

REPUBLIC OF KENYA



THE PARLIAMENT



ELEVENTH PARLIAMENT-FOURTH SESSION

MEDIATION COMMITTEE ON THE WATER BILL (NATIONAL  
ASSEMBLY BILL NO. 7 OF 2014)

REPORT ON THE WATER BILL, 2014 (NATIONAL ASSEMBLY BILL  
NO. 7 OF 2014)

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JOINT CLERKS' CHAMBERS  
PARLIAMENT OF KENYA  
NAIROBI

JULY, 2016

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## ESTABLISHMENT OF THE COMMITTEE

The Mediation Committee on the Water Bill (National Assembly Bill No. 7 of 2014) was constituted by the Speaker of the National Assembly pursuant to Standing Order 149 (2) of National Assembly and the Speaker of the Senate pursuant to Standing Order 154 (2) of the Senate on 15<sup>th</sup> June, 2016, and 28<sup>th</sup> June, 2016, respectively.

### MEMBERS OF THE COMMITTEE

Chairperson	Sen. Lenny Kivuti, M.P
Vice - Chairperson	The Hon. Amina Abdalla, CBS, M.P
Members	The Hon. Ejidius Barua Njogu, M.P
	Sen. Hargura Godana, M.P
	Hon. Ibren Nasra Ibrahim
	Sen. Prof. John Lonyangapuo, M.P
	The Hon. Abdulaziz Farah, M.P
	Sen. Naisula Lesuuda, M.P
	The Hon. Andrew Mwadime, M.P
	Sen. George Khaniri, M.P

### SECRETARIAT

Ms. Brenda Ogembo	Clerk Assistant (Senate)
Ms. Mwanate Shaban	Clerk Assistant (Senate)
Ms. Tracy Chebet Koskei	Clerk Assistant (National Assembly)
Mr. Hassan Arale	Clerk Assistant (National Assembly)
Ms. Lynnet Otieno	Legal Counsel (National Assembly)
Mr. Leonard Koech	Legal Counsel (Senate)
Ms. Sarah Rukwaro	Serjeant at Arms (Senate)

## MANDATE

The Mediation Committee derives its mandate from Article 113 of the Constitution of Kenya and the National Assembly Standing Order No. 149 and Senate Standing Orders No. 154

The Committee was established to develop a version of the Water Bill (National Assembly Bill No. 7 of 2014) and in particular Clauses 2, 8, 8B, 30, 64, 75, 102, 114 and 115 of the Bill that would be presented to both Houses for approval as provided for under National Assembly Standing Order No. 149 (6) and Senate Standing Order No. 154 (6).

The specific clauses of the Bill that were in contention were Clauses 2, 8, 8B, 30, 64, 75, 102, 114 and 115.

## SITTINGS

The Committee held its first meeting on 14<sup>th</sup> July, 2016 and elected Sen. Lenny Kivuti, M.P and Hon. Amina Abdalla, CBS, M.P as Chairperson and Co-Chairperson respectively. The Committee thereafter deliberated on Clauses 2, 8, 8B, 30, 64, 75, 102, 114 and 115 of the Water Bill (National Assembly Bill No. 7 of 2014) which were in contention.

## RESOLUTIONS

The Committee deliberated on the contentious clauses and unanimously agreed on a version of the Bill to be presented to both Houses for approval. The agreed version of the Bill is appended to this report.

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## ADOPTION OF THE REPORT

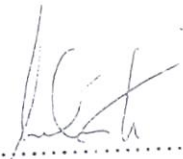
We the Members of the Mediation Committee on the Water Bill (National Assembly Bill No. 7 of 2014) have adopted this report pursuant to Standing Order 155 (1), and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity as per the attached schedule (Appendix II)

## ACKNOWLEDGMENT

The Committee thanks the Offices of the Speakers and the Clerks of the National Assembly and the Senate for the necessary support extended to it in the process of considering the Bill. The Chairperson thanks all the Members of the Committee for their sacrifice, commitment and selflessness to the cause of the mediation process that facilitated the achievement of consensus.

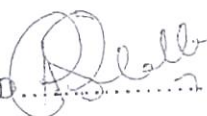
Mr. Speaker Sir,

It is now my pleasant duty and privilege to present and commend this report of the Mediation Committee including an agreed version of the Water Bill (National Assembly Bill No. 7 of 2014), for consideration and approval by the House pursuant to Article 113(2) of the Constitution and Standing Order 155(3) of the Senate and Standing Order 150(1) of the National Assembly.

SIGNED.....

DATE..... 26/07/2016

SEN. LENNY KIVUTI, M.P. - CHAIRPERSON

SIGNED.....

DATE..... 26/7/2016

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THE HON. AMINA ABDALLA, M.P - VICE - CHAIRPERSON

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## 1.0 BACKGROUND

The Water Bill (National Assembly Bill No. 7 of 2014) was published in the Kenya Gazette Supplement No. 3 of 20<sup>th</sup> January, 2014 as a Bill originating in the National Assembly. The Bill underwent the First and Second readings and subjected to public participation as required by the Kenya Constitution, 2010 and National Assembly Standing Orders and was passed on 7<sup>th</sup> July, 2015.

The Bill was referred to the Senate for consideration pursuant to National Assembly Standing Order No. 142 where it was read for the first time on 26<sup>th</sup> November, 2014. The Bill was passed in the Senate with amendments on 31<sup>st</sup> March, 2016.

Pursuant to Article 110 (4) of the Constitution and the provisions of Standing Orders 40 (1) and 149 of the Senate Standing Orders, the Senate conveyed a message to the National Assembly seeking the concurrence of the National Assembly to the amendments made to the Water (Amendment) Bill, 2014.

The National Assembly, on its Sitting of 7<sup>th</sup> June, 2016 considered the proposed amendments by the Senate and by a resolution rejected the Senate's amendments on Clauses 2, 8, 8B, 30, 64, 75, 102, 114 and 115 of the Bill. Consequently, and pursuant to National Assembly Standing Order No. 149 and Senate Standing Order No. 154, the Bill and specifically Clauses 2, 8, 8B, 30, 64, 75, 102, 114 and 115 of the Bill were referred to a Mediation Committee with the sole objective of developing a version of the Bill that would be presented to both Houses for approval.

2.0 RESOLUTIONS OF THE NATIONAL ASSEMBLY ON THE  
PROPOSED SENATE AMENDMENTS TO THE WATER BILL  
(NATIONAL ASSEMBLY BILL NO. 7 OF 2014)

The Departmental Committee on Environment and Natural Resources, considered the amendments proposed by the Senate to the Water Bill (National Assembly Bill No. 7 of 2014) and with the concurrence of the House resolved as follows:

CLAUSE 2

THAT clause 2 of the Bill be amended by inserting the following new definition in its proper alphabetical order --

“wetland” means an area where plants and animals have become adapted to temporary or permanent flooding by saline, brackish or fresh water”.

The Committee rejected the proposed amendment.

Justification: the word ‘wetland’ is not used within the body of the Bill hence no need to define it.

CLAUSE 8

THAT clause 8 be amended in sub clause (3) by inserting the words ‘for domestic use’ immediately after the words “water works”.

The Committee rejected the proposed amendment.

Justification: it is not clear where the proposed amendment should be inserted as the words “water works” appear twice, further the words proposed to be inserted create ambiguity in the intended meaning of the sub clause.

CLAUSE 8 B

THAT clause 8B be amended in sub clause (5) by deleting the word “three” appearing immediately after the words “Resource Strategy every” and substituting therefor the word “five”.

The Committee rejected the proposed amendment.

Justification: The amendment requires a review of the Water Resource Strategy every five (5) years. The purpose of a review is to monitor the implementation of the Strategy which is formulated every five (5) years as provided under sub clause (1). Increasing the period for

review to five (5) years would result in the process of formulation and review of the Strategy clashing.

CLAUSE 19

THAT clause 19 of the Bill be amended in sub clause (1) by inserting the words "georeferenced" immediately after the words "monitoring and".

The Committee agreed with the proposed amendment.

Justification: This amendment will ensure that the national monitoring and information system is georeferenced.

CLAUSE 24

THAT clause 24 of the Bill be amended in sub clause (1) (b) by inserting the words "appointed by the appointing authority after approval by the county assembly" immediately after the words "the basin".

The Committee agreed with the proposed amendment.

Justification: the amendment provides for the representative of each county government in a basin water resources committee to be approved by the County Assembly.

CLAUSE 25

THAT clause 25 of the Bill be amended by inserting the words "and county governments" immediately after the words "the Authority".

The Committee agreed with the proposed amendment.

Justification: Water Services is a shared function of both the national and county governments.

CLAUSE 30

THAT clause 30 of the Bill be amended in sub clause (1)(d) by inserting the words " and rules and regulations" immediately after the words "harvesting policy".

The Committee rejected the proposed amendment.

Justification: The powers to make rules and regulations lies with the Cabinet Secretary and is already provided for in Clause 140 of the Bill.

CLAUSE 63

THAT clause 63 of the Bill be amended in the headnote appearing immediately before the clause by deleting the word "Boards" and substituting therefor the word "Agencies".



The Committee agreed with the proposed amendment.

Justification: the amendment corrects an error in the title of the heading.

#### CLAUSE 64

THAT clause be amended in sub clause 1(b) by inserting the words "from the respective counties" immediately after the words "the Cabinet Secretary".

The Committee rejected the proposed amendment.

Justification: The proposed amendment creates an ambiguity as to where the chairperson of the development Agency is to be appointed from.

In order to remove the ambiguity, the Committee suggests that the proposed amendment should instead read 'from counties within the basin'

#### CLAUSE 72

THAT clause 72 of the Bill be amended—

- (a) in the marginal note by deleting the word "accreditation" and substituting therefor the word "licensing"; and
- (b) in sub clause (3) by deleting the word "accreditation" appearing immediately after the words "applicant meets the" and substituting therefor the word "licensing".

The Committee agreed with the proposed amendment.

Justification: the word "license" is more appropriate. Further, there are instances in the Bill where the word "license" is used.

#### CLAUSE 73

THAT clause 73 of the Bill be amended—

(1) in sub clause (1)—

- (a) in the marginal note by deleting the word "accredited" and substituting therefor the word "licensed";
- (b) by deleting the word "accredited" appearing immediately after the words "register of all" in the introductory phrase and substituting therefor the word "licensed";
- (c) in paragraph by deleting the word "accredited" appearing immediately after the words "providers are" and substituting therefor the word "licensed"; and

- (d) in paragraph(d) by deleting the word "accreditation" appearing immediately after the words "to their" and substituting therefor the word "licence";
- (2) in sub clause (2) by deleting the word "accredited" appearing immediately after the words "register of the" and substituting therefor the word "licensed"; and
- (3) in sub clause (4) by deleting the word "accredited" appearing immediately after the words "conduct of" and substituting therefor the word "licensed".

**The Committee agreed with proposed amendment.**

**Justification:** the word "license" is more appropriate. Further, there are instances in the Bill where the word "license" is used.

**CLAUSE 74**

**THAT** clause 74 of the Bill be amended—

- (1) in the marginal note by deleting the word "accreditation" and substituting therefor the words " a license";
- (2) in sub clause (1)—
  - (a) by deleting the word "accreditation" appearing immediately after words "revoke the" in the introductory phrase and substituting therefor the word "license";
  - (b) in paragraph (a) by deleting the word "accreditation" appearing after the words "Board that the" and substituting therefor the word "licensing";
  - (c) paragraph (b) by deleting the word "accreditation" appearing immediately after the words "criteria for" and substituting therefor the word "licensing"; and
  - (d) in paragraph (c) by deleting the word "accredited" appearing immediately after the words "they were" and substituting therefor the word "licensed";
  - (e) in paragraph (e) by deleting the word "accreditation" appearing immediately after the words "conditions for" and substituting therefor the word "licensing".
- (3) In sub clause (2) by deleting the word "accreditation" appearing immediately after the words "revocation of" and substituting therefor the word " a license"; and

In sub clause (3) by deleting the word "accreditation" appearing immediately after the words "person whose" and substituting therefor the word "license".  
The Committee agreed with the proposed amendment.

Justification: the word "license" is more appropriate. Further, there are instances in the Bill where the word "license" is used.

#### CLAUSE 75

THAT clause 75 of the Bill be amended by deleting sub clause one and substituting therefor the following new sub clause —

- (1) Each county government shall establish a water services provider.

The Committee rejected the proposed amendment.

Justification: The requirement that counties establish only one water services provider in each county will create monopoly. Further, the Committee prefers the use of the word "may" as opposed to "shall" as proposed by the amendment.

#### CLAUSE 102

THAT clause 102 of the Bill be amended by deleting sub clause (1) and substituting therefor the following new sub clause—

" A water user may enter into an agreement with any person with respect to the execution and maintenance by any party to the agreement of such works as the water user considers necessary or as the conditions of the water user may require for the purpose of protecting the catchment areas, drainage of land, carrying out soil conservation measures, the control of vegetation or effectively collecting, conveying or preserving the purity and quantity of water which the water user is for the time being authorised to take."

The Committee rejected the proposed amendment.

Justification: the amendment seeks to substitute the word "licensee" with the word "water user", however the word "water user" is too broad.

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#### CLAUSE 109

THAT clause 109 of the Bill be amended in sub clause (1) by inserting the words "georeferenced" immediately after the words "monitoring and".

The Committee agreed with the proposed amendment



Justification: the amendment requires the national monitoring and information system on water services to be georeferenced.

CLAUSE 114

THAT clause 114 of the Bill be amended in sub clause (1) by deleting paragraph (g) and substituting therefor the following new paragraph —

receive grants for onward lending to water services providers, counties and community schemes towards water services and water resources management projects for the underserved areas and urban poor;

The Committee rejected the proposed amendment

Justifications: the amendment seeks to substitute the word “communities” with the words “Community schemes”. However the phrase “Community schemes” is not defined in the Bill and could be misinterpreted.

CLAUSE 115

THAT clause 115 be amended in sub clause (1) by deleting paragraphs (b) and (c).

The Committee rejects the proposed amendment.

Justification: the amendment deletes the equalization fund and monies from a county government as sources of funding for the Water Sector Trust Fund. However, the object of the Fund is to provide conditional grants to counties, in addition to the equalisation fund and to assist in financing the development and management of water services in marginalized areas or any area deemed to be underserved. The equalisation fund would act as co-financing for donor funded projects.

CLAUSE 117

THAT clause 117 of the Bill be amended in sub clause (1) by deleting the words “which shall be a subordinate court as provided under Article 169(1)(d) of the Constitution”.

The Committee agrees with the proposed amendment.

Justification: the amendment deletes unnecessary words.

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CLAUSE 130

THAT clause 130 of the Bill be amended by inserting the words “conservation and” immediately after the words “for the”.



The Committee agrees with the proposed amendment

Justification: the amendment requires that incomes received from water permits and other fees be used for conservation in addition to management of water resources.

#### CLAUSE 139

THAT clause 139 of the Bill be amended by inserting the words "a county government" immediately after the words "Cabinet Secretary".

The Committee agreed with the proposed amendment.

Justification: the amendment adds County governments to the list of entities not deemed liable for claims relating to works authorized under the Bill. Inspection of such works shall not imply that the works are guaranteed by a County government.

#### CLAUSE 140

THAT clause 140 of the Bill be amended in—

- (a) sub clause (2) (a) by deleting the word "commission" appearing immediately after the words "Authority, the" and substituting therefor the word "Board"; and

The Committee agreed with the proposed amendment.

Justification: the amendment corrects an error in the Clause.

- (b) sub clause (2)(h) by inserting the words "or the Board" immediately after the word "Authority".

The Committee agreed with the proposed amendment.

Justification: the amendment empowers the Cabinet Secretary to make regulations with respect to requirements for the keeping of records and the furnishing of information to the Board.

#### CLAUSE 154

THAT clause 154 of the Bill be amended in sub clause 5 by deleting the word "Board" appearing immediately after the words "event that the" and substituting therefor the word "Authority".

The Committee agreed with the proposed amendment.

Justification: The amendment seeks to substitute the word "Board" with the word "Authority" which is more inclusive.

### 3.0 RESOLUTIONS OF THE MEDIATION COMMITTEE ON THE WATER BILL, 2014

The Committee held one sitting on 14<sup>th</sup> July, 2016 and unanimously resolved the contention on Clauses 2, 8, 8B, 30, 64, 75, 102, 114 and 115 as follows:

#### 1. Clause 2 – mediated version

The mediation committee identified Clause 2 in the definition in relation to wetlands. The definition was not taken up since it has not been used in the Bill.

Interpretation

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

“wetland” means an area where plants and animals have become adapted to temporary or permanent flooding by saline, brackish or fresh water; and

Cap.306.

#### 2. Clause 8 – mediated version

National  
Public  
Water  
Works.

8. (1) A national public water works means a water works which has been designated by the Cabinet Secretary, by notice published in the Gazette, as a national public water works based on the fact that—

(a) the water resource on which it depends is of a cross county in nature;

No.18 of  
2012.

(b) it is financed out of the national government's share of national revenue pursuant to the provisions of the Public Finance Management Act, 2012;

(c) it is intended to serve a function of the national government; or

(d) it is intended to serve a function which by agreement between the national and county

government has been transferred to the national government.

(2) National public water works include —

- (a) water storage;
- (b) water works for bulk distribution and provision of water services;
- (c) inter-basin water transfer facilities; and
- (d) reservoirs for impounding surface run-off and for regulating stream flows to synchronize them with water demand patterns which are of strategic or national importance.

No. 6 of  
2012.

(3) A national public water works for domestic use shall, subject to the acquisition of a permit from the Authority in case of inter basin water transfer, take precedence over all other water works for the use of water or the drainage of land.

(4) Subject to the Land Act, land required for national public water works may be acquired in any manner provided by law for the acquisition of land for public purposes.

(5) The Cabinet Secretary may, after reasonable notice to any landholder concerned, cause to be constructed and maintained upon any land such works as the Cabinet Secretary may consider necessary for the purposes of any national public water works.

(6) Compensation on just terms shall be payable by the Government to the owner of the land on which any such works are constructed, but in assessing the amount of compensation payable, the Cabinet Secretary shall take into consideration any benefit accruing to the land by the construction of the

works and any adverse effect on the land caused by the works, as the case may be.

(7) The Cabinet Secretary shall make regulations for the better carrying into effect of subsections (5) and (6).

### 3. Clause 8B – mediated version

National Water Resource Strategy. 8B.(1) The Cabinet Secretary shall, within one year of the commencement of this Act and every five years thereafter, following public participation, formulate a national water resource strategy.

(2) The object of the Water Resource Strategy shall be to provide the Government's plans and programs for the protection, conservation, control and management of water resources.

(3) The Water Resources Strategy shall contain, among other things, details of –

(a) existing water resources and their defined riparian areas;

(b) measures for the protection, conservation, control and management of water resources and approved land use for the riparian area;

(c) minimum water reserve levels at national and county levels;

(d) institutional capacity for water research and technological development;

(e) functional responsibility for national and county governments in relation to water resources management; and



(f) any other matters the Cabinet Secretary considers necessary.

(4) The Cabinet Secretary shall—

(a) prepare and issue an annual report on the state of national water resource strategies in Kenya; and

(b) may direct any lead agency to prepare and submit to it a report on the state of national water resources under the administration of that lead agency.

(5) the Cabinet Secretary shall review each approved water resource strategy every three years.

#### 4. Clause 30 – mediated version

Powers and functions of the Water Storage Authority shall be to -

the Water Storage Authority.

(a) undertake on behalf of the national government, the development of national public water works for water resources storage and flood control;

(b) maintain and manage national public water works infrastructure for water resources storage;

(c) collect and provide information for the formulation by the Cabinet Secretary of the national water resources storage and flood control strategies;

(d) develop a water harvesting policy and enforce water harvesting strategies;

(e) undertake on behalf of the national government strategic water emergency interventions during drought; and

(f) advise the Cabinet Secretary on any matter concerning national public water works for water storage and flood control.

(2) The Water Storage Authority may appoint agents for the operation, management, maintenance and safety of any storage infrastructure that it has developed.

(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.

5. **Clause 64 – mediated version**

Boards of the water works development agencies. 64. (1) Each water works development agency shall consist of—

- (a) a chairperson, who shall be appointed by the Cabinet Secretary from counties within the basin area;
- (b) four other members who shall be appointed by the Cabinet Secretary from counties within the basin area; and
- (c) the Chief Executive Officer.

(2) The First Schedule has effect with respect to the membership and procedure of the water works development agencies.

6. **Clause 75 – mediated version**

Establishment of water service providers. 75.(1) A county government shall establish water services providers.

(2) In establishing a water services provider, a county government shall comply with the standards of commercial viability set out by

the Regulatory Board.

(3) A water services provider established under this section may be a public limited liability company established under the Companies Act or other body providing water services as may be approved by the Regulatory Board.

Cap. 486.

(4) A company intending to be licensed as a water service provider shall submit to the Regulatory Board its memorandum and articles of association that conform to the guidelines developed and approved by the Regulatory Board.

(5) The Regulatory Board shall make regulations on the standard of water to be supplied by water service providers licensed under this section.

#### 7. Clause 102 – mediated version

Agreements as to protection of sources of water etc, 102.(1) A licensee may enter into an agreement with any person with respect to the execution and maintenance, by any party to the agreement, of such works as the licensee considers necessary or as the conditions of the licence may require for the purpose of protecting the catchment areas, drainage of land, carrying out soil conservation measures, the control of vegetation or effectively collecting, conveying or preserving the purity and quantity of water which the licensee is for the time being authorised to take.

(2) An agreement under this section may be registered against any proprietor of the applicable land, and shall be binding upon and enforceable against such person or successor in title.

8. Clause 114 – mediated version

Functions of the Fund. 114.(1) The powers and functions of the Fund shall be to—

- (a) manage the resources of the Fund;
- (b) mobilize additional resources for the Fund;
- (c) formulate and implement principles, regulations and procedures in consultation with the national government and county governments for financing projects, including efficiency and effectiveness of funds;
- (d) implement measures to ensure the efficient and equitable sharing of the resources of the Fund giving priority to resource allocation in –
  - (i) rural and urban areas where access to basic water services is below the national average; and
  - (ii) rural areas which are vulnerable to the degradation or depletion of water resources;
- (e) monitor the implementation of projects;
- (f) maintain and make public available information on the projects financed and impact of such projects;
- (g) receive grants for onward lending to water services providers, counties and registered community schemes, towards water services and water resources management projects for the underserved areas and urban poor;
- (h) establish and manage subsidiary funds as may be necessary for sustainable financing towards water services and water resource management; and
- (i) in collaboration with relevant institutions develop incentive



programmes for water resources management including disaster management, climate change adaptation and mitigation.

(2) The provisions of subsection (1) (g) shall only apply to water service providers, counties and communities, who can afford the repayment of the funds advanced, and profits thereof used to finance water services and water resources management projects for the underserved areas and urban poor.

(3) The Board of Trustees of the fund shall, following public consultation, Gazette the criteria for qualification for funding from the Fund taking account of considerations of equity and may from time to time following public consultation review the criteria.”

9. Clause 115 – mediated version

Monies of 115.(1)The monies of the Fund shall consist of monies —  
the Fund.

- (a) appropriated by Parliament from the national budget for the purposes of the Fund;
- (b) provided to the Fund from the Equalization Fund on agreed programmes;
- (c) provided to the Fund by a county government on agreed programmes;
- (d) received by the Fund from donations, grants, and bequests from other sources;
- (e) the proceeds of the levy imposed under subsection (2); and
- (f) payable into the Fund under any Act.

(2) The Cabinet Secretary may, by regulations following public consultation prescribe a levy to be paid by consumers of piped water supplied by licensed water service providers, the proceeds of which shall be paid into the Fund established under section 111.

MINUTES OF THE 1<sup>ST</sup> SITTING OF THE MEDIATION COMMITTEE ON THE WATER BILL, 2014 HELD ON THURSDAY 14<sup>TH</sup> JULY, 2016 IN MAIN PARLIAMENT BUILDINGS, CPA ROOM AT 11.00 A.M.

PRESENT

- |                                    |                    |
|------------------------------------|--------------------|
| 1. Sen. Lenny Kivuti, M.P          | - Chairperson      |
| 2. Hon. Abdalla Amina, CBS, M.P.   | - Vice-Chairperson |
| 3. Hon. Farah, Abdulaziz Ali, M.P. |                    |
| 4. Hon. Barua Ejidius Njogu, M.P.  |                    |
| 5. Hon. Mwadime Andrew, M.P        |                    |
| 6. Sen. Naisula Lesuuda, M.P       |                    |
| 7. Sen. Hargura Godana, M.P        |                    |

APOLOGIES

1. Sen. George Khaniri, M.P
2. Sen. Prof. John Lonyangapuo, M.P
3. Hon. Ibren Nasra Ibrahim, M.P

IN-ATTENDANCE - SECRETARIAT

- |                            |                                       |
|----------------------------|---------------------------------------|
| 1. Ms. Tracy Chebet Koskei | - Clerk Assistant (National Assembly) |
| 2. Mr. Hassan A. Arale     | - Clerk Assistant (National Assembly) |
| 3. Ms. Lynette Otieno      | - Legal Counsel (National Assembly)   |
| 4. Ms. Brenda Ogembo       | - Clerk Assistant (Senate)            |
| 5. Mr. Leonard Koech       | - Legal Counsel (Senate)              |

MIN.NO. MED/WATER BILL/1/2016: PRELIMINARIES

The meeting was called to order at 11.00 am after which prayers were said. The Clerk then welcomed the members to the meeting.

MIN. NO.MED/WATER BILL/2/2016: ELECTION OF CHAIR AND VICE CHAIR

The Members elected Sen. Lenny Kivuti, M.P as the Chairperson while Hon. Amina Abdalla was elected as the Vice-Chairperson of the Committee. Thereafter Sen. Hargura Godana, M.P. proposed the adoption of the Agenda which was seconded by Sen. Naisula Lesuuda, M.P.

MIN.NO. MED/WATER BILL/3/2016: CONSIDERATION OF CONTESTED CLAUSES  
OF THE WATER BILL, 2014:

The Committee reviewed the contentious clauses in the amendments proposed by the Senate and resolved as follows:

That –

CLAUSE 2

The Committee resolved that the word “wetland” should not be inserted in definitions.

**Justification:** the word ‘wetland’ is not used within the body of the Bill hence there was no need to define it.

CLAUSE 8

THAT clause 8 be amended in sub clause (3) by inserting the words ‘for domestic use’ immediately after the words “A national public water works”.

(3) A national public water works for domestic use shall, subject to the acquisition of a permit from the Authority in case of inter basin water transfer, take precedence over all other water works for the use of water or the drainage of land.

**Justification:** this amendment it was agreed was critical for ensuring that priority is given to water for domestic use over all other water works.

CLAUSE 8 B

THAT clause 8(B) be amended in sub clause (5) as follows:

(5) The Cabinet Secretary shall, after formulation, review the Water Resource Strategy every three years.

**Justification:** This will ensure that formulation of the Water Resource Strategy is done every ~~five (5) years and a mid-term review of the strategy undertaken every three years.~~

CLAUSE 30

THAT clause 30 should remain as is in the Bill, and should not include the development of rules and regulations as one of the functions and powers of the Water Storage Authority.



Justification: The Committee was in concurrence that the powers to make rules and regulations lies with the Cabinet Secretary and was already provided for in Clause 140 of the Bill. The Committee also noted that the rules and regulations would be brought to Parliament for approval prior to gazettelement.

#### CLAUSE 64

THAT clause 64 be amended in sub clause 1 (a) and (b) by inserting the words "from the counties within the basin" immediately after the words "the Cabinet Secretary" in both (a) and (b):

(1) Each water works development agency shall consist of—

(a) A chairperson, who shall be appointed by the Cabinet Secretary from counties within the basin area;

(b) Four other members who shall be appointed by the Cabinet Secretary from counties within the basin area;

Justification: The proposed amendment clarifies where the chairperson in (a) and the four other members in (b) of the development Agency are to be appointed from. The Committee noted the importance of ensuring that the Chairperson of the water works development agency was a resident of the counties within the basin of the water works agency.

#### CLAUSE 75

THAT clause 75 of the Bill be amended by deleting sub clause one and substituting therefor the following new sub clause —

(1) Each county government shall establish water services providers.

Justification: This compels all Counties to establish water service providers while at the same time preventing creation of monopolies which the committee noted would not constitute best practice.

#### CLAUSE 102

THAT clause 102 of the Bill remain as is in the Bill.

(1) A licensee may enter into an agreement with any person with respect to the execution and maintenance, by any party to the agreement, of such works as the licensee considers necessary or as the conditions of the licence may require for the purpose of protecting the catchment areas, drainage of land, carrying out soil conservation measures, the control of vegetation or effectively

collecting, conveying or preserving the purity and quantity of water which the licensee is for the time being authorised to take.

Justification: the previous amendment sought to substitute the word "licensee" with the word "water user" which the committee noted would prejudice the rights of the licensee.

CLAUSE 114

THAT clause 114 of the Bill be amended in sub clause (1) by deleting paragraph (g) and substituting therefor the following new paragraph —

(g) receive grants for onward lending to water services providers, counties and registered community schemes, towards water services and water resources management projects for the underserved areas and urban poor;

Justification: the committee noted that lending to registered community schemes safeguards the fund and also enhances accountability.

CLAUSE 115

THAT clause 115 be amended in sub clause (1) in (b) and (c) as follows:

(b) provided to the Fund from the Equalization Fund on agreed programmes;

(c) provided to the Fund by a county government on agreed programmes;

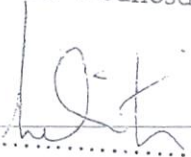
Justification: the amendment ensures that funds going to the Water Trust Fund from the Equalization Fund in (b) and county government in (c) shall only be for pre-approved and agreed on water projects.

MIN.NO. MED/WATER BILL/4/2016:

ADJOURNMENT

There being no other business the meeting was adjourned at 12.30pm and the next meeting was agreed to be held on Wednesday 20<sup>th</sup> July 2016 at 11.00am in CPA room.

SIGNED.....



(SEN. LENNY KIVUTI- Chairperson)

DATE.....

21/7/2016

MINUTES OF THE 2<sup>nd</sup> SITTING OF THE MEDIATION COMMITTEE ON THE WATER BILL, 2014 HELD ON THURSDAY 22<sup>nd</sup> JULY, 2016 IN THE NEW SENATE BOARDROOM FIRST FLOOR, MAIN PARLIAMENT BUILDINGS AT 11.00 A.M.

PRESENT

1. Sen. Lenny Kivuti, M.P
  2. Hon. Abdalla Amina, CBS, M.P.
  3. Hon. Farah, Abdulaziz Ali, M.P.
  4. Hon. Mwadime Andrew, M.P
  5. Sen. Naisula Lesuuda, M.P
  6. Sen. Hargura Godana, M.P
- Chairperson  
- Vice-Chairperson

APOLOGIES

1. Sen. George Khaniri, M.P
2. Sen. Prof. John Lonyangapuo, M.P
3. Hon. Ibren Nasra Ibrahim, M.P
4. Hon. Barua Ejidius Njogu, M.P.

IN-ATTENDANCE -- SECRETARIAT

1. Ms. Tracy Chebet Koskei
  2. Mr. Hassan A. Arale
  3. Ms. Lynette Otieno
  4. Ms. Brenda Ogembo
  5. Ms. Mwanate Shaban
  6. Mr. Leonard Koech
  7. Ms. Sarah Rukwaro
- Clerk Assistant (National Assembly)  
- Clerk Assistant (National Assembly)  
- Legal Counsel (National Assembly)  
- Clerk Assistant (Senate)  
- Clerk Assistant (Senate)  
- Legal Counsel (Senate)  
- Serjeant at Arms (Senate)

MIN.NO. MED/WATER BILL/5/2016: PRELIMINARIES

The meeting was called to order at 10.30 a.m. by the Chairperson followed with a word of prayer.

MIN.NO. MED/WATER BILL/6/2016: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as shown below after being proposed by Sen. Naisula Lesuuda and seconded by Hon. Abdulaziz Farah as follows;

Prayer

1. Preliminaries;
2. Adoption of the Agenda;
3. Confirmation of Minutes
4. Review and adoption of the Draft Mediation Report on the Water Bill, 2014;
5. Any Other Business;
6. Adjournment and Date of Next Meeting.



MIN. NO. MED/WATER BILL/7/2016: CONFIRMATION OF MINUTES

The minutes of the 1<sup>st</sup> sitting of the Mediation Committee on the Water Bill, 2014 held on Thursday 22<sup>nd</sup> July, 2016 in the New Senate Boardroom 1<sup>st</sup> Floor, Main Parliament Buildings at 11.00 am were confirmed after being proposed by Sen. Hargura and seconded by Hon. Mwadime.

MIN. NO. MED/WATER BILL/8/2016: REVIEW AND ADOPTION OF THE DRAFT MEDIATION REPORT ON THE WATER BILL, 2014

The Committee reviewed the contents of the report and made an amendment on Clause 8B (5) to read "The Cabinet Secretary shall review each approved water resource strategy every three years".

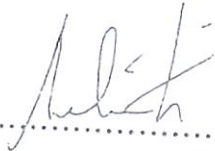
The Committee then adopted the report with the amendment after it was proposed by Sen. Naisula Lesuuda and seconded by Hon. Abdulaziz Ali Farah.

MIN. NO. MED/WATER BILL/9/2016:

ADJOURNMENT

There being no other business the meeting was adjourned at 11.10am and the Committee resolved to table the report by Wednesday 27<sup>th</sup> July, 2016.

SIGNED.....



(SEN. LENNY KIVUTI- Chairperson)

DATE.....

26/7/2016