THE IRRIGATION BILL 2015

A Bill for

An Act of Parliament to amend and consolidate the law relating to sustainable development and management of irrigation for the socio-economic development in the country; to align existing irrigation laws to the Constitution of Kenya 2010, to repeal the Irrigation Act, Chapter 347 Laws of Kenya; and for purposes incidental thereto and connected therewith

ENACTED by the Parliament of Kenya, as follows-

PART I - PRELIMINARY

<table>
<thead>
<tr>
<th>Short title.</th>
<th>1. This Act may be cited as the Irrigation Act 2015 and shall come into operation on such date as the Cabinet Secretary may, by notice in the Gazette, appoint, and different dates may be appointed for the coming into operation of different provisions.</th>
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<tbody>
<tr>
<td>Interpretation.</td>
<td>2. In this Act, unless the context otherwise requires-</td>
</tr>
<tr>
<td>The Agriculture, Fisheries and Food Authority Act, 2013</td>
<td>&quot;agriculture&quot; shall have the meaning assigned to it in the Agriculture, Fisheries and Food Authority Act, 2013;</td>
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<td></td>
<td>“Appeal Board” means the Water Appeal Board established under the Water Act 2002;</td>
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<td></td>
<td>“authorized” means authorized by or under this Act;</td>
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<td></td>
<td>“chief executive officer” means the chief executive officer of the Service;</td>
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<td></td>
<td>“commercial irrigation farmer” means a farmer who by means of irrigation grows crops primarily for sale;</td>
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<td></td>
<td>“County irrigation development unit” means the unit or entity established by a county government to carry out irrigation matters under Section 10.</td>
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<td>“Board” means the Board of the National Irrigation Development Service established under section 9;</td>
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<td>“Director” means the Director of Irrigation and Drainage;</td>
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<td>&quot;farmer&quot; includes a crop, livestock or fish farmer;</td>
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</table>
“Fund” means the Irrigation Development Fund established under section 17;

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

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

“Irrigation Service Fee” means the rates to be charged to water users for receiving irrigation services;

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

“irrigation water user” means a member of a water users’ association who uses water from an irrigation scheme for an approved purpose such as for crops, livestock, fish, domestic use or small industry;

“Large scale irrigation scheme” means a scheme which in acreage size covers over three thousand hectares, is implemented by the Service or a county government, and is established for national strategic purposes;

“Medium scale irrigation scheme” means a scheme which in acreage size covers over five hundred hectares to three thousand hectares, and is implemented by a county government or a private operator;

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

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

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

“national irrigation scheme” means an area of land designated as a national irrigation scheme under this Act;
and as may be specified from time to time in schedule II

“Cabinet Secretary” means the Minister for the time being responsible for irrigation in Kenya;

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

“Research Institute” means a research institute established under the Kenya Agricultural and Livestock Research Act 2013;

“Research centre” means the Irrigation and Drainage Research Centre established under section 13;

“Service” means the National Irrigation Development Service established under section 3;

"smallholder irrigation and drainage schemes" means irrigation schemes that are developed, owned and managed by communities as irrigation water user groups or individual farmers and in size are below 500 hectares;

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

“Training Centre” means the Irrigation Development Training Centre established under section 13;

Trustees” mean the Trustees of the Irrigation Development Fund established under section 17;

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

“water users’ association” refers to associations established under section 15, and “members” shall be construed accordingly;

“WRMA” means Water Resources Management Authority established under the Water Act 2002.

Scope

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

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

(3). In the event of any conflict with any other law or laws in matters relating to irrigation, the provisions of this Act shall prevail over the other law or laws

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<tr>
<th>PART II: REGULATION OF IRRIGATION</th>
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4. (1). The Cabinet Secretary shall have and will exercise control over every irrigation development in accordance with this Act.

(2). The Cabinet Secretary shall regulate and promote the development and proper management of irrigation throughout Kenya and to this extent shall ensure the effective exercise and performance by any authorities or persons under the authority of the Cabinet Secretary of their powers and duties in relation to irrigation and drainage, including water harvesting and storage for agriculture.

(3). Without prejudice to the generality of the foregoing, the Cabinet Secretary shall have responsibility with regard to development and management of irrigation to:-

(i) formulate laws and policies, provide sector regulation, coordination and guidance, and monitoring and evaluation;
(ii) appoint officers and carry out other mandates as may be specified in the Act;
(iii) report to Parliament annually, and from time to time as may be necessary, on the state of, and needs for, irrigation development and management in the country.

(4). The Cabinet Secretary shall consult and seek the cooperation of other ministries and agencies of the national Government, county governments, as well as non Government entities, so as to encourage broad support for irrigation development and management.

(5). The Cabinet Secretary may, in pursuance of the obligation set out under subsection (4), establish and oversee
a sector-wide cross ministerial body to coordinate with all organizations related to the irrigation sub-sector regarding development and management of schemes and provision of support services to Irrigation Water Users Associations.

(6). (i) The Cabinet Secretary shall, in consultation with the county governments and the public, formulate and publish in the Gazette, a national irrigation services strategy.

(ii) The national irrigation services strategy shall have the following objects:

(a) To design a programme to bring about progressive expansion of irrigation coverage in Kenya

(b) To identify outputs, overall budget estimates and timeframe to realize expected results;

(c) Accelerating the development of irrigation infrastructure;

(d) Increasing productivity per unit area;

(e) Increasing water harvesting and storage for agricultural purposes;

(f) Improving water management, irrigation efficiency and sustainability;

(g) Increasing the participation of stakeholders;

(h) Increasing and improving access to investment capital and credit; and

(i) Strengthening irrigation research, extension and capacity building.

(7) The Cabinet Secretary shall be assisted in the discharge of his duties, powers and functions under this Act by the Director.

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<tr>
<th>Duties and Powers of Director</th>
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<tr>
<td>5. (1). The Director shall have and exercise the following duties and functions, in consultation or collaboration with county governments and other stakeholders as appropriate:</td>
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| a). develop principles, guidelines, standards and procedures for promoting development and management of irrigation; |
| b). receive and determine applications for any irrigation projects; |
| c). monitor and enforce conditions attached to licenses for all irrigation projects; |
| d). promote protection of irrigation water sources; |
| e). gather and maintain information on irrigation development and management, including on irrigation water resources, irrigation projects and schemes, areas under irrigation and potential for expansion, and from time to time publish such information; |
| f). in collaboration with the Training Centre, facilitate capacity building in the sector by promoting and coordinating irrigation |
development research and technology transfer, including support services and professional and farmer training;
g). render advice and technical support, where necessary, to entities engaged in irrigation and drainage development and management so as to enable them to carry out their responsibilities satisfactorily;
h). liaise with other bodies for the better regulation and management of irrigation development and management in Kenya;
i) in cooperation with other relevant agencies, develop guidelines and standards for irrigation development and management;
j). liaise with other water sector institutions to promote integrated water resource management;
k) register and maintain a register of any contractor, consultant or professional in irrigation services and in this regard maintain a strict certification procedure;
l) prepare and submit to Parliament, through the Cabinet Secretary annual and other periodic reports concerning the performance of the duties and functions or other mandates of the Director.

(2). The Director may exercise any or some of the duties and functions under sub section 1 above directly or through the Service.

(3). The Director may, with the consent of the Director of Public Prosecutions given under the Criminal Procedure Code (Cap 75), undertake the prosecution of any offences arising under this Act or in connection with the performance of its functions.

PART III- THE NATIONAL IRRIGATION DEVELOPMENT SERVICE

Establishment.

6 (1). There is hereby established the National Irrigation Development Service.

(2). The Service shall be a body corporate with perpetual succession and a common seal and shall have power, in its corporate name, to sue and to be sued and, in the exercise and performance of its powers and functions, to do and permit all such things as may lawfully be done or permitted by a body corporate in furtherance of its objects.
(3). The headquarters of the Service shall be in Nairobi.

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

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<tr>
<th>National Irrigation Board.</th>
<th>7. The Service shall be the successor to the Board known as the National Irrigation Board existing immediately before the commencement of this Act, and subject to this Act, all rights, obligations, assets and liabilities of that Board existing at the commencement of this Act shall be automatically and fully transferred to the Service, and any reference to the National Irrigation Board in any contract or document shall, for all purposes, be deemed to be a reference to the Service established under section 3.</th>
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| Powers and Functions of the Service. | 8. The functions of the Service shall be to-

(a) develop and improve irrigation infrastructure for large, public national, medium and smallholder schemes;

(b) provide support services to private medium and smallholder schemes, in consultation and cooperation with county governments and other stakeholders;

(c) provide advisory and technical services to irrigation schemes in design, construction supervision, administration, operation and maintenance under appropriate modalities.

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

(a) undertake irrigation development, including infrastructure, in national or public and smallholder schemes, including schemes which traverse or straddle more than one county;

(b) in consultation with the Cabinet Secretary, establish and enforce regulations concerning operations and maintenance of national or public irrigation infrastructure and undertake gradual irrigation management transfer wherever possible;

(c) in consultation with county governments facilitate formation and strengthening of irrigation water users’ associations at scheme level for operation, maintenance and management; |
(d) in consultation with the Cabinet Secretary and the Cabinet Secretary for the time being responsible for finance, raise funds for the development of infrastructure in national and smallholder schemes under appropriate mechanisms;

(f) in consultation with county governments co-ordinate and plan settlement on national or public irrigation schemes, as well as schemes which traverse or straddle more than one county and determine the number of settlers thereof;

(g) conduct periodic technical and management audits of irrigation schemes to identify problems with scheme infrastructure, governance, management and financing, and recommend solutions to the irrigation water users’ associations;

(h) provide advisory services on irrigation water management, including water harvesting and storage for agricultural use to all schemes under appropriate modalities;

(i) in collaboration with county governments and other stakeholders, provide advisory and technical services to community and smallholder irrigation schemes concerning design, construction, supervision, administration and maintenance of irrigation infrastructure under appropriate modalities;

(j) facilitate linkages between national Government, county governments, private sector, civil society organizations, communities and other stakeholders for the provision of support services to irrigation water user associations;

(k) in collaboration with county governments, encourage the uptake of micro-irrigation technologies distributed through the private sector and civil society organizations;

(l) in collaboration with county governments gather information and maintain databases on irrigation development and management, including but not limited to data on irrigation water supplies, demands, projects, irrigated areas, management performance, potential for expansion, human resources, and the like;

(m) provide land in national irrigation schemes for public purposes;

(n) in collaboration with county governments and other stakeholders promote the provision of irrigation support services including
marketing and or processing of crops and produce grown or produced on national and other irrigation schemes and to liaise in this regard with organizations responsible;

(o) prepare and submit to the Cabinet Secretary, through the Director, annual and other periodic reports concerning the performance of its mandates and functions; and

(p) advise the Cabinet Secretary, through the Director, on any matter in connection with the development, maintenance, expansion and availability of irrigation support services.

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The Board

6. (1) There shall be a Board of the Service which shall consist of-

(a) a Chairman, who shall be appointed by the President; and

(b) ten other members, who shall be appointed by the Cabinet Secretary, taking into account the various stakeholder interests in irrigation development and management;

(c) the members of the Board shall reflect gender and regional balance in accordance with the Constitution, include at least three representatives of county governments nominated by the Council of Governors, and in addition be reflective of a professional, disciplinary and stakeholder mix of the following, among others: irrigation professionals and practitioners, farmers, financiers, manufacturers and suppliers of goods and services, employers and workers representatives.

(d) The Chief Executive Officer of the Service shall be the secretary to the Board and shall be ex-officio.

(2) The members of the Board shall elect a vice-Chairman from among their number.

(3) A person shall be qualified for appointment as chairman of the Board if such person-

(a) is a citizen of Kenya;

(b) meets the requirements of leadership and integrity set out in Chapter 6 of the Constitution, and
<table>
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<tr>
<th>Offical</th>
<th>Details</th>
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| Chief Executive Officer | 7. (1) There shall be a Chief Executive Officer of the Service who shall be appointed by the Cabinet Secretary on recommendation of the Board on such terms and conditions as may be specified in the instrument of appointment.

(2) A person shall be qualified to be appointed as Chief Executive Officer of the Service if that person-
   (a) is a citizen of Kenya;
   (b) meets the requirements of leadership and integrity set out in Chapter 6 of the Constitution; and
   (c) holds relevant academic and professional qualifications including an advanced university degree in any field relevant to or related to irrigation; or
   (d) in addition to relevant academic and professional qualifications including at least a university degree in any field relevant to or related to irrigation, has at least ten years’ experience in the management of a public or private institution, five of which should be at senior management level, or is a distinguished scholar in a discipline relevant to irrigation.

(3) The Chief Executive Officer shall be responsible to the Board for the day-to-day management of the affairs of the Service and for the performance of any other functions as the Board may direct, and shall be the chief accounting officer of the Service. |
| Other Staff | 8. The Service may engage such other officers and staff as it may consider sufficient for the performance of its functions under this Act on such terms and conditions as the Cabinet Secretary may approve. |
Meetings and procedures of the Board.

| 9. Schedule 1 shall have effect in relation to the meetings and procedures of the Board. |

**PART IV- RESPONSIBILITY OF COUNTY GOVERNMENTS**

<table>
<thead>
<tr>
<th>Respective roles of national and county governments</th>
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<tbody>
<tr>
<td>10 (1) The national Government shall, in accordance with Part 1 section 22 of the Fourth Schedule to the Constitution, be responsible for irrigation policy and for assisting the county governments on irrigation matters.</td>
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<tr>
<td>(2) Each county government shall within its area of jurisdiction be responsible for irrigation matters in accordance with Part 2 of Fourth Schedule to the Constitution, and may in this regard establish a county irrigation development unit for the better carrying out of the county government’s irrigation mandates. The functions of the county irrigation development units shall include to:</td>
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<tr>
<td>a. Implement irrigation policy at the county level as per its mandate;</td>
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<tr>
<td>b. Formulate and implement county irrigation strategy in collaboration with relevant stakeholders, in line with national policies and strategies;</td>
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<tr>
<td>c. Develop and maintain an irrigation database and integrate systematic monitoring and evaluation of the sub-sector development at the county;</td>
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<tr>
<td>d. Provide technical (surveys, designs, supervision of construction), financial and other support services for the development of the irrigation sub-sector;</td>
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<tr>
<td>e. Identify community-based smallholder schemes for implementation in line with national guidelines.</td>
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<td>f. Mainstream irrigation related statutory obligations such as environmental, water and health;</td>
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<td>g. Undertake rehabilitation of existing irrigation schemes within the counties;</td>
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<tr>
<td>h. Capacity build farmers and support establishment of viable farmer organizations to develop and manage irrigation schemes including actively participating in conflicts resolution within irrigation schemes;</td>
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<tr>
<td>i. Set up measures to implement adaptation and mitigation to climate change, and enhance sustainable environmental management;</td>
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<tr>
<td>j. Implement the regulatory function in line with national standards</td>
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</table>
(3) Each county government shall, for purposes of ensuring uniformity and national standards in the irrigation sub-sector, through its legislative and administrative action, implement and act in accordance with the national policy guidelines issued by the Cabinet Secretary and approved by Parliament.

(4) Any action required under this Act to be done by the county government shall be deemed to have been done if done by an officer of the county government in that behalf.

(5) Any dispute or conflict between the levels of government, or between county governments, shall be resolved in accordance with the framework set out in the Inter-Governmental Relations Act.

**PART V IRRIGATION SERVICES**

**Water for irrigation**

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

   (2). In pursuance of sub-section (1), the Cabinet Secretary shall take measures to-

   (a) negotiate appropriate tariff structures and other arrangements with the Water Resources Management Authority in respect of requisition of irrigation water in bulk; and

   (b) advise the Water Resources Management Authority on the development of new irrigation water sources, including water harvesting and storage for agricultural purposes.

**Setting apart of land.**

12 (1). The Cabinet Secretary may, in consultation with the National Lands Commission, the Board and county governments, by notice in the Gazette, designate an area of land, for which an irrigation water permit can be issued by the Water Resources Management Authority and an irrigation license may be issued by the Director, to be a national or public irrigation scheme.

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

   (3). In the case of Trust land forming part of a national or public irrigation scheme, the Cabinet Secretary, on behalf of the Director, may take the land on lease, on terms to be agreed between the Cabinet Secretary and the county government concerned.
<table>
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<tr>
<th>Land Act (2012)</th>
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<tr>
<td>(4). In default of agreement between the Cabinet Secretary and the county government as to the terms of a lease under subsection (3) of this section, the relevant provisions of the Land Act shall have effect.</td>
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<tr>
<td>(5). The Cabinet Secretary shall, in collaboration with county governments support and facilitate access rights to land for all irrigators on national irrigation schemes in order to provide livelihoods for the poor and vulnerable persons and groups, and adequate security for investments in land improvement and the irrigation schemes</td>
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<tr>
<td>(6). The Cabinet Secretary shall, in consultation with county governments, ensure that the design of national or public irrigation schemes and others, takes into account the needs of various irrigation water users, including livestock and fish producers.</td>
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<td>(7). The Cabinet Secretary shall, in consultation with the Cabinet Secretary responsible for water resources and county governments, ensure that irrigation developments are planned and implemented within the framework of Integrated Water Resources Management, and in accordance with agreements between irrigation and other stakeholders, in such a manner as to reduce water resource conflicts, protect the environment and public health, and share water appropriately and equitably for multiple uses.</td>
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<td>(8). The Cabinet Secretary may, in consultation with the Cabinet Secretary responsible for water resources, and county governments, and in consultation with irrigation water users and other stakeholders as appear to him necessary and upon obtaining water permits where needed, develop water harvesting and storage infrastructure for provision of wholesale water supplies to multi-purpose water users, including irrigators, who may provide corresponding retail irrigation water services.</td>
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<th>Irrigation research, innovation and training</th>
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<tr>
<td>13 (1) Irrigation research and innovation shall be carried out primarily under the auspices of an Irrigation and Drainage research Centre to be established and mandated under Part VI and the Second Schedule of the Kenya Agricultural and Livestock Research Act, 2013.</td>
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<tr>
<td>(2) The Cabinet Secretary shall, on the advice of the Board, and the Board of the Kenya Agricultural and Livestock Research Organization establish an Irrigation and Drainage Research Centre to be specifically responsible for irrigation and drainage research with necessary linkages with other research institutes established</td>
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(3) The Research Centre contemplated under (2) above shall carry out the following functions and duties among others:
   a. Undertake hydraulic research for application in irrigation development;
   b. Carry out modeling and simulation studies, innovations and technology adaptations and dissemination of the research results and innovations;
   c. Seek research and innovations advances in irrigated agriculture for improved productivity and quality standards;
   d. Promote international cooperation in irrigation research and information;
   e. Promote linkages between research, extension and farmers for effective adoption of technological packages;
   f. Establish and evaluate pilot projects;
      i. Promote initiatives to encourage various stakeholders to invest in science and technology and related businesses;
      j. Promote coordinated and regulated research and technology development for the irrigation sub-sector to gain from emerging knowledge;
   k. Collaborate with county governments to promote irrigation and drainage research and innovation.

(4) The Cabinet Secretary shall, on the advice of the Board, and the Board of the Technical and Vocational Education and Training Authority establish an Irrigation and Drainage Training Centre to be specifically responsible for irrigation and drainage training with necessary linkages with other training institutes established and mandated under the Technical and Vocational Education and Training Act 2013 and other relevant statutes;
(5) The registration, licensing, accreditation, inspection and other legal compliance requirements of the Training Centre shall be in accordance with the provisions of the Technical and Vocational Education and Training Act 2013.
(6) The Training Centre contemplated under (4) above shall carry out the following functions and duties among others:
   a. Identify key training priority areas for the sub-sector in
a. Undertake development of training curricula in collaboration with the county Governments and other relevant stakeholders;
b. Undertake development of manuals, publications and other training materials for capacity building;
g. Undertake revision of the training modules in collaboration with relevant stakeholders;
h. Set linkages with county governments, relevant professional bodies, universities and other training institutions for improved staff development;
i. Create a data bank in collaboration with other stakeholders to facilitate planning of appropriate institutional programs;
j. Establish mechanisms for information sharing amongst shareholders; and
k. Keep pace in technology changes and ensure continuous staff development through regular review of training needs and training

(7) Each county government may identify priority irrigation research, innovation and training areas and participate in irrigation research processes, in collaboration with the Director and the Research Centre and Training Centre respectively.

**Management of irrigation schemes.**

14. (1). The Cabinet Secretary shall, through the Service, manage existing and new national or public schemes, except those under county governments, and particularly the intake, main and secondary canals as necessary.

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

(3). Notwithstanding any management contracts between the national Government or county governments and any irrigation
water users’ association under sub-section (2), all assets of the national or public irrigation schemes shall remain vested in the Government, which shall also retain regulatory oversight over governance, management and financing of such schemes.

(4). The Cabinet Secretary shall, through the Service, and in collaboration with county governments provide resources and direction for capacity building and technical services to irrigation water users’ associations and other farmers associations to enable them to take over governance and management responsibility for smallholder schemes as soon as possible after they are developed.

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<th>Formation of water users’ associations</th>
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15. (1) A resident of a catchment area who is a crop farmer, livestock producer, fish pond user, or small rural industry entrepreneur or otherwise uses water for irrigation purposes may, together with other members or persons resident in the same area, form an association under the Societies Act, Cooperatives Act, or other legally recognized framework to be called an Irrigation Water Users Association for the better administration of the users’ interests and obligations with respect to conservation.

(2). The membership of an association formed under subsection (1) shall comprise any person who uses water for irrigation within the catchment area for which the association is established.

(3) An association registered under subsection (1) may apply to the Director for permission to establish or operate and maintain an irrigation scheme and participate in the conservation and management of water within the catchment area in accordance with the provisions of this Act.

(4) Where an association pre-exists an irrigation scheme, the said association may be recognized as the bona fide association to operate and maintain a scheme established in the association’s area of coverage, and more than one association may operate and maintain a scheme on appropriate and mutually agreed terms.

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

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

(5). An association may enter into cost-sharing agreements with the
national Government, county government, private sector institutions
or other farmers’ associations for implementing improvements,
modernization or expansion of the scheme, subject to approval by
the Director in consultation with the county.

(6). The Cabinet Secretary in collaboration with county governments
shall assist water users’ associations and other farmers associations
to develop the capacity for budgeting based on the actual
requirements for proper operation and maintenance of their
irrigation scheme, and for setting appropriate fees to be paid by
users for routine maintenance and operations.

(7). The Cabinet Secretary in consultation with county
governments may make Rules for the establishment and governance
of water users’ associations under this section.

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<th>PART VI FINANCIAL PROVISIONS</th>
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<tr>
<td>Finances of the Service.</td>
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<tr>
<td>16. The funds and assets of the Service shall consist of:</td>
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<td>(a) such monies as may be appropriated by Parliament for the purposes of the Service;</td>
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<tr>
<td>(b) any monies or property which may in any manner accrue or vest in the Service in the course of the exercise of its functions under this Act;</td>
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<tr>
<td>(c) such monies as may become payable to the Service by way of fees in respect of services rendered by or through the Board; and</td>
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<tr>
<td>(d) all monies from any other sources provided, donated or lent to the Service, including through the Fund established under section 17 below.</td>
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<tr>
<th>Establishment of the Fund</th>
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<tr>
<td>17. (1) There is established a Fund to be known as the Irrigation Development Fund.</td>
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<td>(2) The Fund shall consist of:-</td>
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<tr>
<td>(a) any funds provided by bilateral or multilateral donors for the purposes of irrigation development</td>
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<td>(b) moneys provided by Parliament for the purposes of irrigation development</td>
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<tr>
<td>(c) any interest from loans and advances; and</td>
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<tr>
<td>(d) funds from any other source approved by the Trustees</td>
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<tr>
<td>(3) The Fund shall be managed by the Trustees appointed by the</td>
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Cabinet Secretary in consultation with county governments on such terms and conditions as the Cabinet Secretary shall determine through the constituent instrument of a Trust Deed.

(4) The Trustees may from time to time and in consultation with the Cabinet Secretary make rules for the better management of the Fund

(5) The moneys received into the Fund shall be applied to provide strategic and predictable funding to irrigation development, research, training and related activities. In particular, the Fund shall:
   a. Support development, repairs, maintenance, improvement and rehabilitation of irrigation infrastructure.
   b. Support irrigation research, innovation and training
   c. Provide grants and loans for development and/or expansion of smallholder irrigation schemes.

**Annual estimates.**

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

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

   (a) the payment of salaries, allowances and other charges in respect of the staff of the Service and the members of the Board;

   (b) the payment of pensions, gratuities and other charges in respect of retirement benefits which are payable out of the funds of the Service;

   (c) the acquisition, maintenance, repair and replacement of the equipment and other movable property of the Service; and

   (d) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance and the replacement of buildings or equipment, or in respect of such other matters as the Council may deem fit.

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

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

### Accounts and Audit

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

### Annual Reports

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

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

(3). The financial reports of the Service with the yearly balance sheet and such other statements of account as the Cabinet Secretary may deem appropriate, together with the auditor's report and any report made by the Auditor-General, shall be laid by the Cabinet Secretary before Parliament as soon as possible after it has been submitted to him, and shall constitute an integral part of the Cabinet Secretary’s report required under Section 4.

### PART VII – DISPUTE RESOLUTION

#### Dispute resolution

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

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

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

<table>
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<tr>
<th>Appeals.</th>
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<tr>
<td><strong>Water Act 2002</strong></td>
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<td>22. (1). If either of the parties involved in a dispute is or are not satisfied with the decision of the Dispute Resolution Committee at the irrigation water users association or scheme level, or if the dispute involves two or more associations or schemes, the concerned party or parties may appeal to the relevant regional committee or to the Catchment Area Advisory Committee established under the Water Act 2002.</td>
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<td>(2). The regional committee or Catchments Area Advisory Committee concerned shall appoint a Dispute Resolution Committee with a mandate to settle the dispute.</td>
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<td>(3). Decisions regarding a dispute shall be made by the Dispute Resolution Committee within four weeks of the hearing of the dispute in question.</td>
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<tr>
<td>(4). Every legal and administrative effort shall be made by the Dispute Resolution Committee at the catchment level to ensure that most disputes are settled at the scheme or irrigation water users association level.</td>
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<th>Monitoring and evaluation.</th>
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<td><strong>Water Act 2002</strong></td>
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<tr>
<td>(5). Any party aggrieved by the decision of a regional committee or Catchment Area Advisory Committee, as the case may be, may appeal to the Appeal Board, and the provisions of the Water Act 2002 and any rules made there under shall apply accordingly.</td>
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<tr>
<td>(6) Any party aggrieved by the decision of the Appeal Board may apply for review to the Environment and Land Court.</td>
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<td>(7) For avoidance of doubt, the competent court for irrigation matters is the Environment and Land Court</td>
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<th>PART VIII - MISCELLANEOUS PROVISIONS</th>
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<tr>
<td><strong>Monitoring and evaluation.</strong></td>
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<tr>
<td>23. (1) The Cabinet Secretary shall, in consultation with the county governments- (a) develop and implement a monitoring and evaluation system for</td>
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</table>
the development, governance, management and financing of irrigation at all levels, and this may include assessment of inputs, immediate outcomes and ultimate impacts based on the results; and

(b) Conduct periodic irrigation management audits in strategically important schemes, and may assess the financial management and quality of governance obtaining in the schemes.

Protection from Liability.

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

Regulations.

25. (1). The Cabinet Secretary may, in consultation with county governments, and on advice of the Director and the Service, make regulations for the better carrying out of the purposes and provisions of this Act.

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

(a) the management of national, public and other irrigation schemes;
(b) the standards of good on-farm water management;
(c) the regulation of, and rates payable for, the use of water on national, public and other irrigation schemes;
(d) the control of persons occupying any land comprising or forming part of a national irrigation scheme, the introduction of or the control of settlers on such land, the issue by the Director or Service, as the case may be, of licenses or permits or leases to such persons or settlers, the revocation of such licenses and leases, and the terms and conditions which may be attached to such licenses and leases;
(e) the licensing of contractors to perform any function connected with a national or other irrigation scheme;
(f) the establishment, operations and governance of water users’ associations;
(g) monitoring and evaluation and audits required under the Act; and
(h) environmental and public health matters.

(3). Any regulations made under this section may require acts to be performed to the satisfaction of a prescribed authority, may prohibit
their performance without the prior approval of a specified authority, and may empower a specified authority to impose conditions for the performance of specific acts.

(4). Any regulations made under this section may be made to apply generally to all irrigation schemes or to any specified irrigation scheme or to any specified area or areas thereof.

(5). Any regulations made under this section may provide for such penalty for the breach of any provision thereof, not exceeding a fine of ten thousand shillings and or imprisonment for one year, as the Cabinet Secretary may think fit.

<table>
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<th><strong>Offences</strong></th>
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<td><strong>Wilful damage.</strong></td>
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| **Destructive practices.** | 27. Any person who-

(a) engages in activities or practices which are destructive or potentially destructive to the catchment areas of a river or public water body supplying water to an irrigation scheme; or

(b) permits or causes animals to damage irrigation areas;

(c) unlawfully diverts water from or into an irrigation infrastructure, or blocks an irrigation infrastructure;

shall be guilty of an offence and shall be liable upon conviction to a fine of not more than five hundred thousand or to imprisonment for a term not exceeding 12 months or to both such fine and imprisonment. |
| **Setting fire.** | 28. Any person who:

a) sets or causes to be set on fire crops on an irrigation scheme or on any irrigated or drained farm, garden or plot; or

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

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

### Harmful chemicals.

| 29. | Any person who applies or causes to be applied on an irrigation scheme, farm, garden or plot under irrigation any chemicals or substances prohibited under this Act or any other law for the time being in force in Kenya commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term of five years or to both such fine and imprisonment. |

### PART IX -- REPEALS AND TRANSITIONAL

| 30. | (1) The Irrigation Act is repealed. |
|      | (2) Notwithstanding subsection(1)- |
|      | (a) all the funds, assets and other property, both movable and immovable, which immediately before such date were vested in the Board shall, by virtue of this paragraph, vest in the Service. |
|      | (b) all rights, powers and liabilities which immediately before such day were vested in, imposed on or enforceable against the Board shall, by virtue of this paragraph, be vested in, imposed on or enforceable against the Service. |
|      | (c) any reference in any written law or in any document or instrument to the Board shall, on and after the appointed day, be construed to be a reference to the Service. |
|      | (d) The annual estimates of the Board for the financial year in which the appointed day occurs shall be deemed to be the annual estimates of the Service for the remainder of that financial year: |
|      | Provided that such estimates may be varied by the Council in such manner as the Cabinet Secretary may approve. |
(e) The administrative directions made by the Board or by the Cabinet Secretary which are in force immediately before the appointed day shall, on or after such day, have force as if they were directions made by the Board or the Cabinet Secretary under this Act.

(f) Any person who is an officer of the Board immediately before the appointed day shall be deemed to be on secondment to the Service:

Provided that such person shall, within a period of one year from the appointed day, exercise his option either—

(i) to enter into a written contract of service with the Service, whereupon his service with the Board shall be deemed to have been terminated without right to severance pay but without prejudice to all other remuneration and benefits payable upon such termination; or

(ii) to be re-deployed by the Government.

No. 8 of 2002.

31. The Water Act, 2002 is amended—

(a) in section 2 by inserting the following definition in proper alphabetical sequence—

“irrigation” shall have the meaning assigned to it under the Irrigation Act, 2015 ?-;

SCHEDULE 1

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

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

Vacation of office.

2. The chairman or a member other than an ex-officio member may—

(a) at any time resign from office by notice in writing to the Cabinet Secretary;

(b) be removed from office by the Cabinet Secretary on the recommendation of the Board if the member—

(i) has been absent from three consecutive meetings of the Board without the permission of the Board;

(ii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;

(iii) is incapacitated by prolonged physical or mental illness; or

(iv) is otherwise unable or unfit to discharge his functions.

Meetings.

3.(1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

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

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

(4) The quorum for the conduct of the business of the Board shall be seven members including the chairman or the person presiding.
(5) The chairman shall preside at every meeting of the Board at which he is present but in his absence, the members present shall elect one of their number to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairman.

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

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

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

<table>
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<tr>
<th>Disclosure of interest</th>
<th>4.(1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which contract, proposed contract or other matter is the subject consideration, he shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in quorum of the meeting during consideration of the matter.</th>
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<tr>
<td>The common seal.</td>
<td>5. The affixing of the common seal of the Service shall be authenticated by the signature of the chairman and the Chief Executive Officer and any document not required by law to be made under seal and all decisions of the Board may be</td>
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</table>
| Contracts and instruments. | authenticated by the signatures of the chairman and the Chief Executive Officer

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

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

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SCHEDULE II

NATIONAL IRRIGATION SCHEMES

1. Mwea irrigation scheme
2. Hola irrigation scheme
3. Pekerra irrigation scheme
4. Bunyala irrigation scheme
5. Ahero irrigation scheme
6. West Kano irrigation scheme
7. Bura irrigation scheme