/Introductions
 - i. Adoption of the Agenda
 - ii. Remarks by the Chairperson
3. Confirmation of Minutes/Matters Arising
4. **Agenda:**
 - i. **Consideration of the Legal Brief on the Senate Amendments to the Water (Amendment) Bill, (National Assembly Bill No. 33 of 2023)**
 - ii. **Meeting with the State Department for Water and Sanitation to consider the Senate Amendments to the Water (Amendment) Bill, (National Assembly Bill No. 33 of 2023)**
5. Any other Business
6. Adjournment/Date of the next meeting

MIN.NO.DC/ BEW&I/078/2024: ADOPTION OF THE AGENDA

The Committee unanimously adopted the agenda of the day.

MIN.NO.DC/ BEW&I/079/2024: CONFIRMATION OF THE PREVIOUS MINUTES

This agenda item was deferred to the next meeting.

MIN.NO.DC/ BEW&I/080/2024: CONSIDERATION OF THE LEGAL BRIEF ON THE SENATE AMENDMENTS TO THE WATER (AMENDMENT) BILL, (NATIONAL ASSEMBLY BILL NO. 33 OF 2023)

The Legal Counsel briefed on the Senate Amendments to the Water (Amendment) Bill, (National Assembly Bill No. 33 of 2023) as follows;

1. The brief is guided by the Constitution which empowers Parliament to make provisions having the force of law in Kenya and the Interpretation and General Provisions Act, Cap 2 of the Laws of Kenya which provides for construction, application and interpretation of statutes.
2. The Committee was reminded that the Water (Amendment) Bill (National Assembly Bills No. 33 of 2023) was published on 4th July, 2023 and read a First Time on 26th July 2023. The Bill was considered by the National Assembly and passed with amendments on 23rd August 2023. The Bill seeks to provide for operationalizing public private partnership in the water sector.
3. Pursuant to Standing Order 144 the Committee was informed that the Bill was forwarded for consideration by the Senate. The Senate thereafter considered the Bill and passed it with amendments on 7th March, 2024.

4. The Committee was further informed that the Senate amendments have subsequently been committed to the Departmental Committee on Blue Economy, Water and Irrigation for consideration and reporting to the House.
5. The Legal Counsel presented an analysis of the Senate amendments in comparison to the Committee's amendments to the Water (Amendment) Bill as seen in the *Copy attached*.

MIN.NO.DC/ BEW&I/081/2024: MEETING WITH THE STATE DEPARTMENT FOR WATER AND SANITATION TO CONSIDER THE SENATE AMENDMENTS TO THE WATER (AMENDMENT) BILL, (NATIONAL ASSEMBLY BILL NO. 33 OF 2023)

The Cabinet Secretary for Water, Sanitation and Irrigation Mr. Zachariah Waweru, EGH appeared before the Committee and submitted on the Senate Amendments to the Water Amendment Bill, 2023 as follows:

CLAUSE 3

6. **THAT Clause 3** of the Bill be amended –
 - a) in the proposed new paragraph (g) by inserting the words “subject to the economic efficiency criteria set by the Regulatory Board” at the end of the paragraph; and
 - b) in the proposed new paragraph (h) by inserting the words “subject to the economic efficiency criteria set by the Regulatory Board” at the end of the paragraph.

Observation

7. Senate amendments proposes to amend the Bill to provide that bulk water storage agreements entered into by the National Water Storage Authority should be subject an economic efficiency criteria set by the regulatory board i.e. the Water Service Regulatory Board (WASREB).
8. The Public Private Partnerships Act which came into effect on December 23, 2021, is the principal law governing PPPs in Kenya. Section 32 of the Act provides an elaborate legal and institutional framework for the carrying out and approval of a feasibility study which determines the viability of the project. There is already a legal and institutional framework in place fairly robust to ensure the financial integrity of the PPP projects. **The Senate amendment is unnecessary. It is proposed that Clause 3 of the Bill be retained as is in the Bill.**

CLAUSE 4

9. **That Clause 4** the Bill be amended by deleting clause 4 and inserting the following new clause 4-
 4. Section 68 of the principal Act is amended by inserting the following new paragraphs immediately after paragraph (b)—
 - (ba) operate water works and provide bulk water services by entering into a bulk water purchase agreement —
 - i) with an investor in accordance with the provisions of the Public Private Partnerships Act, 2021, subject to the economic efficiency criteria set by the Regulatory Board and after conduction public participation and consulting the

- relevant county government whose area of jurisdiction the water works is located; or
- ii) with a water services provider subject to the economic efficiency criteria set by the Regulatory Board; or

(bb) operate water works and provide bulk water services as a bulk water services provider until such a time as the water works development agency transfers responsibility for the operation and management of water works to a county government or water service provider in whose area of jurisdiction the water works is located.

Observation

10. The Bill proposes an amendment to the Act to expand the mandate of the agencies by allowing the agencies to:
 - a) Enter into PPPs for supply of bulk water as per the PPP Act
 - a) Enter into agreements with other water services providers for bulk water supply
 - b) Operate as a water services provider until the agency transfers responsibility for the operation of water works to a county government or a water services provider
11. The proposed amendment by Senate provides for the requirement for public participation and consultation with the relevant county government in bulk water supply by the water works agencies in both arrangements. It further requires that the agreement both be subjected to an “economic efficiency criteria set by the WASREB.
12. The requirement for public participation has been provided for in the PPP Act, 2021. Under Section 22 of the Act, the contracting authority has a duty to ensure public participation and in projects implementation.
13. Subjecting the PPP agreement to an economic efficiency criteria set by the Regulatory Board, there is an elaborate legal and institutional framework in place both under the PPP Act and the Water Act, 2016 to ensure the financial integrity of the PPP projects, safeguard consumer interests and guarantee equitable access to water and sanitation services at fair prices. **The proposed amendment by Senate to (ba) (I) should NOT therefore be sustained. The provisions in the Bill should be retained as is.**
14. Accordingly, the PPP Act in which bulk water supply agreements between the water works development agencies and investors under the PPP framework is anchored caters for the public participation requirement.
15. The Water Act, 2016 provides for consumer protection and ensuring water services provision is affordable, efficient and equitable. Further, the Bill, under section 72 (b), Clause 7 the mandate of the regulatory board is enhanced to evaluate and approve imposition of bulk water tariffs in line with consumer protection standards. **The proposed amendment by Senate to (ba) (ii) should NOT therefore be sustained. The provisions in the Bill should be retained as is**

CLAUSE 5

16. THAT the Bill be amended in the proposed new section 68A(2) by deleting the words “with the approval of the Cabinet Secretary,” appearing immediately after the words “necessary thereafter”—

Observation

17. Section 72 of the Water Act, 2016 empowers the Regulatory Board to publish regulatory standards without the approval of the Cabinet Secretary. The Ministry agreed to the proposed amendment of Clause 5

CLAUSE 6

18. **THAT, Clause 6** of the Bill be amended—
(a) in paragraph (a), by deleting the new proposed subsection (1) and inserting the following new proposed subsection (1) —

- 1) As soon as possible, following the commissioning of waterworks, the waterworks development agency shall enter into an agreement with a county government, a joint committee, cross-county water service provider, or water service provider to provide water services within whose area of jurisdiction the services are located.

- (b) by deleting paragraph (b) and inserting the following new paragraph-

- (b) in subsection (2), by deleting the words "authority" appearing after the words “the joint committee” and inserting therefor the words “cross-county water service providers”;

- (c) by deleting paragraph (c) and inserting the following new paragraph-

- (c) in subsection (3), by deleting the words " the authority" appearing after the words “the joint committee” and inserting therefor the words “cross-county water service providers”

Observation

19. The amendment to Section 69 of the Act mainly sought to clarify that completed water works to be handed over to counties exclude national public water works. The Act provides that hand over agreements for completed water works shall be between the water works development agencies and the county government, the joint committee or authority of the county governments within whose area the water works is located jointly with the water service provider
20. The Bill also seeks to omit reference to joint committees and authorities in the process since the roles of the committee in the process has not been defined.
21. The transfer/ handover envisaged by the Bill under section 69 will be for the County public works and services.
- 22. Based on the above information, the proposed amendment by Senate should NOT be sustained. Clause 6 of the Bill be retained as is.**

CLAUSE 7

23. **THAT, Clause 7** of the Bill be amended—

(a) by deleting paragraph (a) and inserting the following new paragraph—

(a) by inserting a new paragraph immediately after paragraph (b)

(ba) evaluate and recommend bulk water tariffs and approve the imposition of such tariffs in line with consumer protection standards for use of water for domestic, commercial and irrigation purposes;

(bb) evaluate and recommend tariffs for irrigation purposes;

(b) in paragraph (b) by deleting the proposed new paragraph (c) and substituting therefor the following new paragraph—

(c) issue licenses, set conditions for water services provision, and accredit water service providers and bulk water service providers.

Observation

24. The Bill proposes amendments to Section 72 of the Water Act by introducing a new mandate for the Water Services Regulatory Board (WASREB) to evaluate and approve water, sewerage and bulk water tariffs for domestic, commercial and irrigation purposes. The regulator evaluates the tariff and approves the impositions of the tariff in line with consumer protection standards. **The Ministry proposes that Clause 7 (ba) be retained as is in the Bill**

CLAUSE 10

25. **THAT Clause 10** of the Bill be amended by deleting the proposed subsection (4) and inserting therefor the following new subsection—

(4) Despite any provisions in this Act, bulk water supply services which are primarily intended to supply water in bulk to a water services provider in a county or counties other than the county in which the bulk water abstraction works are located, shall be undertaken by bulk water service providers licensed under this section.

Observation

26. Clause 10 of the Bill seeks to amend Section 100 of the Water Act which deals with supply of bulk water. The bill proposes that all bulk water supply services to a water services provider in a county or multiple county different from where the bulk water abstraction is situated shall be undertaken by water works development agencies established under Section 65 of the Water Act. With the proposed amendments to the Bill by Senate which has provided and defined “bulk water service provider” it follows therefore that bulk water supply will be undertaken by a bulk water supplier. The definition has been expanded to include counties. **The Ministry has no objection to the proposed amendment to this clause.**

CLAUSE 11

27. **THAT Clause 11** of the Bill be deleted

Observation

28. Clause 11 of the Bill proposes an amendment to Section 114 of the Water Act to expand the mandate of the Water Sector Trust Fund by broadening the scope of entities to

which the fund caters. Currently the Act mandates the fund to provide financial support to counties in the provision of water and sanitation services and to assist in financing the development and management of water services in the marginalized and underserved areas. **Although the proposal by Senate is to retain the provision in the Act, the Ministry propose that the Section be amended to allow financing by the fund to all water sector institutions.**

CLAUSE 12

29. THAT, clause 12 of the Bill be amended in the proposed new section 119 (2) by inserting the following new paragraph immediately after paragraph (c) —
- (d) two persons, a man and a woman, who possess a degree from a university recognized in Kenya and at least five years' experience in a relevant field, nominated by the Council of County Governors.

Observation

30. Clause 12 of the Bill seeks to amend Section 119 of the Water Act which establishes the Water Tribunal. The Act established the tribunal but did not provide for composition of the tribunal members. The proposed amendments to section therefore seek to cure this gap in the law.
31. Senate propose that the two persons appointed under category (c) be nominated by the Council of Governors.
32. The tribunal set up under the Act was established to hear disputes relating concerning implementation of the Act. As an arbiter, it would be prudent that the membership of the tribunal be as neutral as possible. It is for this simple reason that the proposed amendment by the Senate in this regard should not be sustained. **The Ministry proposes that Clause 12 of the Bill be retained as is.**

CLAUSE 2

33. **THAT Clause 2** of the Bill be amended—
- (a) by deleting paragraph (a) and inserting the following new paragraph—
- (a) by inserting the following new definitions in the proper alphabetical sequence —

"bulk water service provider" means a water service provider, contracting authority, or any other person providing bulk water services in accordance with a license issued by the Regulatory Board for the service areas specified in the license;

"contracting authority" means—

- (a) at the national government level, a state department, agency or state corporation which intends to have its functions undertaken by a private party; or
- (b) at the county level, the county government, county agency or county corporation which intends to have its functions undertaken by a private party;

"joint committee" means a committee established by the national or county government consisting of the national government and a county government or two or more county governments;

"private party" means a party that enters into a project agreement with a contracting authority and is responsible for undertaking a project on behalf of the contracting authority under this Act;

(b) in Paragraph (b) by deleting the proposed definition of "bulk water" and substituting therefor with the following new definition—
"bulk water" means supply of water in bulk by a bulk water services provider to a water service providers for retail;

(c) by deleting Paragraph (c)

Observation

34. The proposed amendments to the water act include critical definitions and interpretations which will open up several water sector institutions to be capable of benefitting from the PPP funding option and also to be bankable. The proposed definition by senate of a bulk water service provider will allow government and its agencies to be bulk water service providers. **The Ministry is satisfied with the proposed definition and has no objection to its inclusion in the Bill.**

35. The Bill defines a "contracting authority" to mean a national or county government body seeking to delegate its function to a private party. **The Ministry has no objection to the addition of "county agency" to the list.** Reference to a "joint committee" is made under Sections 69 of the Water Act which provides for handover process of completed water works on Commissioning. The Act is elaborate on how the hand over process of water works is to be undertaken. The roles of water works development agency, county government water services provider or cross-county water services provider are clear.

36. Inclusion of a joint committee whose role has not been defined is ambiguous. **The Ministry therefore objects the inclusion or definition of the joint committees**

37. The proposed definition of "private party" is in tandem with the PPP Act. **The Ministry therefore has no objection to its inclusion in the Bill**

38. The Ministry has no objection to this proposal for amendment given the new definition of a bulk water service provider will allow national government agencies to enter into PPPs. In view of the proposed new definition of a bulk water

MIN.NO.DC/ BEW&I/082/2024:

ADJOURNEMENT

There being no other business, the Chairperson adjourned the meeting at ten minutes past two o'clock. The next meeting will be held on the same day at three o'clock.

Signed.....

**HON. BOWEN DAVID KANGOGO, MP
(CHAIRPERSON)**

Date.....17/4/2024.....



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
13TH PARLIAMENT - THIRD SESSION – 2024

MINUTES OF THE 14TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
BLUE ECONOMY, WATER AND IRRIGATION HELD ON THURSDAY 21ST
MARCH, 2024 AT THE COMMITTEE ROOM, 5TH FLOOR, CONTINENTAL
HOUSE, PARLIAMENT BUILDINGS AT 12.00 NOON

PRESENT

1. Hon. Kemero Maisori Marwa Kitayama, MP - Vice- Chairperson
2. Hon. Chepkwony Charity Kathambi, MP
3. Hon. William Kamket, MP
4. Hon. Eng. Nzengu Paul Musyimi, MP
5. Hon. Eng. Tandaza Kassim Sawa, MP
6. Hon. Were Charles Ong'ondo, MP
7. Hon. Dorothy Muthoni Ikiara, MP
8. Hon. Eng. Nebart Bernard Muriuki, MP
9. Hon. Eng. Muiruri Muthama Stanley, MP

APOLOGIES

1. Hon. Bowen David Kangogo, MP - Chairperson
2. Hon. Buyu Rozaah Akinyi, MP
3. Hon. Gachagua George, MP
4. Hon. Eric Wamumbi, MP
5. Hon. Mnyazi Amina Laura, MP
6. Hon. Adow Mohamed Aden, MP

**IN- ATTENDANCE – NATIONAL ASSEMBLY
COMMITTEE SECRETARIAT**

- | | |
|--------------------------|-------------------------|
| 1. Mr. Nicodemus Maluki | First Clerk Assistant |
| 2. Ms. Ivy Kageha | Third Clerk Assistant |
| 3. Ms. Lynette Otieno | Senior Legal Counsel |
| 4. Ms. Veron Aluoch | Research Officer III |
| 5. Ms. Fridah Ngari | Media Relations Officer |
| 6. Mr. Allan Gituku | Searjeant-At-Arms |
| 7. Ms. Abigael Mwanga | Intern |
| 8. Ms. Abubakar Shekhuna | Intern |

MIN.NO.DC/ BEW&I/072/2024: PRELIMINARIES

The Chairperson called the meeting to order at thirty- five minutes twelve o'clock and prayed. He thereafter requested all present to make a self-introduction.

AGENDA:

The agenda of the meeting was presented as follows:

1. Prayers
2. Preliminaries/Introductions
 - i. Adoption of the Agenda

- ii. Remarks by the Chairperson
3. Confirmation of Minutes/Matters Arising
4. **Agenda: Consideration of the Legal Brief on the Senate Amendments to the Water (Amendment) Bill, (National Assembly Bill No. 33 of 2023)**
5. Any other Business
6. Adjournment/Date of the next meeting

MIN.NO.DC/ BEW&I/073/2024: ADOPTION OF THE AGENDA

The agenda of the day was adopted having been proposed by the Hon. Eng. Nebart Bernard Muriuki, MP and seconded by the Hon. William Kamket, MP.

MIN.NO.DC/ BEW&I/074/2024: CONFIRMATION OF THE PREVIOUS MINUTES

This agenda item was deferred to the next meeting

MIN.NO.DC/ BEW&I/075/2024: CONSIDERATION OF THE LEGAL BRIEF ON THE SENATE AMENDMENTS TO THE WATER (AMENDMENT) BILL, (NATIONAL ASSEMBLY BILL NO. 33 OF 2023)

The Legal Counsel briefed the Committee on the Senate Amendments to the Water (Amendment) Bill, (National Assembly Bill No. 33 of 2023) as follows:

1. The brief is guided by the Constitution which empowers Parliament to make provisions having the force of law in Kenya and the Interpretation and General Provisions Act, Cap 2 of the Laws of Kenya which provides for construction, application and interpretation of statutes.
2. The Committee was reminded that the Water (Amendment) Bill (National Assembly Bills No. 33 of 2023) was published on 4th July, 2023 and read a First Time on 26th July 2023. The Bill was considered by the National Assembly and passed with amendments on 23rd August 2023. The Bill seeks to provide for operationalizing public private partnership in the water sector.
3. Pursuant to Standing Order 144 the Committee was informed that the Bill was forwarded for consideration by the Senate. The Senate thereafter considered the Bill and passed it with amendments on 7th March, 2024.
4. The Committee was further informed that the Senate amendments have subsequently been committed to the Departmental Committee on Blue Economy, Water and Irrigation for consideration and reporting to the House.
5. The Legal Counsel presented an analysis of the Senate amendments in comparison to the Committee's amendments to the Water (Amendment) Bill as follows:

ANALYSIS OF THE SENATE PROPOSALS TO THE WATER (AMENDMENT) BILL, 2023

CLAUSE	PRINCIPAL ACT	AMENDMENT	SENATE AMENDMENTS	OBSERVATIONS
2	"water services provider" means a company, public benefits organization or other person providing water services under and in accordance with a	2. Section 2 of the Water Act, 2016 (hereinafter referred to as "the principal	THAT clause 2 of the Bill be amended— (a) by deleting paragraph (a) and inserting the	The Senate proposal seeks- • Introduces a new definition of "bulk water service provider"

	<p>licence issued by the Regulatory Board for the service areas defined by the licence;</p>	<p>Act") is amended—</p> <p>(a) by inserting the following new definition in proper alphabetical sequence —</p> <p>"contracting authority" means—</p> <p>(a) at the national government level, a state department, agency or state corporation which intends to have its functions undertaken by a private party; or</p> <p>(b) at the county government level, the county government or county corporation which intends to have its functions undertaken by a private party; and</p> <p>(b) by deleting the definition of "bulk water" and substituting therefor with the following new</p>	<p>following new paragraph—</p> <p>(a) by inserting the following new definitions in the proper alphabetical sequence —</p> <p>"bulk water service provider" means a water service provider, contracting authority, or any other person providing bulk water services in accordance with a license issued by the Regulatory Board for the service areas specified in the license;</p> <p>"contracting authority" means—</p> <p>(a) at the national government level, a state department, agency or state corporation which intends to have its functions undertaken by a private party; or</p> <p>(b) at the county level, the county government, county agency or county corporation</p>	<p>that is not defined</p> <ul style="list-style-type: none"> • Amended the definition of "contracting authority" at county level seeks to incorporate "county agency" as part of contracting authority at the county level(clean-up) • Introduce a new definition of "joint committee" • Introduce the definition of "private party" that is in line with the Public Private Partnerships Act, Cap. 430. • Amended the definition of "bulk water" to remove WWDA and WSA as suppliers and replace them with bulk WSP • Deleted the proposed new definition of "water service provider" and retained the one in the Water Act, 2016. <p>SENATE RATIONALE</p> <ul style="list-style-type: none"> • Inclusion of county agency in the definition of "contracting authority" acknowledges the comprehensive roles played by various county entities in water services delivery.
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		<p>definition— “bulk water” means supply of water in bulk by a water works development agency or the Water Storage Authority to water service providers for retail;</p> <p>(c) by deleting the definition of “water services provider” and substituting therefor with the following new definition—</p> <p>“water services provider” means a company, agency, authority, state corporation, public benefit organization or any other person providing water services in accordance with a licence issued by the Regulatory Board for the service areas specified in the licence.</p>	<p>which intends to have its functions undertaken by a private party;</p> <p>“joint committee” means a committee established by the national or county government consisting of the national government and a county government or two or more county governments;</p> <p>“private party” means a party that enters into a project agreement with a contracting authority and is responsible for undertaking a project on behalf of the contracting authority under this Act;</p> <p>(b) by deleting the definition of “bulk water” and substituting therefor with the following new definition—</p> <p>“bulk water” means supply of water in bulk by a bulk water services provider to a water service</p>	<ul style="list-style-type: none"> • Introduction of bulk water service providers seeks to clarify who these providers are. • Introduction of private party seeks to provide clarity in the term that is used in the Bill but not defined in line with Public-Private Partnership Act. • Bulk water is amended to accurately reflect that bulk water mean supply of water in bulk by a bulk water services provider including both national and county governments. • The amendment of WSP seeks to remove contractions within the Act regarding designation and governance of water service providers. • Introduction of joint committee to remove uncertainty about the nature and scope of such committees. Noting that section 23 of the Intergovernmental Relations Act underscores the establishment of joint committees between national and county governments whenever necessary to achieve objectives of devolution under article 174 and 175 of the Constitution
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			providers for retail;	
3	<p>Powers and functions of the Water Storage Authority</p> <p>32. (1) The functions and powers of the Water Storage Authority shall be to—</p> <p>(a) undertake on behalf of the national government, the development of national public water works for water resources storage and flood control;</p> <p>(b) maintain and manage national public water works infrastructure for water resources storage;</p> <p>(c) collect and provide information for the formulation by the Cabinet Secretary of the national water resources storage and flood control strategies;</p> <p>(d) develop a water harvesting policy and enforce water harvesting strategies;</p>	<p>3. Section 32 of the principal Act is amended in subsection (1) by inserting the following new paragraphs immediately after paragraph (f)—</p> <p>(g) enter into a bulk water purchase agreement with an investor in accordance with the provisions of the Public Private Partnerships Act;</p> <p>(h) enter into a bulk water purchase agreement with a water works development agency</p>	<p>THAT clause 3 be amended-</p> <p>(a) in the proposed new paragraph (g) by inserting the words “subject to the economic efficiency criteria set by the Regulatory Board” at the end of the paragraph”—</p> <p>(g) enter into a bulk water purchase agreement with an investor in accordance with the provisions of the Public Private Partnerships Act subject to the economic efficiency criteria set by the Regulatory Board;</p> <p>(b) in the proposed new paragraph (h) by inserting the words “subject to the economic efficiency criteria set by the Regulatory Board” at the end of the paragraph”</p> <p>(h) enter into a bulk water purchase agreement with a water works development agency subject to the economic efficiency criteria set by the</p>	<p>The Senate amendment seeks to-</p> <p>Require WASREB to undertake economic efficiency analysis when the Water Storage Authority is entering into a bulk water purchasing agreement with an investor under PPP or a WSP.</p> <p>SENATE RATIONALE</p> <p>The amendment seeks to enhance the existing clause by introducing a vita measure whenever the Water Storage Authority decides to enter into a bulk water purchase agreement, whether with a private investor or a water works development agency, it is essential that the agreements undergo rigorous assessment based on economic efficiency criteria established by WASREB.</p> <p>The amendment seeks to ensure that the agreement is not only financially viable but also structured to safeguard public resources.</p> <p>The amendment underlines the role of the WASREB in regulatory oversight over public resources and ensures that any agreement</p>

	<p>(e) undertake on behalf of the national government strategic water emergency interventions during drought; and</p> <p>(f) advise the Cabinet Secretary on any matter concerning national public water works for water storage and flood control.</p> <p>(2) The Water Storage Authority may appoint agents for the operation, management, maintenance and safety of any storage infrastructure that it has developed.</p> <p>(3) The Water Storage Authority shall have such other powers and functions as may be conferred or imposed on it by this or any other Act.</p>		Regulatory Board	<p>entered into serves public interest, promotes sustainability and contributes to equitable distribution of water services.</p>
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COMMITTEE RESOLUTION

The Committee proposed to retreat in Machakos or Kiambu Counties between 7th – 9th April, 2024 with the Ministry of Water, Sanitation and Irrigation together with Council of Governors to deliberate on the proposed Senate amendments to the Water Amendment Bill, 2023 with a venue to tabling its report when the House resumes. The Secretariat was requested to facilitate the said retreat.

MIN.NO.DC/ BEW&I/076/2024: ADJOURNEMENT

There being no other business, the Chairperson adjourned the meeting at fifty minutes past one o'clock. The next meeting will be held on notice.

Signed.....

**HON. BOWEN DAVID KANGOGO, MP
(CHAIRPERSON)**

Date.....*19/4/2024*

ANNEX THREE:

LETTERS
INVITING
STAKEHOLDERS
FOR MEETINGS
WITH THE
COMMITTEE



**THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK**

P. O. Box 41842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: cna@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote

Ref: NA/DDC/BEW&I/2024/007

3rd April, 2024

Mr. Julius Korir, CBS
Principal Secretary
State Department for Water and Sanitation
Ministry of Water, Sanitation and Irrigation
Maji House, Upper Hill, Ngong' Road
P.O. Box 49720 -00100
NAIROBI

Dear

REF: MEETING WITH THE DEPARTMENTAL COMMITTEE ON BLUE ECONOMY, WATER AND IRRIGATION TO CONSIDER THE SENATE AMENDMENTS TO THE WATER (AMENDMENT) BILL, 2023 (NATIONAL ASSEMBLY BILL NO. 33 OF 2023)

The Departmental Committee on Blue Economy, Water and Irrigation is established pursuant to Standing Order 216 and is mandated *inter alia*, 'to study and review all legislation referred to it.

As you may be aware, the National Assembly considered the Water (Amendment) Bill, 2023 (National Assembly Bills No. 33 of 2023) and passed it with amendments on **23rd August, 2023** and forwarded the same to the Senate for concurrence Pursuant to the provisions of Standing Order 144. The Senate considered the Bill and passed it with amendments on **7th March, 2024**.

The Senate amendments to the Bill have subsequently been referred to the Departmental Committee on Blue Economy, Water and Irrigation for consideration and reporting back to the House.

In this regard, the Departmental Committee on Blue Economy, Water and Irrigation proposes to hold a meeting with the Cabinet Secretary to deliberate on the Senate Amendments to the Water (Amendment) Bill, 2023 on **Monday, 8th April, 2024** as per the attached programme at a venue to be confirmed in **Machakos or Kiambu Counties**. You may be accompanied by technical officers who will assist in responding to issues that may arise in the course of the Committee proceedings.

Kindly provide twenty (20) copies of your submission and send a soft copy to the Office of the Clerk via email: cns@parliament.go.ke .

The liaison officers for coordination of this meeting are Mr. Nicodemus Maluki who may be contacted on tel. no. 0722913902 or email: nicodemus.maluki@parliament.go.ke or Ms. Ivy Kageha on tel. no. 0727779172 or email: ivy.kageha@parliament.go.ke.

Yours

JEREMIAH NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

Copy To:

Hon. Zachariah Mwangi Njeru, EGH
Cabinet Secretary
Ministry of Water, Sanitation and Irrigation
Kilimo House, Cathedral Road
NAIROBI





**THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK**

P. O. Box 41842-00100
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www.parliament.go.ke/the-national-assembly

When replying, please quote

Ref: NA/DDC/BEW&I/2024/006

3rd April, 2024

Ms. Mary Mwiti
Chief Executive Officer
Council of Governors
Delta Corner, 2nd Floor, Chiromo Road
P.O Box 40401 – 00100
NAIROBI

Dear *Ms Mwiti*

REF: MEETING WITH THE DEPARTMENTAL COMMITTEE ON BLUE ECONOMY, WATER AND IRRIGATION TO CONSIDER THE SENATE AMENDMENTS TO THE WATER (AMENDMENT) BILL, 2023 (NATIONAL ASSEMBLY BILL NO. 33 OF 2023)

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The liaison officers for coordination of this meeting are **Mr. Nicodemus Maluki** who may be contacted on tel. no. **0722913902** or email: nicodemus.maluki@parliament.go.ke or **Ms. Ivy Kageha** on tel. no. **0727779172** or email: ivy.kageha@parliament.go.ke.

Yours



JEREMIAH NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

Copy To:

H.E Anne Waiguru, EGH
Chairperson
Council of Governors
Delta Corner, 2nd Floor
Chiromo Road, Off Waiyaki Way, Westlands
P.O Box 40401 – 00100
NAIROBI





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When replying, please quote

Ref: NA/DDC/BEW&I/2024/007

3rd April, 2024

Mr. Julius Korir, CBS
Principal Secretary
State Department for Water and Sanitation
Ministry of Water, Sanitation and Irrigation
Maji House, Upper Hill, Ngong' Road
P.O. Box 49720 -00100
NAIROBI

Dear Mr. Korir

REF: MEETING WITH THE DEPARTMENTAL COMMITTEE ON BLUE ECONOMY, WATER AND IRRIGATION TO CONSIDER THE SENATE AMENDMENTS TO THE WATER (AMENDMENT) BILL, 2023 (NATIONAL ASSEMBLY BILL NO. 33 OF 2023)

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In this regard, the Departmental Committee on Blue Economy, Water and Irrigation proposes to hold a meeting with the Cabinet Secretary to deliberate on the Senate Amendments to the Water (Amendment) Bill, 2023 on Monday, 8th April, 2024 as per the attached programme at a venue to be confirmed in Machakos or Kiambu Counties. You may be accompanied by technical officers who will assist in responding to issues that may arise in the course of the Committee proceedings.

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Yours



JEREMIAH NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

Copy To:

Hon. Zachariah Mwangi Njeru, EGH
Cabinet Secretary
Ministry of Water, Sanitation and Irrigation
Kilimo House, Cathedral Road
NAIROBI



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When replying, please quote

Ref: NA/DDC/BEW&I/2024/006

3rd April, 2024

Ms. Mary Mwiti
Chief Executive Officer
Council of Governors
Delta Corner, 2nd Floor, Chiromo Road
P.O Box 40401 – 00100
NAIROBI

Dear

REF: MEETING WITH THE DEPARTMENTAL COMMITTEE ON BLUE ECONOMY, WATER AND IRRIGATION TO CONSIDER THE SENATE AMENDMENTS TO THE WATER (AMENDMENT) BILL, 2023 (NATIONAL ASSEMBLY BILL NO. 33 OF 2023)

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In this regard, the Departmental Committee on Blue Economy, Water and Irrigation proposes to hold a meeting with the Chief Executive Officer, Council of Governors to deliberate on the Senate Amendments to the Water (Amendment) Bill, 2023 on **Monday, 8th April, 2024** as per the attached programme at a venue to be confirmed in **Machakos or Kiambu Counties**. You may be accompanied by technical officers who will assist in responding to issues that may arise in the course of the Committee proceedings.

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Yours

JEREMIAH NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

Copy To:

H.E Anne Waiguru, EGH
Chairperson
Council of Governors
Delta Corner, 2nd Floor
Chiromo Road, Off Waiyaki Way, Westlands
P.O Box 40401 – 00100
NAIROBI



ANNEX FOUR:

STAKEHOLDER'S
SUBMISSIONS



REPUBLIC OF KENYA
MINISTRY OF WATER, SANITATION AND IRRIGATION

SUBMISSIONS TO THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON BLUE ECONOMY, WATER AND IRRIGATION ON THE SENATE AMENDMENTS TO THE WATER (AMENDMENT) BILL, 2023 (NATIONAL ASSEMBLY BILL NO. 33 OF 2023)

Pursuant to a letter Ref. NA/DDC/BEW &1/2024/007 dated April 3, 2024, the Committee invited the Cabinet Secretary Ministry of Water, Sanitation and Irrigation to provide submissions to the Senate Amendments to the Water (Amendment) Bill, 2023 (National Assembly Bill No. 33 of 2023).

Honourable Chair,

The Ministry of Water, Sanitation and Irrigation initiated proposed amendments to the Water Act, 2016 in order to provide for public private partnerships in financing development of water works by the National and County government agencies for operations and maintenance of water services, storage facilities, treatment plants, laying mainlines, bulk water supply and last mile connectivity by the counties.

Kenya is classified as a water scarce country by the United Nations. This means that a lot of efforts are required in terms of funding to ensure quality and adequate water is served on the fifty (50) million citizens. The proposed PPP funding option if adopted, is expected to contribute to the attainment of the target of raising Kshs. 500 billion required to increase access to water from the current 60 per cent for the regulated services to 80 per cent and increase irrigation acreage to 1.2 million acres by the year 2030.

Once effected, these amendments will enable both the National and County Governments, water sector institutions to undertake PPP projects. This will greatly enhance the efforts to improve water and sewerage coverage for all by the year 2030.

Honourable Chair,

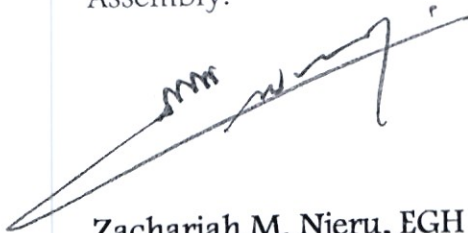
The proposed amendments were approved with two proposals for amendment of Sections 114 and 119 of the Principal Act. The above proposed amendments were also presented to the Senate, and are now before this Honourable Committee for consideration on the proposals by the Senate for amendment to the Bill.

The Ministry has reviewed the proposals coming from Senate and is grateful for the progress so far. The contributions you will make in your consideration of the Bill will go a long way in informing reforms in the water sector. The sector greatly affects water supply to every household in the country therefore the need for these particular reforms in the Bill cannot be overemphasized. The Ministry is grateful,

for the invaluable input that this Committee has provided in the process. We have no doubt that this commitment will continue beyond the legislative process.

Honourable Chair,

Having reviewed the proposed amendments to the Bill, we have prepared our comprehensive responses contained in the matrix attached herewith for consideration by this Committee. It is our humble submission that Clauses 3, 4, 6 and 12 be retained as proposed in the original Bill and passed by the National Assembly.



Zachariah M. Njeru, EGH
CABINET SECRETARY

8th April, 2024



REPUBLIC OF KENYA

MINISTRY OF WATER, SANITATION AND IRRIGATION

SUBMISSIONS TO THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON BLUE ECONOMY, WATER AND IRRIGATION ON THE SENATE AMENDMENTS TO THE WATER (AMENDMENT) BILL, 2023 (NATIONAL ASSEMBLY BILL NO. 33 OF 2023)

CLAUSE	PROVISION UNDER THE WATER (AMENDMENT) BILL NO. 33 OF 2023	CHANGES FROM THE SENATE	REMARKS
Clause 3	Section 32 of the principal Act is amended in subsection (1) by inserting the following new paragraphs immediately after paragraph (f)-; g) enter into a bulk water purchase agreement with an investor in accordance with the provisions of the	That Clause 3 of the Bill be amended – a) in the proposed new paragraph (g) by inserting the words “subject to the economic efficiency criteria set by the Regulatory Board” at the end of the paragraph; and	The Bill proposes amendments to Section 32 of the Water Act, 2016 to enhance the mandate of National Water Storage Authority to enter into bulk water purchase agreements with water service providers or private parties under PPP. Senate has proposed to amend the Bill to provide that bulk water storage agreements entered into by the National Water Storage Authority should be subject an economic

CLAUSE	PROVISION UNDER THE WATER (AMENDMENT) BILL NO. 33 OF 2023	CHANGES FROM THE SENATE	REMARKS
	<p>Public Private Partnerships Act;</p> <p>h) enter into a bulk water purchase agreement with a water works development agency.</p>	<p>b) in the proposed new paragraph, (h) by inserting the words “subject to the economic efficiency criteria set by the Regulatory Board” at the end of the paragraph.</p>	<p>efficiency criteria set by the regulatory board i.e the Water Service Regulatory Board (WASREB).</p> <p>The Public Private Partnerships Act which came into effect on December 23, 2021, is the principal law governing PPPs in Kenya. Section 32 of the Act provides an elaborate legal and institutional framework for the carrying out and approval of a feasibility study which determines the viability of the project.</p> <p>The feasibility study undertaken by the contracting authority under the PPP Act takes into account:</p> <ul style="list-style-type: none"> a) the technical requirements of the project; b) the legal requirements to be met by the parties to the project; c) the social, economic and environmental impact of the project; d) the affordability and value for money proposition in the project; and e) the project’s land requirements and required site preparatory activities

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			<p>necessary for effective and efficient project initiation</p> <p>The Act applies to all projects agreements undertaken under both the national and county level PPP projects.</p> <p>Section 6 of the Act provides for the establishment of a PPP Committee whose functions and powers include policy formulation, overseeing PPP contract implementation, approval of bid documents, feasibility studies, negotiated contract terms and monitoring implementation of the Act. In view of the foregoing provisions of law, there is already a legal and institutional framework in place fairly robust to ensure the financial integrity of the PPP projects.</p> <p>Under Section 70 of the Water Act, 2016, WASREB is established and mandated to protect the interests and rights of consumers in the provision of water services.</p> <p>Accordingly, WASREB sets standards and enforce regulations that guide the sector in not only ensuring that the consumers are</p>

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			<p>protected and have access to efficient and sustainable services, but also provide for financial sustainability of water service providers by allowing financing of operations, capital cost recovery and a return on capital that sustains services through ongoing investments.</p> <p>Under Section 72 of the Water Act, the regulatory board has power to set, monitor and review standards and conditions to ensure water services provision is affordable, efficient and equitable</p> <p>Further the Water (Amendment) Bill proposes for inclusion of section 72 (ba) to give the regulatory board the mandate to evaluate and approve water and sewerage tariffs, bulk water tariffs and approve the imposition of such tariffs in line with consumer protection standards for use of water for domestic, commercial and irrigation purposes;</p> <p>The foregoing provisions of law under the Water Act are also sufficient to safeguard consumer interests and guarantee equitable</p>

CLAUSE	PROVISION UNDER THE WATER (AMENDMENT) BILL NO. 33 OF 2023	CHANGES FROM THE SENATE	REMARKS
			<p>access to water and sanitation services at fair prices.</p> <p>Accordingly, the proposed amendment by Senate is unnecessary.</p> <p>It is proposed that Clause 3 of the Bill be retained as is.</p>
<p>Clause 4</p>	<p>Section 68 of the principal Act is amended by inserting the following new paragraph immediately after paragraph (b):</p> <p>ba) operate water works and provide water services:</p> <p>i. by entering into a bulk water purchase agreement with an investor in accordance with the provisions of the Public Private Partnerships Act, 2021;</p>	<p>That the Bill be amended by deleting Clause 4 and inserting the following new Clause 4 –</p> <p>4. Section 68 of the principal Act is amended by inserting the following new paragraphs immediately after Paragraph (b) –</p> <p>(ba) operate water works and provide bulk water services by entering into a bulk water purchase agreement –</p> <p>(i) with an investor in accordance with the</p>	<p>Section 68 of the Water Act, 2016 details the roles and responsibilities of the Water Works Development Agencies, including developing, maintaining and managing national public water works and providing technical support to the Cabinet Secretary.</p> <p>The Bill proposes an amendment to the Act to expand the mandate of the agencies by allowing the agencies to:</p> <p>a) Enter into PPPs for supply of bulk water as per the PPP Act</p> <p>a) Enter into agreements with other water services providers for bulk water supply</p> <p>b) Operate as a water services provider until the agency transfers</p>

CLAUSE	PROVISION UNDER THE WATER (AMENDEMENT) BILL NO. 33 OF 2023	CHANGES FROM THE SENATE	REMARKS
	<p>ii. by entering into a bulk water purchase agreement with a water services provider; or²</p> <p>iii. as a water services provider until such time as the water works development agency transfers responsibility for the operation and management of water works to a county government or water services provider in whose area of jurisdiction the water works is located:</p> <p>Provided that a national public water works shall not be transferable to a county government. <i>(removed by the Senate)</i></p>	<p>provisions of the Public Private Partnerships Act, Cap 430, subject to the economic efficiency criteria set by the Regulatory Board and after conducting public participation and consulting the relevant county government whose area of jurisdiction the water works is located; or</p> <p>(ii) with a water services provider subject to the economic efficiency criteria set by the Regulatory Board.</p> <p>(bb) operate water works and provide bulk water services as a bulk water services provider until such a time as the water</p>	<p>responsibility for the operation of water works to a county government or a water services provider</p> <p>Additionally, the Bill seeks to reaffirm the non-transferability of National Public Water Works developed by the Water Works Development Agencies that are gazetted as such.</p> <p>The proposed amendment by Senate provides for the requirement for public participation and consultation with the relevant county government in bulk water supply by the water works agencies in both arrangements. It further requires that the agreement both be subjected to an “economic efficiency criteria set by the WASREB.</p> <p>a) <u>For bulk water supply PPPs between water works development agencies and private investors- Clause (ba) (i)</u></p> <p>PPPs are meant to provide value to the public hence public involvement in the process is crucial. Equally important is making PPP projects and processes transparent. Public</p>

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		<p>Works development agency transfers responsibility for the operation and management of water works to a county government or water services provider in whose area of jurisdiction the water works is located.</p>	<p>participation is fundamental constitutional principle.</p> <p>The requirement for public participation has been provided for in the PPP Act, 2021. Under Section 22 of the Act, the contracting authority has a duty to ensure public participation and in projects implementation.</p> <p>The draft Public Participation Bill, 2023 currently in Parliament once enacted will provide more clarity on the scope and form of public participation required.</p> <p>Section 6 of the PPP Act establishes a Public Private Partnership Committee whose functions and powers include policy formulation, overseeing PPP contract implementation, approval of bid documents, feasibility studies, negotiated contract terms and monitoring implementation of the Act. Two persons nominated by the Council of Governors sit in this Committee to represent the interests of counties.</p>

CLAUSE	PROVISION UNDER THE WATER (AMENDEMENT) BILL NO. 33 OF 2023	CHANGES FROM THE SENATE	REMARKS
			<p>Accordingly, the PPP Act in which bulk water supply agreements between the water works development agencies and investors under the PPP framework is anchored caters for the public participation requirement.</p> <p>As for the proposal of subjecting the PPP agreement to an economic efficiency criteria set by the Regulatory Board, as earlier indicated, there is in place an elaborate legal and institutional framework in place both under the PPP Act and the Water Act, 2016 to ensure the financial integrity of the PPP projects, safeguard consumer interests and guarantee equitable access to water and sanitation services at fair prices.</p> <p>The proposed amendment by Senate to (ba) (i) should NOT therefore be sustained.</p> <p>The provisions in the Bill should be retained as is.</p> <p>b) For bulk water supply agreements between water works development agencies and water services providers clause (ba) (ii)</p>

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			<p>As earlier discussed, the Water Act, 2016 provides for consumer protection and ensuring water services provision is affordable, efficient and equitable.</p> <p>Further, the Bill, under section 72 (b), Clause 7 the mandate of the regulatory board is enhanced to evaluate and approve imposition of bulk water tariffs in line with consumer protection standards.</p> <p>The proposed amendment by Senate to (ba) (ii) should NOT therefore be sustained.</p> <p>The provisions in the Bill should be retained as is.</p> <p>c) <u>Transferability of National Public Water Works</u></p> <p>Senate proposal for amendment omits the clause (ba) which sought to reaffirm that national water works are not transferable.</p> <p>The Fourth Schedule of the Constitution provides for distribution of functions</p>

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			<p>between the National and County Governments; The National Government has the function of National Public Works while the County Government has the function of County public works and services.</p> <p>Further the Water Act, 2016, Section 8 provides for national public waters works to be designated by the Cabinet Secretary, by notice published in the gazette, for their maintenance and management to be undertaken by Water Works Development Agencies.</p> <p>The Water Act identifies national public water works as follows:</p> <ul style="list-style-type: none"> a) The water resources on which it depends is of a cross county in nature; b) It is financed out of the national government share of revenue pursuant to provisions of the Public Finance Management Act, 2012; c) It is intended to serve a function of the national government; <p>The national public water works include;</p> <ul style="list-style-type: none"> a) Water storage

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			<p>b) Waterworks for bulk distribution and provision of water services c) Inter-basin water facilities;</p> <p>Based on the foregoing, the specific provision regarding non-transferability on national public works in the Bill should be retained as is.</p>
<p>Clause 5</p>	<p>The principal Act is amended by inserting the following new section immediately after section 68 -;</p> <p>68A</p> <p>(1) Each Water Works Development Agency shall be licenced by the Regulatory Board with respect to the functions under section 68 (ba) of this Act.</p> <p>(2) The Regulatory Board shall, upon commencement of this Act and as may be necessary</p>	<p>That the Bill be amended in the proposed Section 68A (2) by deleting the words "and with the approval of the Cabinet Secretary, " appearing immediately after the words "necessary thereafter"</p>	<p>Section 72 of the Water Act, 2016 empowers the Regulatory Board to publish regulatory standards without the approval of the Cabinet Secretary. For consistency in the provisions of the law, the Ministry concedes the proposal for amendment of Clause 5 by Senate.</p> <p><i>Agree with Senate</i></p>

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	thereafter, and with the approval of the Cabinet Secretary, publish the standards and conditions for licensing of water works development agencies under this section.		
Clause 6	<p>Section 69 of the principal Act is amended-</p> <p>a) by deleting subsection (1) and substituting therefor the following new subsection;</p> <p>1) As soon as possible, following the commissioning of waterworks other than national public water works, the waterworks development agency shall enter into an agreement with any county government</p>	<p>That Clause 6 of the Bill be amended –</p> <p>a) in Paragraph (a), by deleting the new proposed Subsection (1) and inserting the following new proposed Subsection (1) -</p> <p>(1) As soon as possible, following the commissioning of waterworks, the water works development agency shall enter into an agreement with a county government, a joint committee, cross-county water services provider, or water services provider to provide water services within whose area of jurisdiction the services are located.</p>	<p>The amendment to Section 69 of the Act mainly sought to clarify that completed water works to be handed over to counties exclude national public water works. The Act provides that hand over agreements for completed water works shall be between the water works development agencies and the county government, the joint committee or authority of the county governments within whose area the water works is located jointly with the water service provider</p> <p>The Bill also seeks to omit reference to joint committees and authorities in the process since the roles of the committee in the process has not been defined.</p>

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	<p>or water services provider to provide water services within whose area of jurisdiction the services are located.</p> <p>b) in subsection (2), by deleting the words "the joint committee, authority"</p> <p>c) in subsection (3), by deleting the words "the joint committee, the authority"</p>	<p>b) by deleting Paragraph (b) and inserting the following new paragraph- (b) in Subsection (2) by deleting the word "authority" appearing after the words "the joint committee" and inserting therefor the words "cross-county water service providers".</p> <p>by deleting Paragraph (c) and inserting therefor the following new paragraph – (d) in Subsection (3) by deleting the words "the authority" appearing immediately after the words "the joint committee" and inserting the words "cross-county water service providers".</p>	<p>The transfer/ handover envisaged by the Bill under section 69 will be for the County public works and services.</p> <p>The justification for non- transferability is as follows;</p> <ol style="list-style-type: none"> 1. The Constitution of Kenya, Schedule 4 clearly distinguishes the National Public Works and County Public Works as functions of the National and County government respectively. 2. The National Public Water Works are clearly provided for under Section 8 of the Water Act which define what they are based on and what they include as outlined earlier. 3. The non- transferability of National public water works and Bulk water services provision will ensure repayment of the loan by the National Government and sustainability of infrastructure. 4. Cost- Benefit analysis; The formation of additional committees and authorities and cross county WSPs in the management of cross county water infrastructure in an additional cost tax

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			<p>payer and ultimately create additional cost to water when the same can be handled by water works development agency already existing.</p> <p>Based on the foregoing, the proposed amendment by Senate should NOT be sustained.</p> <p>Clause 6 of the Bill be retained as is.</p>
Clause 7	<p>Section 72 of the principal Act is amended in sub section (1) -;</p> <p>a) by inserting a new paragraph immediately after paragraph (b)-</p> <p>ba) evaluate and approve water and sewerage tariffs, bulk water tariffs and approve the imposition of such tariffs in line with consumer protection standards for use of water for domestic, commercial and irrigation purposes;</p>	<p>That Clause 7 of the Bill be amended –</p> <p>(a) by deleting Paragraph (a) and inserting the following new paragraph –</p> <p>(a) by inserting the following new paragraphs immediately after Paragraph (b) –</p> <p>(ba) evaluate and recommend bulk water tariffs and approve the imposition of such</p>	<p>The Bill proposes amendments to Section 72 of the Water Act by introducing a new mandate for the Water Services Regulatory Board (WASREB) to evaluate and approve water, sewerage and bulk water tariffs for domestic, commercial and irrigation purposes</p> <p>The regulator evaluates the tariff and approves the impositions of the tariff in line with consumer protection standards.</p> <p>We therefore propose that Clause 7 (ba) be retained as is in the Bill</p>

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	<p>b) by deleting paragraph (c) and substituting therefor the following new paragraph –</p> <p>(C) issue and set conditions for licensing of water services providers.</p>	<p>tariffs in line with consumer protection standards for use of water for domestic and commercial purposes;</p> <p>(bb) evaluate and recommend tariffs for irrigation purposes;</p> <p>(b) in Paragraph (b) by deleting the proposed new Paragraph (c) and inserting the following new paragraph –</p> <p>(c) issue licenses, set conditions for water service provision, and accredit water service providers and bulk water services providers.</p>	
<p>Clause 10</p>	<p>Section 100 of the principal Act is amended by inserting the following new subsections</p>	<p>That Clause 10 of the Bill be amended by deleting the proposed Subsection (4) and</p>	<p>Clause 10 of the Bill seeks to amend Section 100 of the Water Act which deals with supply of bulk water. The bill proposes that all bulk</p>

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	<p>immediately after subsection (3)</p> <p>–</p> <p>(4) Notwithstanding any provision in this Act, all bulk water supply services which are primarily intended to supply water in bulk to a water services provider in a county or counties other than the county in which the bulk water abstraction works are located shall be undertaken by waterworks development agencies established under section 65 of this Act and licensed under this section.</p>	<p>inserting therefor the following new subsection –</p> <p>(4) Despite any provision in this Act, bulk water supply services which are primarily intended to supply water in bulk to a water services provider in a county or counties other than the county in which the bulk water abstraction works are located, shall be undertaken by bulk water services providers licensed under this section.</p>	<p>water supply services to a water services provider in a county or multiple county different from where the bulk water abstraction is situated shall be undertaken by water works development agencies established under Section 65 of the Water Act.</p> <p>With the proposed amendments to the Bill by Senate which has provided and defined “bulk water service provider” it follows therefore that bulk water supply will be undertaken by a bulk water supplier. The definition has been expanded to include counties.</p> <p>The Ministry therefore has no objection to the proposed amendment to this clause.</p> <p>The proposed changes to be retained as per the Senate’s recommendations.</p>
<p>Clause 11</p>	<p>Section 114 of the Principal Act is amended in the opening statement by inserting the words “or any water works development agency”</p>	<p>The Bill is be amended to delete Clause 11</p>	<p>Clause 11 of the Bill proposes an amendment to Section 114 of the Water Act to expand the mandate of the Water Sector Trust Fund by broadening the scope of entities to which the fund caters. Currently the Act mandates the fund to provide financial support to counties</p>

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	immediately after the word "counties".		<p>in the provision of water and sanitation services and to assist in financing the development and management of water services in the marginalized and underserved areas.</p> <p>Although the proposal by Senate is to retain the provision in the Act, we propose that the Section be amended to allow financing by the fund to all public water sector institutions.</p>
Clause 12	<p>The Principal Act is amended by deleting section 119 and substituting therefor the following new section-</p> <p>(1)The Water Tribunal shall consist of the following members appointed by the Judicial Service Commission-</p> <p>(a) a Chairperson who shall be an advocate of the High Court of Kenya, with not less than ten years' post</p>	<p>Clause 12 of the Bill be amended in the proposed new Section 119 (2) by inserting the following new paragraph immediately after Paragraph (c):</p> <p>(a) two persons, a man and a woman, who possesses a degree from a university recognized in Kenya and at least five years' experience in a relevant field,</p>	<p>Clause 12 of the Bill seeks to amend Section 119 of the Water Act which establishes the Water Tribunal. The Act established the tribunal but did not provide for composition of the tribunal members. The proposed amendments to section therefore seek to cure this gap in the law.</p> <p>Senate proposes that the two persons appointed under category (c) be nominated by the Council of Governors.</p> <p>The tribunal set up under the Act was established to hear disputes relating concerning implementation of the Act. As an arbiter, it would be prudent that the</p>

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	<p>qualification experience</p> <p>(b) two persons one of whom shall be a registered civil engineer and the other a registered water engineer, with at least ten years' experience; and</p> <p>(c) two persons who possess a degree from a university recognized in Kenya and at least five years' experience in a relevant field.</p> <p>(2) The Chairperson and members of the Water Tribunal shall be appointed for a term of three years and shall be eligible for reappointment for one further term of three years.</p>	<p>nominated by the Council of Governors.</p>	<p>membership of the tribunal be neutral and independent as possible. It is for this simple reason that the proposed amendment by the Senate in this regard should not be sustained.</p> <p><u>The Ministry proposes that Clause 12 of the Bill be retained as is.</u></p>

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	(3)The Chairperson and members of the Water Tribunal shall be paid such remuneration and allowances as the Judicial Service Commission may, in consultation with the Salaries and Remuneration Commission, determine		
Clause 2	<p>Section 2 of the Water Act, 2016 (hereinafter referred to as "the principal Act ") is amended;</p> <p>a) by inserting the following new definition in proper alphabetical sequence:</p> <p>"contracting authority" means -;</p> <p>a) at the national government level, a state department, agency or state corporation which</p>	<p>That Clause 2 of the Bill be amended -</p> <p>(a) by deleting Paragraph (a) and inserting the following new paragraph -</p> <p>(a) by inserting the following new definitions in the proper alphabetical sequence -</p> <p>bulk water service provider" means a water service provider, contracting authority, or any other person providing bulk water services in accordance with a license issued by the</p>	<p>The proposed amendments to the water act include critical definitions and interpretations which will open up several water sector institutions to be capable of benefitting from the PPP funding option and also to be bankable.</p>

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	<p>intends to have its functions undertaken by a private party; or</p> <p>b) at the county government level, the county government or county corporation which intends to have its functions undertaken by a private party.</p> <p>c) by deleting the definition of "water services provider" and substituting therefor with the following new definition;</p>	<p>Regulatory Board for the service areas specified in the license;</p> <p>"contracting authority" means –</p> <p>(a) at the national government level, a state department, agency or state corporation which intends to have its functions undertaken by a private party; or</p> <p>(b) at the county level, the county government, county agency or county corporation which intends to have its functions undertaken by a private party;</p>	<p>The proposed definition by senate of a bulk water service provider will allow government and its agencies to be bulk water service providers.</p> <p>The Ministry is satisfied with the proposed definition and has no objection to its inclusion in the Bill.</p> <p>The Bill defines a "contracting authority" to mean a national or county government body seeking to delegate its function to a private party.</p> <p>The Ministry has no objection to the addition of "county agency" to the list.</p>

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	<p>"water services provider" means a company, agency, authority, state corporation, public benefit organization or any other person providing water services in accordance with a licence issued by the Regulatory Board for the service areas specified in the licence.</p>	<p>"joint committee" means a committee established by the national or county government consisting of the national government and a county government or two or more county governments;</p>	<p>Reference to a "joint committee" is made under Sections 69 of the Water Act which provides for handover process of completed water works on Commissioning. The Act is elaborate on how the hand over process of water works is to be undertaken. The roles of water works development agency, county government water services provider or cross-county water services provider are clear.</p> <p>Inclusion of a joint committee whose role has not been defined is ambiguous.</p> <p>The Ministry therefore objects the inclusion or definition of the joint committees</p>
		<p>"private party" means a party that enters into a project agreement with a contracting authority and is responsible for undertaking a project on behalf of the contracting authority under this Act;</p>	<p>The proposed definition is in tandem with the PPP Act.</p> <p>the Ministry therefore has no objection to its inclusion in the Bill</p>

CLAUSE	PROVISION UNDER THE WATER (AMENDMENT) BILL NO. 33 OF 2023	CHANGES FROM THE SENATE	REMARKS
		<p>d) in Paragraph (b) by deleting the proposed definition of "bulk water" and inserting therefor the following new definition –</p> <p>"bulk water" means supply of water in bulk by a bulk water services provider to a water services provider for retail;</p>	<p>The Ministry has no objection to this proposal for amendment given the new definition of a bulk water service provider will allow national government agencies to enter into PPPs.</p>
		<p>e) by deleting Paragraph (c).</p>	<p>In view of the proposed new definition of a bulk water service provider, this provision in the Bill can be deleted as recommended by Senate.</p>



**COMMENTS ON AMENDMENTS PASSED BY THE SENATE ON THE WATER (AMENDMENT) BILL, 2023 (NATIONAL ASSEMBLY
BILL NO. 33 OF 2023).**

**TO
THE NATIONAL ASSEMBLY STANDING COMMITTEE ON ENVIRONMENT, FORESTRY AND MINING**

**BY
THE COUNCIL OF GOVERNORS**

7TH APRIL, 2023

The Council of Governors,

In recognition of Article 1(4) of the Constitution of Kenya, that sovereign power of the people is exercised at the national level and the county level;

In further recognition of Article 6 (2) that governments at the national and county levels are distinct; and

Aware of the need for coordination and consultation between the National Government and County Governments to ensure that legislation responds to the key issues facing devolution, and further reflects the spirit and objects of devolution.

A) General Comments on the Amendments Passed by the Senate

The Council hereby notes as follows on the amendments passed by the Senate;

- i. The Council appreciates the Senate and particularly the Departmental Committee on Lands, Environment and Natural Resources for considering and incorporating most of its proposals on the Bill, which in fact feature in the amendments passed by the House.
- ii. The Council is agreeable to most of the amendments by the Senate as they include **County Water Service Providers (WSPs) in bulk water service provision arrangements, entrenchment of cross-county WSPs in the law and requirement for consultation of County Governments before water works development agencies (WWDAs) engage investors.**
- iii. However, the Council notes that WWDAs may choose to enter into bulk water purchase agreements with either private investors **or** WSPs. We note that this raises the threat of private investors getting more opportunities due to economies of scale. The Council urges the Assembly to entrench a certain percentage of opportunities for county WSPs to ensure equity and motivate these entities to become commercially viable.

The Council presents its specific comment on the amendments as hereunder.

B) Specific Comment on the Amendments Passed by the Senate:

CLAUSE	PROVISION of Section in the Bill	PROPOSED AMENDMENT	Rationale/Justification for the Amendment
Clause 4	<p>Section 68 of the principal Act is amended by inserting the following new paragraph immediately after paragraph (b):</p> <p>(ba) operate water works and provide bulk water services by entering into a bulk water purchase agreement.</p> <p>(i) with an investor in accordance with the provisions of the Public Private Partnerships Act, Cap 430, subject to the economic efficiency criteria set by the Regulatory Board and after conducting public participation and consulting the relevant county government whose area of jurisdiction the water works is located; or</p> <p>(ii) ...</p>	<p>Amend the proposed Section 68 (ba) (i) and the proviso to:</p> <p>(i) With an investor in accordance with the provisions of the Public Private Partnerships Act, Cap 430, subject to the economic efficiency criteria set by the Regulatory Board and after conducting public participation and obtaining a no objection issued by County Government whose area of jurisdiction the water works is located;</p>	<p>Consultation of the County Government is not sufficient because the jurisdiction of WWDAs is limited until such a time as responsibility for the operation and management of the waterworks is handed over to the county government. The WWDA therefore needs to obtain a no objection from the relevant County Government before entering into bulk water purchase agreements with investors.</p>

C) Conclusion/Our Ask

- i. That the Council's comments on the amendments passed by the Senate be adopted to further enrich the Bill.
- ii. That there is need to align the Water Act, 2016 as a whole to the Constitution by reviewing the roles of various institutions that claw back on the functions of county governments. There is also need to harmonize and mainstream the role of county governments in the entire chain of institutional framework of provision, regulation and overall management of water services.

END.