Approved for tabling.
SNA
1/10/15

PARLIAMENT OF KENYA

NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – THIRD SESSION- 2015

DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

REPORT ON THE PETITION BY GEOFFREY ELPHAS KOKONYA ON BEHALF OF BUKHAYO COUNCIL OF ELDERS REGARDING CONSTRUCTION OF A DAM ALONG SIO RIVER.

CLERK'S CHAMBERS
PARLIAMENT BUILDINGS,
NAIROBI

OCTOBER, 2015

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ANNEXES

1.0 PREFACE

Mr. Speaker

The Departmental Committee on Environment and Natural Resources is established under the National Assembly Standing Orders No. 216(1).

On behalf of the Committee and pursuant to provisions of Standing Order 227 it is my pleasant privilege and honour to present to the House the Report of the Committee on the petition by Geoffrey Elphas Kokonya on behalf of Bukhayo Council of Elders regarding construction of a dam along sio river.

The Petition was tabled before the House pursuant to Standing Order No. 225 (2)(a) and committed to the Committee for consideration.

1.1 COMMITTEE MANDATE

The functions and mandate of the Committee are contained under Standing Order 216(5) and include, to:-

a) Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
b) Study the program and policy objectives of the Ministries and departments and the effectiveness of the implementation;
c) Study and review all legislation referred to it;
d) Study, access and analyze the relative success of the Ministries and Departments as measured by the results obtained as compared with its stated objectives;
e) Investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
f) Vet and report on all appointments where the constitution or any law requires the National Assembly to approve, except those under Standing Order 204; and
g) Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

The Committee oversees issues to do with climate change, environment management and conservation, forestry, water resource management, wildlife, mining and natural resources, pollution and waste management amongst others.

1.2 COMMITTEE MEMBERSHIP

The Committee comprises of the following members:-

1.Hon. Amina Abdalla, M.P. - **Chairperson**
2.Hon. Alexander K. Kosgey, M.P. - **Vice Chairperson**
3.Hon. Alice Ng'ang'a, M.P.

4.Hon. Samuel Ndiritu, M.P.
5.Hon. Aisha Jumwa Karisa, M.P.
6.Hon. Ejidius Njogu Barua, M.P.
7.Hon. Jude Njomo, M.P.
8.Hon. Moitalel Ole Kenta, M.P.
9.Hon. Kathuri Murungi, M.P.
10.Hon. Sunjeev Birdi, M.P.
11.Hon. Jackson K. Rop, M.P.
12.Hon. Abdi Noor Ali, M.P.
13.Hon. Joyce Emanikor, M.P.
14.Hon. Abdulaziz Farah, M.P.
15.Hon. Ronald Tonui, M.P.
16.Hon. (Dr.) Reginalda Wanyonyi, M.P.
17.Hon. Gideon Mwiti, M.P.
18.Hon. Hassan Dukicha, M.P.
19.Hon. Chachu Ganya, M.P.
20.Hon. Opiyo Wandayi, M.P
21.Hon. Charles G. Mongare, M.P.
22.Hon. (Dr.) Wilber K. Ottichilo, M.P.
23.Hon. Khatib Mwashetani, M.P.
24.Hon. George Ogalo, M.P.
25.Hon. (Major) Muluvi Mutua, M.P.
26.Hon. Mohamed, Diriye M.P.
27.Hon, Peter Kinyua, MP.
28.Hon. Shukra Hussein Gure, M.P

1.3 CONSIDERATION OF THE PETITION

1.3.1 On 18th June 2015, Mr. Geoffrey Elphas Kokonya on behalf of Bukhayo Council of Elders, presented a petition pursuant to Standing Order 225 (2) regarding the construction of a dam along Sio River.

1.3.2 The petitioners prayed that the National Assembly through the Committee on Environment and Natural Resources intervenes so that the unlicensed construction of the water dam at Manyole be altered and ensure that the petitioners' plight is urgently addressed.

1.3.3 Pursuant to Standing Order 227 (1) the petition was committed to t' departmental committee on Environment and Natural Resources consideration and response to the petitioners as provided for under Sta Orders 227 (1).

1.3.4 The Committee having been seized of the matter, subsequently formed a Sub-Committee to undertake a field visit to the site. The following Members undertook the visit on 7thAugust, 2015:-

1. Hon. Amina Abdalla, M.P – Chairperson
2. Hon. James Opiyo Wandayi, M.P.
3. Hon. Dr. Wilbur Ottichilo, M.P
4. Hon. Dr. Reginalda Wanyonyi, M.P.
5. Hon. Sunjeev Kaur Birdi, M.P
6. Hon. Gideon Irea Mwiti, M.P.
7. Hon. Ronald Tonui, M.P.

1.4 RESPONSE TO THE PRAYERS OF THE PETITIONERS

In response to the Petitioners' prayer that the National Assembly through the Committee intervenes to have the unlicensed construction of the Water Dam at Manyole altered, the Committee responds as follows, that:-

1. **There is no ongoing construction of a dam as indicated in the prayers of the petitioners and therefore the prayer cannot be granted. There is also enough water in the Sio River as per the submissions by the Water Resources Management Authority to support use by the residents of Busia and its environs and also for use by factories;**

2. **The National Environment Management Authority (NEMA) and Water Resource Management Authority (WRMA) should carry out public participation as required under Article 69 (d) of the Constitution for major projects that may affect water levels at the river and undertake continuous monitoring of the river flow;**

3. **Proactive steps should be taken by NEMA and WRMA to inform the community on the intention of the West Kenya Sugar company to abstract water at Nambale – Malanga bridge;**

4. **The Committee recommends that the issue of distance between sugar factories need to be addressed through legislation since it is leading to unhealthy business rivalry that is not suitable for the development of the sugar sector in the region.**

1.5 ADOPTION OF THE REPORT

We the members of the Departmental Committee on Environment and Natural Resources have pursuant to Standing Order 199 adopted this Report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity as per the attached adoption list.

1.6 ACKNOWLEDGMENT

The Committee wishes to register its appreciation to the offices of the Speaker and the Clerk of the National Assembly for the support accorded to the Committee in the execution of its mandate.

I take this opportunity to thank all members of the Committee for their patience, endurance and dedication to Committee business despite their other commitments and tight schedules which enabled the Committee to consider the Petition and respond to the Petitioner through the report.

On behalf of the Departmental Committee on Environment and Natural Resources and pursuant to Standing Order 227 (2) of the National Assembly, I now have the honor to present the Committee Report on the Petition regarding the construction of a water dam in Manyole, Busia County.

Thank You,

SIGNED .....

(CHAIRPERSON)

DATE ..... 1st OCTOBER 2015 .....

2.0 BACKGROUND

The Sio River is in Nambale Constituency, Busia County. The river runs from Nambale Constituency through Matayos to Lake Victoria. People and livestock in these sub counties depend on water from this river. The area has an estimated population of 130,000 people.

Other dependants of the river include: Lwanya High school, Mundika High School, St Mathias High School, Our Lady of Mercy Girls High School, Busia TTC, Busia General Hospital, Busia Prison and many others.

3.0 THE PETITION

3.1 On 18th June 2015, Mr. Geoffrey Elphas Kokonya on behalf of Bukhayo Council of Elders, presented a petition pursuant to Standing Order 225 (2) regarding the regarding the construction of a dam along Sio River.

3.2 The petition sought to draw the attention of the House to the following, that:-

(i) West Kenya Sugar Company had initiated construction of a sugar plant at Olepito in Busia county;

(ii) The Olepito Sugar plant is located a long Nambale – Busia road in Teso – South Sub-County and a dam is being constructed at Manyole area in Nambale which is about 6 km away;

(iii) The West Kenya Sugar Company never consulted the residents of Bukhayo nor conducted a public participation exercise over the intended construction of a water dam at Manyole area;

(iv) Article 69 of the Constitution stipulates that the state shall ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources, and ensure equitable sharing of accruing benefits and encourage public participation in the management , protection and conservation of the environment which the company has violated ;

(v) The construction of water dam at Manyole will cause shortage of water on the lower side of the river as it serves residents in Busia Town, Matayos town, Mundika town, Secondary schools and primary schools in Matayos Sub-County (population of more than 124,445 people;

(vi) Installation of water pumps across the river will affect fish migration and fishing activities.

3.3 The Petitioner prayed that the National Assembly, through the Departmental Committee on Environment and Natural Resources intervenes to have the unlicensed construction of the water dam at Manyole halted and ensure that the petitioner's plight is urgently addressed.

4.0 MEETINGS AND VISIT TO NAMBALE CONSTITUENCY, BUSIA COUNTY

4.1 SUBMISSIONS FROM RESIDENTS OF NAMBALE CONSTITUENCY, BUSIA COUNTY

On 7thAugust 2015 the Committee held a public hearing at Nambale Constituency CDF Office, Busia County where they received submissions from among others hereunder outlined:-

a) **Submission by Bukhayo Council of Elders**

Mr. Elphas Kokonya informed the Committee that:-

(i) The Bukhayo Council of Elders is a registered Council with the Registrar of Societies and its main objective is to promote peaceful co-existence, ensure sustainable development and preservation of cultural values among the residents of Matayos and Nambale (Bukhayo) in Busia County;

(ii) West Kenya Sugar Company has initiated construction of sugar plant at Olepito in Busia County. The sugar plant is located along Nambale – Busia road in Teso Sub- County and a dam is being constructed along Sio River in Manyole area in Nambale Sub-County to supply water to the factory;

(iii) The river runs through the two sub-counties of Nambale and Matayos and is the main source of water for domestic use by the residents, agricultural activities and livestock and for industrial use by other sugar factories located in the proximity of the river. During the dry season the tributaries that feed Sio River dry up and river flow dwindles;

(iv) The construction of the dam will cause shortage of water on the lower side of the river as Sio River serves the residents of Busia town, Matayos, Mundika as well as learning institutions located downstream. In total more than 122,445 people will be affected;

(v) Further, installation of water pumps to extract water from the river will reduce water available for livestock, agricultural activities and will affect fishing activities downstream;

(vi) West Kenya Sugar Company never consulted the residents of Nambale and Matayos. The Government too through NEMA and WARMA did not conduct any public participation over the construction of the water dam along the river thereby violating Article 69 of the Constitution which requires that public participation should be encouraged in the management, protection and conservation of the environment;

(vii) The residents of Nambale and Matayos have lived and co-existed peacefully over the years and would not wish to fight over competition of natural

resources particularly water. It is on this basis that the Bukhayo Council and the residents of Nambale and Matayos oppose diversion of water from Sio River;

(viii) The Council petitions the Committee on Environment and Natural Resources on behalf of the residents of Matayos and Nambale (Bukhayo) to recommend that West Kenya Sugar Company halts the construction of the said dam.

b) Submission by the National Environment Management Authority (NEMA)

Mr. Zephania Ouma NEMA Litigation Officer informed the Committee as follows, that:-

(i) The then Ministry of Water in 2013 intended to construct a mega multi-purpose dam along Sio River to store water for irrigation purposes. The nature of the project was huge and thus would lead to adverse environmental and socio-economic effects. The impact of infringement of the site would be complex and larger in scale;

(ii) Because of the huge nature of the project, NEMA requested the then Ministry of Water to undertake a full Environmental Impact Assessment (EIA) study on the proposed project which has not been carried out to date;

(iii) In order to reduce the burden of environmental impact it became necessary to undertake Environmental Impact Assessment (EIA) study to identify and mitigate the negative impacts and maintaining the sustainability of the project even after the intended construction of the dam;

(iv) In the absence of any Environmental Impact Assessment (EIA) studies, NEMA has not issued any licence for the construction of a dam along Sio River.

(c) Submission by Busia County Executive Committee Member for Environment, Mr. Walter Mulitati

County Executive Committee Member for Environment Mr. Walter Mulitati informed the Committee that:-

(i) It is the interest of the County of Government to attract investors to the county and offer them a business friendly environment free from any business impediments to conduct their business;

(ii) The County Government of Busia will ensure that any developments taken within the County are in conformity with the relevant laws and statutes and will respect the principles of public participation;

(iii) The County Government of Busia has never been informed nor consulted by the concerned parties on the proposed construction of a dam along Sio River and its objection by the residents through Bukhayo Council of Elders;

(iv) It is necessary for a full feasibility study to be done on the sustainability of water abstraction from Sio River by the sugar companies. Abstraction of water

from the river can be allowed as long as it does not affect the livelihoods of residents living downstream.

(d) **Submissions by Water Resources Management Authority (WRMA)**

Ms. Rose Angweya from Water Resources Management Authority informed the Committee that:-

(i) The main water supply to Busia town abstracts water from Sio River downstream at Mundika Bridge;
(ii) The National Irrigation Board (NIB) abstracts water from the same river downstream;
(iii) Busia Sugar Factory at Busibwabo will also abstract water from the same river
(iv) The general population, livestock and institutions within Nambale and Matayos sub-counties of Busia County also depend on the same river for water;
(v) West Kenya Sugar Company has been issued with authorization to abstract 1,500M^3 /day of water from Sio River at Nambale – Malanga Bridge. This amount comprises of 50M^3 /day for domestic and 1450 M^3 /day for industrial use within the factory at Olepito, 6 Km away from the intake;

(vi) The authorization was based on:-
  a) Hydrological survey report indicating that this amount of water is 0.011% of the allocable amount (75,859.5 M^3 /day) from Sio River at that abstraction point.
  b) There are tributaries to Sio River downstream of the abstraction points such as Nambale, Mererak, Namwitsula among others.

(vii). Other known abstractions directly from Sio River downstream are as below:-
  a) National Irrigational Board – 83,160 M^3 /day
  b) Busia Sugar Company – 3,980M^3 /day
  c) Lake Victoria North Water Services Board –1500M^3 /day

(viii). WRMA technical team led by the Regional Manager, Lake Victoria North Catchment Area and the Sub-Regional Manager, Lower Nzoia-Yala Sub-Region carried out a field visit to Nambale area on 30th July, 2015. The objective of the visit was to establish the status on the ground in reaction to the Memorandum.

The technical team came up with the following findings:-
a) There is no dam being constructed on part of Sio River
b) The intake to West Kenya Sugar Company at Nambale-Malanga bridge has stopped due to objection from the community
c) The construction of water intake at the NIB site has temporarily stopped due to the high flows in the river.
d) The construction of the intake at Busia Sugar Industries has not yet started

(e) Mr. Lillian Wanjala representing the Youth

She informed the Committee that the intended water abstraction by West Kenya Sugar Company from Sio River should be stopped. The abstraction will affect the lives of people who are living downstream and the fishing activities. She further informed the Committee of the existence of a letter by the Sugar Board questioning the construction of another sugar factory in close proximity to an existing factory.

(f) Hon. John Bunyasi, MP - Nambale Constituency

The Hon. Member informed the Committee that:-

i). The sugar sector plays an important role in the economy of the Western Kenya Region. It supports the livelihoods of sugar cane farmers and has created employment opportunities for many people employed in the sugar estates and factories;

ii). Establishment of more sugar factories in the area in the recent past has led to increased demand of water for running the factories. West Kenya Sugar Company and Busia Sugar Company are located within the same region and their main source of water is Sio River;

iii). There is an apparent competition between the two sugar companies which are located only 10Km apart. The residents' particular interest and disputes in the abstraction of water from Sio River may be attributed to business rivalry between the two companies;

iv). Utilisation of water of Sio River has not reached its maximum level and if proper management measures are put in place the water can still be sufficient to meet current and future demands of the residents, agricultural activities and factories;

v). NEMA and WRMA on behalf of the Government failed to fully educate the public on the technical studies they carried out regarding the river flow and the level of abstraction tolerance the river can accommodate. The findings of the studies on the river did not satisfy the residents because the findings were not communicated in a manner the local could understand;

vi). NEMA and WRMA also failed to address the concerns of the local residents by not responding to the queries raised on the construction of the dam and abstraction of water from the river. The two agencies should promote the involvement of the Communities living along the river in the utilization of water from Sio River;

vii). West Kenya Sugar Company may proceed with the construction of the dam along the river but should only divert during the rainy season when river level is high. Abstraction of water from the river may be done as long as it does not result to shortage of water for the people living downstream.

5.0 COMMITTEE OBSERVATIONS

The Committee made the following observations:

(i) There is no proposed construction of a water dam along Sio River by West Kenya Sugar Company. Instead, the company intends to abstract water from the river at Nambale – Malanga bridge point;

(ii) West Kenya Sugar Company has been authorized to abstract 1,500M^3 /day which is 0.011% of the allocable amount (75,859.5 M^3 /day), therefore there is adequate water to support use by both the residents and factories in the area;

(iii) No proactive steps were taken by NEMA and WARMA to inform the community on the intention of the West Kenya Sugar company to abstract water from Sio River at Nambale – Malanga bridge leading to the misconception that a dam was being constructed;

(iv) There is no evidence that Water Resource Users Association in Nambale exist. This disputes the claims by WRMA that public consultation was done through the Water Resource Users Association;

(v) The establishment of the sugar factories was welcomed by a majority of the stakeholders. The concerns of the residents seemed to be the close proximity of the two factories, less than 10 kms apart, which might lead to cane poaching and unnecessary business rivalry;

(vi) A Letter by the Sugar Board of Kenya on the unauthorised construction of a sugar factory by West Kenya sugar factory contradicts NEMA's assertion that the construction of the factory had been authorised by the Sugar Board. There is therefore need to investigate the matter to establish claims in the Board's letter.

6.0 RESPONSE TO THE PRAYERS OF THE PETITIONERS

In response to the petitioners' prayers that the National Assembly through the Committee intervenes to have the unlicensed construction of the water dam at Manyole halted and ensure that the petitioner's plight is urgently addressed, the Committee responds as follows, that:-

1. **There is no ongoing construction of a dam as indicated in the prayers of the petitioners and therefore the prayer cannot be granted. There is also enough water in the Sio River as per the submissions by the Water Resources Management Authority to support use by the residents of Busia and its environs and also for use by factories;**

2. **The National Environment Management Authority (NEMA) and Water Resource Management Authority (WRMA) should carry out public**

participation as required under Article 69 (d) of the Constitution for major projects that may affect water levels at the river and undertake continuous monitoring of the river flow;

3. Proactive steps should be taken by NEMA and WRMA to inform the community on the intention of the West Kenya Sugar company to abstract water at Nambale – Malanga bridge;

4. The Committee recommends that the issue of distance between sugar factories need to be addressed through legislation since it is leading to unhealthy business rivalry that is not suitable for the development of the sugar sector in the region.

BUKHAYO COUNCIL OF ELDERS
NAMBALE

ANNEX 1

PUBLIC PETITION

BY BUKHAYO COUNCIL OF ELDERS ON ALLEGED CONSTRUCTION OF WATER DAM AT MANYOLE

We, **THE UNDERSIGNED** on behalf of Bukhayo Council of Elders.

DRAW the attention of the House on the following:

1. **THAT,** West Kenya Sugar Company has initiated Construction of a Sugar Plant at Olepito in Busia County;
2. **THAT,** the Olepito Sugar Plant Project is located along Nambale – Busia road in Teso – South Sub-County and a dam is being constructed at Manyole area in Nambale which is about 6Kms away.
3. **THAT,** West Kenya Sugar Company never consulted the residents of Bukhayo nor conducted public participation over the intended construction of Water Dam at Manyole area.
4. **THAT,** Article 69 of the Construction stipulates that the state shall ensure sustainable exploitation, Utilization, management and conservation of the environment and natural resources, and ensure equitable sharing of accruing benefits and encourage public participation in the management, Protection and conservation of the environment, which the company has violated.
5. **THAT,** Construction of Water Dam at Manyole will cause shortage of water on the lower side of the river as the Suo river serves residents in Busia Town, Matayos Town, Mundika Town, Secondary Schools and Primary Schools in Matayos Sub-County (Population of more than 124, 445 people.
6. **Further that**, installation of water pumps across the river will affect fish migration and fishing activities.

THEREFORE your humble petitioners pray that the National Assembly, through the Departmental Committee of Agriculture, Livestock and Cooperatives and Environment, water and Natural Resources.

i) Halts the unlicensed construction of the Water Dam at Manyole; and

ii) Intervenes to ensure that the Petitioners' plight is urgently addressed.

PRESENTED BY:
GEOFFREY ELPHAS KOKONYA
SECRETARY GENERAL
BUKHAYO COUNCIL OF ELDERS
DATE: 15-6-2015

PUBLIC PETITION

BY BUKHAYO COUNCIL OF ELDERS ON ALLEGED CONSTRUCTION OF WATER DAM AT MANYOLE

NO.	NAME	DESIGNATION	ID NO.	SIGN
1	PETER MANGENI MADASI	CHAIRMAN BCE	0102201	
2.	GEOFFREY E. KOKONYA	SECRETARY GENERAL	2058628	
3.	ZAINAB O. MUYOTI	EXE. MEMBER	3065355	
4	PETER OKUKU	MEMBER	07[illegible]	
5	LYCHIFFE W. OKUKU	MEMBER 20415504	07[illegible]	
6	DELUMIANA DENNIS	MEMBER	6765243	
7	JOSEPH. ODONGO ARINGO	MEMBER	0390944	
8	Ibrahim Jukune Ikubaya	"	0682714	
9	JAVAN A. OBORE	MEMBER	20221723	
10	LINUS M. MBALWE	MEMBER	0571725	
11	IBRAHIM JUMA	CHAIRMAN K.N.F.S.F.	6077830	

MATAYOS SUB- [illegible]

Name	ID	Mobile No	Village	Signature
1. Francis Ebesa	0712223533	14023505	Nakhakina	[signature]
2. Jonah Kadima	0721643434	6774364	Buloma	[signature]
3. Patrick Wafula	0721586646	0834881	Sikoma	[signature]
4. Joshua O Kwoba	0725754566	9609579	Alungwe	KWOBA
5. Eliuse J. Lumala	0714458777	3397142	Sikoma	[signature]
6. Albert O Omubeke	0710108360	0834322	Nakhakina	[signature]
7. Pamela A. Juma	0717573834	25575303	Nasira	Juma
8. Jeniffer Nekaka		0834448	Nyungwe	NEKA
9. Johnstone N. Okwara	0724692196	3023802	Nasira	[signature]
10. Albert Saka	0738002364	14553185	Bumanti	[signature]
11. Jane Juma	0701824781	9348014	Mumbire	[signature]
12. Harrison Otwoma	0711749384	25669850	Busibwabo	[signature]
13. Violet Antango	0719472917	12089744	Musoma	[signature]
14. Drusila Makokha	0707716918	9340913	Nakhakina	[signature]
15. Willington Okuma	0721799243	9304443	Mayos meta	[signature]
16. Christophe Barasa	0725530567	6765556	Bumakhwani	[signature]
17. Jeremia K. Opito	0720053273	9607291	Musoma	[signature]
18. Sylvanos Oundo	0714651044	20245361	Busibwabo	[signature]
19. Ernest Wanyama	0728230135		Busibwabo	[signature]
20. Justus Asipa	0704490720	13166921	Sikoma	[signature]
21. Alfred Ochieng	0710903717	1684112	Nasira	[signature]
22. Chrispinus Juma	0720994307	9399376	Sikoma	[signature]
23. Francis Barasa	0727123087	0835061	Nakhakina	[signature]
24. Eveline Makadia	0723479900	078506	Bumakhuba	[signature]
25. Pamela Koyo	0729221747	3977825	Busibwabo	Pamela
26. Abila Okute	0724066664	565006	Mumbiri	[signature]
27. Titus Ouma Ekumu	0727730122	14658185	Buloma	[signature]
28. Nancy Mbuta	0717100049	8616640	Nakhakina	NANCY
29. Sylivanus E. Osome	0787197784	20120575	Nakhakina	OSOME
30. Alice E Ntonleca	0710235876	0570834	Bumanti	Alice
31. Christine A Makokha	0714551322	13167353	Sikoma	Makokha
32. Janepher N. Ekesa	0703707540	7231877	Bumakuba	[signature]

MASIKA [illegible]

NAMES	PHONE	ID	SIG
1. GEOFFREY WANGILA SILIALO	0711612595	0571070	[signature]
2 PHILLIP TAABU WANTELA	0722829185 (written over an earlier number)	22419886	[signature]
3 VITALIS OKELO OBIMBA	0722110874	22040665T	[signature]
4 CHRISTINE N. MAGERO	07147[illegible]	[illegible]	[signature]
5 JOSHUA [illegible]	0735 / 0725583289	362867	[signature]
6 STEPHAN SIMIYU CHANGA	0700520314	8599556	[signature]
7 BONIFACE NAMBOCHE CHACHA	0714374852	2609146	[signature]
8 WANJALA EVANS	0722802591	1800982	[signature]
9 DICK ANGO MANOKHA	0723420264	1945452	[signature]
10 IMMANUEL SHIALO ODANGO	0726365062	0570517	[signature]
11 JOSEPH [illegible] MZEE	0729382634	0682539	[signature]
12 DANIEL WEKESA OGOTSI	0789104765	2491640	[signature]
13. ROSE ANYANGO NAMACHI	0787110217	0834547	[signature]
14 ROSE [illegible]	0711112538	1459774	[signature]
15 HENRY WAKA OKOTSI	0735119169	1856252	[signature]
16 PETER OBURE BARASA	0724419764	17654225	[signature]
17 JACTON OBARE MAGINA	0789335635	2311762	[signature]
18 JULIUS N. SSUMBA ASIGA	0725179578	2058488	[signature]
19 DANIEL WABWIRE	0700697810	0571146	[signature]
20 BENARD WESONGA WANJALA	07046457 (more digits written below)	13528845	[signature]

1. RESIDENT OF BUSIBWABO
MATAYOS SUB-COUNTY

	Name	ID No.	MOBILE	VILLAGE	SIGN
1.	VITALIS JUMA EGESA	05718856	0712260199	Nasio	
2.	Quinto Barasa	6765390	0725253991	Mungore	
3	VITALIS OSORE	7977909	0731418558	Mudete	
4	CRISPINUS SIMIYU	13109226	0726576863	Bumagwa	
5	SHABAN M. OSIRA	22682011 3	0702306574	Nakaalo	
6	TEREMAH K. OPIYO	9607280	0720053275	Sikoma	
7	PAMELA BA OUMA	11535567	0717331883	Busibwabo	
8	Francis O Ayela	9607048	0702070581	Mwamba	
9	AFICANUS O WANDERA	20073179	0739415 91	Musoma	
10	CHARLS OWITI	8616735	0728716949	Nakalo	
11	HARUNI LWANDE	16017181	0705882202	Sikoma	
12	DAVID MAPESA	10923361	0752502286	Bbuwayo	
13	HUMPHRY OBENDE	9225224	0785209998	Busibwabo	
14	BRAMUEL OUMA	0834114	0704931331	Musoma	
15	GLADIS M. HASANI	16886336	0703859457	Matayos	
16	EMILY DIMANYAN	08350 36	0793229114	Bukoma	
17	JOSHUA WAFULA	0571277	0782635713	Abungoli	
18	FRANCISCA KULUBI	14659744	0713535633	Busibwabo	
19	ALBERT P. KWOBA	7920483	0718464100	Mungore	A.P
20	JANE A. WERUYE	10886 04	0721748879	Abungoli	
21	JANEPH HEKESA	0834148	0729863333	Sikoma	
22	KENETH M. OUMA	6098247	0707-872611	Nakalo	
23	LIBAN OBAMBO	9607205	0720685285	Edama	
24	MICHAEL MAKATIA	0571174	0723907558	Edama	
25	ERICK OTIENO	73101987	0706157768	Mbumi	
26	ALICE AWINO	2797140	0724547580	Mumbia	
27	ALPHUNCE OBUHA	23078539	0735479643	Sikoma	
28	RICHARD F. WERE	20799201	0708031876	Busibwabo	
29	Justo Masiga	0834567	0872658684	Busibwabo	
30	VINCENT BARASA	24335587	0715108842	Bukwanga	
31	Fredrick T Balongo	23086455	0711742222	Bumakunda	
32	JACKSON MALOBA	25489582	0726094424	Bumakunda	

AGRICULTURE, FISHERIES AND FOOD AUTHORITY

SUGAR DIRECTORATE
Sukari Plaza, Off Waiyaki Way.
P.O. BOX 51500-00200, Nairobi

AFFA/SD/ST/WKSBU/A1/VOL.I./17

8th April, 2015

Mr. Tejveer S. Rai
Managing Director
West Kenya Sugar Company
P. O. Box 2101
KAKAMEGA

Dear Mr. Rai,

RE: CONSTRUCTION OF A SUGAR FACTORY WITHOUT AUTHORITY

It has come to our attention that West Kenya Sugar Company Limited is engaging in activities that are suggestive of plans to construct a sugar milling factory at Olopito in Busia County.

The statutory requirements for the establishment of a sugar milling plant within the Country are well within your knowledge as an existing player in the industry. The Directorate has not at any time received an application for construction of a sugar milling plant at the subject location from West Kenya or any other party, neither are we aware of any approvals by NEMA that may have authorized the site given the environmental infrastructure involved.

Consideration for such construction is subject to technical evaluation, approval by the Authority in full consultation with the host County Government, affected stakeholders and NEMA prior to licensing.

Tel: (254-20) 8018750/1/2/3; (254-20) 2023316/7/8/9 || Mobile: +254-722-203127/8, +254-733-333378/9
Fax: (254-20)2021266/77 || Email: info@kenyasugar.co.ke || Website: www.kenyasugar.co.ke

In the circumstance you are by this letter directed to cease forthwith any further progress on the project.

Yours faithfully,

R. MKOK, MBS
INTERIM HEAD, SUGAR DIRECTORATE

Copies to:

The Governor
Busia County
BUSIA

Principal Secretary
State Department of Agriculture
NAIROBI

Interim Director General
Agriculture, Fisheries and Food Authority
NAIROBI

The County Commissioner
Busia County
BUSIA

The Chairman
Kenya Federation of Sugarcane Farmers
KISUMU

The Director General
National Environment Management Authority
P. O. Box 67829-00200
NAIROBI

Tel: (254-20) 4018750/1/2/3; (254-20) 2023316/7/8/9 || Mobile: +254-722-203127/8, +254-733-333378/9
Fax: (254-20)2021268/77 || Email: info@kenyasugar.or.ke || Website: www.kenyasugar.or.ke

National Environment Tribunal

Popo Road: P.O. Box 74772–00200, Nairobi, Kenya * Telegrams: "NET" Nairobi
Tel. (254–020) 603729, 020 2441949* Fax: 020–2441939
E-mail: net@swiftkenya.com, or: environmenttribunalk@yahoo.com

Our Ref: NET/146/2015 (2)

4th June, 2015

Your Ref:

The Managing Director,
Busia Sugar Industries Limited,
P.O. Box 265-50409,
NAMBALE, BUSIA

RE: STOP ORDER FOR CONSTRUCTION OF A SUGAR FACTORY COMPLEX AT MASEWA-BUSIBWABO LOCATION, BUSIA COUNTY

TAKE NOTICE that the National Environment Tribunal (NET) has received an appeal from Kenneth Okuku Olulu against NEMA's decision to issue you with an Environmental Impact Assessment (EIA) license for the construction of a sugar factory complex with processing capacity of 900,000 tons of sugarcane per annum on L.R. No. Bukhayo/ Busibwabo/ 1274 in Busibwabo location, Mitaywa sub-county, Busia county without following procedures stipulated under the law.

TAKE FURTHER NOTICE that Section 129 (4) of EMCA states that "*upon any appeal to the Tribunal under this section, the status quo of any matter or activity, which is the subject of the appeal, shall be maintained until the appeal is determined*".

The purpose of this letter, therefore, is to direct that all activities relating to the appeal in question MUST be stopped until the appeal is heard and determined by the Tribunal.

J.K. Awuor
FOR: CHAIRMAN

TO BE SERVED UPON
The Director General,
National Environment Management Authority
NAIROBI.

Africa Polysack Limited,,
Maasai road- off Mombasa Road,
P.O. Box 18869-00500.
NAIROBI.

Mission: To provide accessibility to environmental justice that is expeditious and inexpensive.

Vision: Increased compliance with the law for sustainable environmental management.

The Principal Secretary,
Ministry of Water (National Government)
NAIROBI

The Principal Secretary,
Ministry of Environment, Water and Natural Resources,
State Department of Environment and Natural Resources,
P.O. Box 0126-00100,
NAIROBI

The Hon. Attorney General
NAIROBI.

The Chief Executive Officer,
Lake Victoria North Water Services Board,
P.O. Box 673
KAKAMEGA

The Chief Executive Officer,
Water Services Regulatory Board,
NAIROBI.

The Governor,
County Government of Busia,
BUSIA.

Cc
Muma & Kanjama Advocates,
I & M Bank House, 4th Floor,
2nd Ngong Avenue,
P.O. Box 528-00100,
NAIROBI

MEMORANDUM

ON: WATER DIVERSION IN RIVER SUO TO OLEPITO

FROM: BUKHAYO COUNCIL OF ELDERS

TO: THE DIRECTOR NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY NAIROBI

TO: WATER RESOURCES MANAGEMENT AUTHORITY (WARMA)

TO: LAKE VICTORIA NORTH WATER BOARD

DATE: 10TH MAY 2015

PREAMBLE:

This is to bring to your attention that Bukhayo Council of Elders is registered council with the Registrar of societies and one of its main objective is to see people in Matayos and Nambale (Bukhayo) co-exist peacefully and sustain development and maintain cultural values.

DIVERSION OF WATER FROM SUO TO OLEPITO

Bukhayo council of elders is grateful because there is a factory (Busia sugar Industries) under construction at Busibwabo. This will create employment and will also boost business and development in the two sub- counties namely Matayos and Nambale. Water in river Suo is normally boosted during rain season by Walatsi River which joins Suo near Nambale Town. During drought, Walatsi River almost dries up thus leaving very little water in river Suo. The people of Matayos Sub County and Bukhayo Council of Elders are concerned with the intended diversion of water to Olepito which is about 6Km away on the following grounds:-

- The irrigation scheme running from Nambale to Matayos Sub counties will use the same water.

- Busia Sugar Industries at Busibwabo, (Matayos Sub County) depends on the same river. People and their livestock in the following areas under Matayos Constituency (Busia Sub County)

1.	Busia Town	- Mayenye has population of	19,136
		- Burumba has population of	26,493
		- Ango`rom has population of about	13,100
2.	Bukhayo West Ward – has a population of		23,514
3.	Matayos South Ward- a population of		30,874
4.	Busibwabo Ward a population of		11,328
Total			**124,445**

- These figures are as under Nambale plus per the last census 2009 of which today is much more than this.

- The main water supply to Busia Town and Matayos Town is from this river at the bridge on Busia – Kisumu road.

- Part of Nambale Township and Bukhayo Central location depend on this river under Siekunya Sub location and Lwanyange Sub location (Lwanyange has a population of 4000 Siekunya has a population 3000)

- People and livestock in these sub locations depend on water in this river with a total population of above 7000 people. The overall human being users total to 131,445 a part from livestock, irrigation and Busia Sugar Industry and those doing construction.

- Other dependants on these rivers are Lwanya High School, Mundika High School, St. Mathias High School, Our Lady of Mercy Girls High School, Busende High School, Busia T.T.C Busia General Hospital Busia GK Prison and many other public and private Primary School. People in Nambale and Matayos (Busia) Sub-counties have lived and co-existed peacefully therefore as Bukhayo Council of Elders we would not like to see our people fight over water in this river like it has happened in other areas in some parts of Kenya. It is on this strength that we as a council oppose the idea of diverting water from river Suo to Olepito weighing bridge. We are confident that your expedited response will be received.

Chairman
Bukhayo Council of Elders

.....
PETER MANGENI
0724734533

Secretary General
Bukhayo Council of Elders

.....
GEOFFREY E. WOKOMA
0736341061

QUESTIONABLE OLEPITO PROJECTS AND INTENDED WATER ABTSRACTION FROM RIVER SIO

It has come to the attention of the Community that construction of structural foundation of a plant more or less similar to a sugar mill, is going on at Olepito, Busia County, behind a cane (poached cane) collection centre with a weighbridge belonging to West Kenya Sugar Company of Kakamega County. It looks the same entity has started constructing a structure across River Sio believably with the intention of abstracting water from River Sio, most likely to serve the said projects in full disregard of the principles of natural justice and legal requirements.

The most disturbing issue on these projects is the fact that both Olepito Projects are on a natural wetland area contrary to Environmental Management Regulations of 2009, under the Environmental Management and Coordination Act (No 8 of 1999). It is also a strong feeling of the Community that due process has not been followed in the water abstraction structural exercise that has started at the River Sio.

The principle of public participation in the management of the wetlands and the legal requirement of adequate public consultation and participation in accordance with section 17: Public Participation-Environmental (Impact and Audit) Regulations 2003, has not been carried out e.g. with Busia Sugar Industry Limited who are constructing a 3000TCD sugar mill at Busibwabo hardly 10 Km from Olepito; including local community/administration, Departmental Heads of Busia County, farmers/farmers institutions, traders/business people etc have neither been consulted nor invited to any public participation forum in order to be enlightened and contribute on the mitigation measures on the many anticipated impacts that would arise from the constructions at Olepito and water abstraction from River Sio.

It is therefore prudent to demand for procedures followed on the above mentioned requirements from the Proponent, who in this cas are no longer proposing to develop a project but have started construction of the same. The provision of the followings is necessary in order to ascertain whether the due process has been has been followed and that operations of others will not be jeopardized:-

1. Environmental Impact Assessment and Audit Reports with related EIA license done and obtained in accordance with Regulations 21 of the Environmental Management and Coordination (Impact Assessment and Audit) Regulations, 2003; under the Environmental Management and Coordination Act (No 8 of 1999)

2. Wetlands Resource Use Permit as stipulated in Environmental Management and Coordination Regulations 2009

3. Incase the project is a sugar mill, a license authorizing its construction and its location (within about 10Km from the Busia Sugar Industry Limited sugarcane milling factory?).

4. Hydrological Assessment Report and Water abstraction license as required by Water Act 2002

5. Easement Certificates obtained from the landowners through whose lands the water-flow-course would be situated.

6. It is strange that the construction sites at the Olepito and Sio River Projects do not have Project Construction Boards on display as required by the Laws of Kenya, hence hiding the names of the Client, and Contractors undertaking construction of various components of the projects etc. Seemingly the Boards are not deliberately posted due some sinister reasons/motives that should be investigated and appropriate legal action taken.

It is fresh in the minds of the members of the Community that West Kenya Sugar Company actions in the in the Sugar Industry in Western Kenya has not been palatable. They have for a long time to-date engaged their neighbors, Butali Sugar Mills in protracted Court cases on issues similar to most of the ones cited above. And so, in case it is West Kenya Sugar putting up a sugar factory at Olepito and installing a water project without following the due process then they should not regret if harshest penalty is imposed on them. They are going against the very issues that they pretend to uphold in Kakamega County and doing the opposite in Busia County. They have been the architects of cane poaching targeting farmers contracted to Butali, Nzoia and Mumias Sugar Companies, acting through brokers in a cheekily crafted manner to evade direct litigations and instead impoverishing cane farmers especially in Busia County. West Kenya Sugar Company was barred by NEMA from constructing a sugar factory at Matayos on environmental (wetland) issues. Similarly anyone trying to establish a sugar factory at Olepito natural wetland area should be barred. Busia County has plenty and suitable land for such a project on the Northern part of Busia-Mungatsi Road and at reasonable distances from Busia Sugar Industry sugar factory, for adequate cane catchment area for each sugar factory to warrant fair play and effective/efficient competition geared to the improvement of the socio-economic activities of Busia County Communities.

Sheban wandera

0719038015

1st Reminder

ASHIOYA & COMPANY ADVOCATES
&
COMMISSIONER FOR OATHS

OYE ASHIOYA LLB. (Hons.) Dip. Law (K.S.L.)

BUSIA BUSINESS CENTRE
Opposite Busia Post Office
P. O. Box 363 - 50400
Tel/Fax: 055-23083
Cell: 0722-319552/0722-318071
BUSIA - KENYA
Email: oyeashioya@yahoo.com

Our Ref: OA/GEN/CORR/2015

Your Ref:.....

Date: 20/05/2015

THE CHIEF EXECUTIVE OFFICER
NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY
P. O Box 67839-00200
NAIROBI

Dear Sir,

RE: QUESTIONABLE INTENT OF THE OLEPITO PROJECTS AND THE INTENDED WATER ABSTRACTION FROM RIVER SIO

We refer to our letter dated 23.04.2015 which we personally delivered to you with regards to the above matter. We attach a copy for your reference. Kindly reply to the same.

Yours faithfully,

FCO
ASHIOYA & CO. ADVOCATES

OA/ja

ASHIOYA & COMPANY ADVOCATES
&
COMMISSIONER FOR OATHS

OYE ASHIOYA LLB. (Hons.) Dip. Law (K.S.L.)

BUSIA BUSINESS CENTRE
Opposite Busia Post Office
P. O. Box 363 - 50400
Tel/Fax: 055-23083
Cell: 0722-319552/0722-318071
BUSIA - KENYA
Email: oyeashioya@yahoo.com

Our Ref:.....
OA/GEN/CORR/2015

Your Ref:.....

Date:.....
02/05/2015

1. THE HONOURABLE MOHAMMED NOOR, AGRICULTURE,
LIVESTOCK AND FISHERIES,
PARLIAMENTARY COMMITTEE.
NAIROBI.

Received
Faxed
5/6/15

2. THE HONOURABLE AMINA ABDALLA
CHAIRPERSON
PARLIAMENTARY COMMITTEE ON ENVIRONMENT
AND NATURAL RESOURCES
NAIROBI.

Dear Sir/Madam,

Re; INTENDED WATER ABSTRACTION FROM RIVER SIO AND CONSTRUCTION OF A SUGAR PLANT AT OLEPITO AREA BY WEST KENYA SUGAR COMPANY LIMITED

INTRODUCTION

It is a cardinal rule that at all times economic good should not override environmental good. Madam chair, it is against this backdrop that the Bukhayo Community living near Olepito area within Busia county notes with deep concern that a structural foundation, seemingly a sugar plant is being put up in the area without necessary consideration to their constitutional right to a clean environment and the inalienable right to access clean water, that they are entitled to. The alleged sugar plant is being set up behind a cane collection centre with a weighbridge belonging to West Kenya Sugar Company; A dam and water pump are under construction across River Sio along Nambale- Malanga road; the structure is believed to be an aid in the abstraction of water from River Sio. The water abstraction project is most likely intended to serve the sugar plant construction (about 15 kilometres away) and use of the same plant once the construction is complete. Efforts by Busia Sugar Industry Limited to question the legality and social inconsideration through relevant authorities have proved futile; the issue was raised before the county government and a meeting was called by his Excellency the Governor of Busia county government Sospeter Ojaamong to discuss the way forward, but, West Kenya Sugar Company Limited refused or neglected to attend the meeting. Busia Sugar Industry Limited also send its delegation to the county commissioner to ascertain whether he was aware of the construction at Olepito and the intended abstraction of water from River sio. The commissioner informed the delegation that he was well aware of the construction and abstraction and that West Kenya Sugar Company had been officially stopped from construction. A letter was also done by the acting sugar directorate chairperson Madam Rosemary Mukok to the managing director of West Kenya Sugar Company Limited, questioning the construction but there has been no indication that they are keen to stop. We are aware that the Kenya Sugar Board (as it then was) issued West Kenya with a license to put up a sugar cane mill at Matayos, which is also within Busia County, but they are now constructing one at Olepito which is south of Busia County and clearly not within their allocated zone.

THE COMPLAINANT.

The community has aired out there concerns over the alleged construction through the Bukhayo Council of Elders. The council of elders was elected by members of the Bukhayo community who live in Matayos and Nambale constituencies. They are registered with the Registrar of societies. They are sensitive to the needs of their community and there main objective is to maintain balance and peace and assist the Bukhayo people in achieving economic development and reduce poverty levels among themselves. The council of elders is concerned with the intended diversion of River Sio on the following grounds:-

- The irrigation scheme running from Nambale to Matayos sub counties will use the same water.
- Busia Sugar Industries at Busibwabo (Matayos Sub County) depend on the same river. People and their livestock in the following areas under Matayos constituency (Busia Sub County).
- The population depending on the said river is as follows
- Busia town-Mayenje has a population of-19,136.
- Burumba has a population of about- 26,493.
- Angoromo has a population of about- 13,100.
- Bukhayo West ward has a population of 23,514.
- Matayos south ward has a population of 30,874.
- Busibwabo ward has a population of 11,328.

Total,are **124,445**

These figures are as per the last census held in 2009 of which the population has grown bigger since the time the census was held. The main water supply to Busia town and Matayos township is from this river at the bridge on Busia Kisumu road. Part of Namable township and Bukhayo central location depend on this river under Siekunya sub location and Lwanyange sub location that have a population of 7,000 people.

THE COMPLAINT

Water is the most essential of our natural resources, it is therefore our responsibility and the responsibility of the national government and County Government to ensure that we manage and use it effectively and sustainably. The Olepito project by the West Kenya sugar company and the intended abstraction of water from River Sio are not only a damage and threat to the intensive agricultural activities of the Bukhayo community but might also lead to drying out of water courses i.e. River Sio. Abstraction can alter the natural flow regime either directly on surface or indirectly by groundwater pumping, depleting groundwater levels and consequently affecting flows to springs, wetlands, lakes and rivers. The flow in rivers may be controlled by impounding structures, constructions and activities like water abstraction. The construction of a water pump and dam across a river will lead to the narrowing of the river.

It should be noted that at no time were the people of the Bukhayo Community consulted over the two projects. The Constitution of Kenya, 2010, provides, under Article 69(1) (d) the obligations of the state in respect of the environment which include encouraging public participation in the management, protection and conservation of the environment. The community has not only fundamental rights to environmental protection but also a right to participation in regard to any developments made in their area of habitation. It is in support of such rights that associations like the Water Resource User Association (WRUAs) have been created at the grass root level for stakeholder's engagement in matters concerned with water management and use. It should also be noted that the principle of public participation in the management of wetlands in accordance with Section 17 of the Environment (Impact and Audit) Regulations 2003 has not been carried out. There has not been any consultation with the farmers growing sugarcane in the region, the Ministry of Environment, Water and natural Resources in Busia County nor Busia Sugar Industry Limited who are also constructing a 3000TCD sugar mill at Busibwabo hardly 10Km from Olepito.

Water needs to be available for the Bukhayo community in order for them to manage their daily income generating activities that are the only means of income that sustain their livelihood. There is need to move to more sustainable use of water resources. Availability of water is necessary for the community; this principle is set against a backdrop of increasing population and climate change. The gravity of water scarcity is a crisis in Busia County and this aspect clearly comes out during dry seasons. The abstraction of water from River Sio which is adversely affected in the dry spell will affect the water tables in the

river. Sinking water tables make rivers less reliable since rivers natural flows are maintained in the dry season by springs that dry up when the water tables fall. It is therefore prudent to demand that West Kenya Sugar Company produce relevant documents certifying that due process has been followed before the construction of the sugar plant which is ongoing and the abstraction of water from River Sio. It is necessary that the company produces the following to ascertain whether due process has been followed:-

1. Environmental Impact Assessment and Audit Reports with related EIA license done and obtained in accordance with Regulations 21 of the Environmental Management and Co-ordination (Impact Assessment and Audit) Regulations 2003: under the Environmental Management and Co-ordination Act (No. 8 OF 199).

2. Wetlands Resources use permit as stipulated in Environmental Management and Co-ordination Regulations 2009. A permit from the Water Resources Management Authority (WRMA). The Authority amongst other things has an obligation to receive and determine applications for permit for water use: it also monitors and assesses water resources. In order to get a permit, a company has to;-

   - Apply for a water permit.
   - Technical Assessment and Public awareness has to be done
   - Notification to the community and authoritative bodies concerned.
   - The Water Resources Management Authority has to issue authorization for the construction or abstraction
   - Construction and receival of a completion certificate which will lead to inspection of the constructed structure.
   - Once all the above have been certified, a permit is issued.

   The Company also needs to produce a licensed permit from National Environmental Management Authority (NEMA) for clearance issued to them allowing construction of structures on a river bed. When granting new licenses to abstract water NEMA needs to reserve some water to meet the needs of the environment and protect the rights of the neighbouring community.

3. Hydrological Assessment Report and Water abstraction license as required by Water Act 2002. The hydrological assessment report indicates the amount of water available for abstraction and if there is more water than required to meet the needs of the environment. The report evaluates restrictions on water bodies in order to maintain the pristine nature of the water bodies. It is through this report that new licenses can be considered depending on local and downstream impacts.

4. Easement Certificates obtained from the land owners through whose lands the water flow course would be situated.

5. Incase the project is a sugar mill a license authorizing its construction and its location (within about 10 km from the Busia sugar Industry Limited sugarcane milling factory.

6. Construction Boards on display at the construction side with the name of client, and the construction of various components of the project. The relevant ministry also ought to have been informed of the developments in Olepito.

We therefore urge that the construction of a sugar plant at the Olepito wetland area is discontinued as Busia County has plenty of suitable land for such projects. Water is an important economic driver as an essential requirement for industry power generation, Commerce and agriculture: we should all work towards eradicating water crisis. Kindly and expeditious inquire into this project, and make recommendations for the good of our people.

Yours faithfully,

ASHIOYA & CO. ADVOCATES

OA/lw

CC

1. Client
2. Chief Executive Officer- Sugar Directorate

ASHIOYA & COMPANY ADVOCATES
&
COMMISSIONER FOR OATHS

OYE ASHIOYA LLB. (Hons.) Dip. Law (K.S.L.)

BUSIA BUSINESS CENTRE
Opposite Busia Post Office
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Cell: 0722-319552/0722-318071
BUSIA - KENYA
Email: oyeashioya@yahoo.com

Our Ref:..... OA/GEN/CORR/2015

Your Ref:.....

Date:..... 23/04/2015

THE CHIEF EXECUTIVE OFFICER
NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY
PO BOX 67839-00200
NAIROBI.

RECEIVED
27 APR 2015
NEMA
NAIROBI
DIRECTOR GENERAL'S OFFICE

Dear Sir,

RE: QUESTIONABLE INTENT OF THE OLEPITO PROJECTS AND THE INTENDED WATER ABSTRACTION FROM RIVER SIO

It has been duly noted by the Bukhayo Community living near olepito that a structural foundation seemingly a sugar plant is being put up at Olepito, Busia County. The purported sugar plant is being set up behind a cane collection centre with a weighbridge belonging to West Kenya Sugar Company; A dam and water pump are under construction across River Sio along Nambale Malanga road the structure of which is believed to be an aid in the abstraction of water from River Sio. The water abstraction project is most likely intended to serve the sugar plant construction and use of the same plant once the construction is complete.

Water is the most essential of our natural resources, it is therefore our responsibility and the responsibility of the county government to ensure that we manage and use it effectively and sustainably. The Olepito project by the West Kenya sugar company and the intended abstraction of water from River Sio are not only a damage and threat to the intensive agricultural activities of the Bukhayo community but might also lead to drying out of water courses i.e. River Sio. Abstraction can alter the natural flow regime either directly on surface or indirectly by groundwater pumping, depleting groundwater levels and consequently affecting flows to springs, wetlands, lakes and rivers. The flow in rivers may be controlled by impounding structures, constructions and activities like water abstraction. The construction of a water pump and dam across a river will lead to the narrowing of the river.

It should be noted that the Bukhayo Community has not been consulted over the two projects. The constitution provides under article 69(1) (d) the obligations of the state in respect of the environment which include encouraging public participation in the management protection and conservation of the environment. The community has not only fundamental rights to environmental protection but also a right to participation in regard to any developments made in their area of habitation. It is in support of such rights that associations like the Water Resource User Association (WRUAs) have been created at the grass root level for stakeholder's engagement in matters concerned with water management and use. It should also be noted that the principle of public participation in the management of wetlands in accordance with Section 17 of the Environment (Impact and Audit) Regulations 2003 has not b

out. There has not been any consultation with the farmers growing sugarcane in the region, the Ministry of Environment, Water and natural Resources in Busia County nor Busia sugar Industry Limited who are also constructing a 3000TCD sugar mill at Busibwabo hardly 10Km from Olepito.

Water needs to be available for the Bukhayo community in order for them to manage their daily income generating activities that are the only means of income that sustain their livelihood. There is need to move to more sustainable use of water resources. Availability of water is necessary for the community that is set against a backdrop of increasing population and climate change. The gravity of water scarcity is a crisis in Busia County clearly comes out during dry seasons. The abstraction of water from River Sio which is adversely affected in the dry spell will affect the water tables in the river. Sinking water tables make rivers less reliable since rivers natural flows are maintained in the dry season by springs that dry up when the water tables fall. It is therefore prudent to demand that West Kenya Sugar Company produce relevant documents certifying that due process has been followed before the construction of the sugar plant which is ongoing and the abstraction of water from River Sio. It is necessary that the company produces the following to ascertain whether due process has been followed:-

1. We are aware that Kenya Sugar Board (as it then was) issued them with a license to put up a sugar cane mill at Matayos, they are now constructing one at Olepito.

2. Environmental Impact Assessment and Audit Reports with related EIA license done and obtained in accordance with Regulations 21 of the Environmental Management and Co-ordination (Impact Assessment and Audit) Regulations 2003; under the Environmental Management and Co-ordination Act (No. 8 OF 199).

3. Wetlands Resources use permit as stipulated in Environmental Management and Co-ordination Regulations 2009. A permit from the Water Resources Management Authority (WRMA). The Authority amongst other things has an obligation to receive and determine applications for permit for water use; it also monitors and assesses water resources. In order to get a permit, a company has to

   - Apply for a water permit.
   - Technical Assessment and Public awareness has to be done
   - Notification to the community and authoritative bodies concerned.
   - The Water Resources Management Authority has to issue authorization for the construction or abstraction
   - Construction and receival of a completion certificate which will lead to inspection of the constructed structure.
   - Once all the above have been certified, a permit is issued.

   WRMA monitors and enforces conditions attached to the permit. It is therefore prudent that West Kenya Sugar Company produces permit from (WRMA) The Company also needs to produce a licensed permit from National Environmental Management Authority (NEMA) for clearance issued to them allowing construction of structures on a river bed. When granting new licenses to abstract water NEMA needs to reserve some water to meet the needs of the environment and protect the rights of the neighbouring community.

4. Hydrological Assessment Report and Water abstraction license as required by Water Act 2002. The hydrological assessment report indicates the amount of water available for abstraction and if there is more water than required to meet the needs of the environment. The report evaluates restrictions on water bodies in order to maintain the pristine nature of the water bodies. It is through this report that new licenses can be considered depending on local and downstream impacts.

5. Easement Certificates obtained from the land owners through whose lands the water flow course would be situated.

6. Incase the project is a sugar mill a license authorizing its construction and its location (within about 10 km from the Busia sugar Industry Limited sugarcane milling factory).

7. Construction Boards on display at the construction side with the name of client, and the construction of various components of the project. The relevant ministry also ought to have been informed of the developments in Olepito.

Abstractions are at times sustainable but this is not always the case. Unsustainable abstraction from rivers and ground water will result in lower flows and reduced water levels which in turn may limit the ecological status of the river. A reduction in the river flow at River Sio will mean

1. Exaggeration of the impact of barriers such as weirs which can hinder the passage of migratory fish this will greatly affect the fishing activities of the Bukhayo community. It may also increase sedimentation rates and hence affect species sensitive to sediment loadings such as fish and affect spawning success.

2 Movement of poor quality ground water which in turn induces saline intrusion from deep groundwater or from the river. Saline is a huge threat to the vibrant agricultural activities of the Bukhayo community.

3 The construction of a water pump and dam across a river will lead to the narrowing of the river.

NEMA is under an obligation not to allow water bodies to deteriorate in status except under circumstances where certain conditions are met; it has been mandated to eliminate processes and activities that are likely to endanger the environment. We therefore urge that the construction of a sugar plant at the Olepito wetland area is discontinued as Busia County has plenty of suitable land for such projects. Water is an important economic driver as an essential requirement for industry power generation, Commerce and agriculture; we should all work towards eradicating water crisis and not enhancing it. Whatever conclusion NEMA will arrive at should be in the best interest of the Bukhayo Community and Busia County as a whole.

Yours faithfully,

ASHIOYA & CO. ADVOCATES

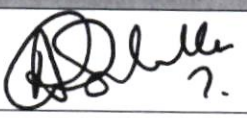
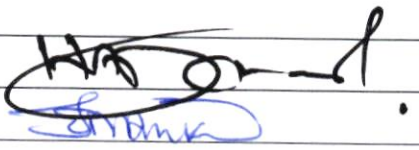
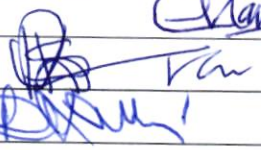
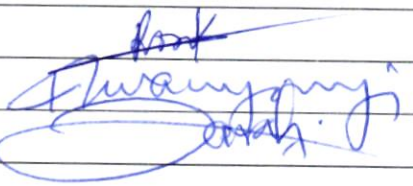
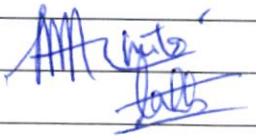
OA/ja

DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

ATTENDANCE SCHEDULE

AGENDA: ADOPTION OF THE PETITION REPORT REGARDING THE CONSTRUCTION OF A DAM A LONG SIO RIVER.

DATE: 29/09/2015 TIME: 10.00 AM VENUE: C.P.A ROOM

	NAME	SIGNATURE
1	Hon. Abdalla, Amina, MP-**CHAIRPERSON**	
2	Hon. Alexander Kosgey, MP **Vice Chairperson**	
3	Hon. Dukicha, Hassan Abdi,MP	
4	Hon. Emanikor, Joyce Akai, MP	
5	Hon.Ganya, Francis Chachu, MP	
6	Hon. Geni, Charles Mongare, MP	
7	Hon. Gure, Shukra Hussein, MP	
8	Hon. Ole Kenta, Richard Moitalel, MP	
9	Hon. Mohamed, Diriye Abdullahi, MP	
10	Hon. Murungi, Kathuri, MP	
11	Hon. Ogalo, George Oner, MP	
12	Hon. Sunjeev Kour Birdi, MP	
13	Hon. Tonui, Ronald Kiprotich, MP	
14	Hon. Dr. Wanyonyi, Reginalda N, MP	
15	Hon. Farah, Abdulaziz Ali, MP	
16	Hon. Barua, Ejidius Njogu, MP	
17	Hon. Irea, Gideon Mwiti, MP	
18	Hon. Muluvi, Marcus Mutua, MP	
19	Hon. Mwashetani, Khatib, MP	
20	Hon. Ndiritu, Samuel Mathenge, MP	

21	Hon. Ottichilo, Wilber Khasilwa, MP	
22	Hon. Rop, Jackson Kipkorir, MP	
23	Hon. Abdinoor, Mohammed Ali, MP	
24	Hon. Ng'ang'a, Alice Wambui, MP	
25	Hon. Peter Kinyua, MP	
26	Hon. Wandayi, James Opiyo, MP	
27	Hon. Katana, Aisha Jumwa, MP	
28	Hon. Jude Njomo, MP	

NICHOLAS EMEJEN

FOR -CLERK OF THE NATIONAL ASSEMBLY

ANNEX 2

MINUTES OF THE 68TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD ON THURSDAY 1ST OCTOBER, 2015 AT 10.00AM C.P.A ROOM, MAIN PARLIAMENT BUILDINGS.

PRESENT

1. Hon. Abdalla Amina, M.P. – **Chairperson**
2. Hon. Kathuri Murungi, M.P.
3. Hon. Geni Charles Mong'are, M.P.
4. Hon. Tonui Ronald Kiprotich, M.P.
5. Hon. Rop Jackson Kipkorir, M.P.
6. Hon. Mohamed Diriye Abdullahi, M.P.
7. Hon. Ole Kenta Richard Moitalel, M.P.
8. Hon. Emanikor Joyce, M.P.
9. Hon. Dukicha Hassan Abdi, M.P.
10. Hon. Dr. Wanyonyi Reginalda N. M.P.
11. Hon. Ganya Francis Chachu, M.P.
12. Hon. Gure Shukra Hussein, M.P.
13. Hon. Peter Kinyua, M.P.
14. Hon. Mwashetani Khatib, M.P.
15. Hon. Farah Abdulaziz Ali, M.P.

APOLOGIES

1. Hon. Alexander Kosgey, M.P. – **Vice Chairperson**
2. Hon. Muluvi Marcus Mutua, M.P.
3. Hon. Jude Njomo, M.P.
4. Hon. Ng'ang'a Alice Wambui, M.P.
5. Hon. Irea Gideon Mwiti, M.P.
6. Hon. Katana Aisha Jumwa, M.P.
7. Hon. Ottichilo Wilber Khasilwa, M.P.
8. Hon. Wandayi James Opiyo, M.P.
9. Hon. Barua Ejidius Njogu, M.P.
10. Hon. Sunjeev Kaur Birdi, M.P.
11. Hon. Abdinoor Mohammed Ali, M.P.
12. Hon. Ndiritu Samuel Mathenge, M.P.
13. Hon. Ogalo George Oner, M.P.

IN-ATTENDANCE

THE NATIONAL ASSEMBLY

1. Mr. Joshua Ondari - Clerk Assistant III
2. Ms. Lynette Otieno - Legal Counsel II

MIN. NO. DC/ENR/291/2015 - PRELIMINARIES

The Chair called the meeting to order at 10.25 am followed by a word of prayer.

MIN. NO. DC/ENR/292/2015 – CONSIDERATION AND ADOPTION OF THE PETITION REPORT REGARDING THE CONSTRUCTION OF A DAM A LONG SIO RIVER

The Committee considered the report and there being no other changes it was unanimously adopted.

MIN. NO. DC/ENR/293/2015 – CONSIDERATION AND ADOPTION OF THE REPORT ON THE SENATE AMENDMENTS TO THE NATIONAL DROUGTH MANAGEMENT AUTHORITY BILL

The Committee considered the report and there being no other changes it was unanimously adopted.

MIN. NO. DC/ENR/294/2015 – CONSIDERATION AND ADOPTION OF THE REPORT ON THE INVESTIGATION INTO WILDLIFE POACHING IN KENYA

The Committee considered the report and there being no other changes it was unanimously adopted.

MIN. NO. DC/ENR/295/2015 – CONSIDERATION AND ADOPTION OF THE REPORT ON LEAD POISONING AT THE UHURU OWINO VILLAGE IN MIKINDANI MOMBASA

The Committee considered the report and there being no other changes it was unanimously adopted.

MIN.NO. DC/ENR/296/2015 ADJOURNMENT

There being no other business the meeting was adjourned at Twelve O'clock.

SIGNED.....

(Chairperson)

DATE..... 1st OCTOBER 2015

MINUTES OF THE 64TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY 2ND SEPTEMBER, 2015 AT 10.00AM C.P.A ROOM, MAIN PARLIAMENT BUILDINGS.

PRESENT

1. Hon. Abdalla Amina, M.P. – **Chairperson**
2. Hon. Kathuri Murungi, M.P.
3. Hon. Wandayi James Opiyo, M.P.
4. Hon. Geni Charles Mong'are, M.P.
5. Hon. Tonui Ronald Kiprotich, M.P.
6. Hon. Rop Jackson Kipkorir, M.P.
7. Hon. Barua Ejidius Njogu, M.P.
8. Hon. Ganya Francis Chachu, M.P.
9. Hon. Gure Shukra Hussein, M.P.
10. Hon. Peter Kinyua, M.P.
11. Hon. Sunjeev Kaur Birdi, M.P.
12. Hon. Abdinoor Mohammed Ali, M.P.
13. Hon. Ndiritu Samuel Mathenge, M.P.
14. Hon. Mwashetani Khatib, M.P.
15. Hon. Farah Abdulaziz Ali, M.P.
16. Hon. Ogalo George Oner, M.P.

APOLOGIES

1. Hon. Alexander Kosgey, M.P. – **Vice Chairperson**
2. Hon. Mohamed Diriye Abdullahi, M.P.
3. Hon. Muluvi Marcus Mutua, M.P.
4. Hon. Emanikor Joyce, M.P.
5. Hon. Jude Njomo, M.P.
6. Hon. Dukicha Hassan Abdi, M.P.
7. Hon. Ng'ang'a Alice Wambui, M.P.
8. Hon. Irea Gideon Mwiti, M.P.
9. Hon. Katana Aisha Jumwa, M.P.
10. Hon. Dr. Wanyonyi Reginalda N. M.P.
11. Hon. Ottichilo Wilber Khasilwa, M.P.
12. Hon. Ole Kenta Richard Moitalel, M.P.

IN-ATTENDANCE

THE NATIONAL ASSEMBLY

1. Ms. Tracy Chebet Koskei – Clerk Assistant II
2. Mr. Joshua Ondari - Clerk Assistant III
3. Ms. Lynette Otieno - Legal Counsel II

MIN. NO. DC/ENR/277/2015 - PRELIMINARIES

The Chair called the meeting to order at 10.25 am followed by a word of prayer.

MIN. NO. DC/ENR/278/2015 – CONSIDERATION OF THE PETITION RE[PORT REGARDING THE CONSTRUCTION OF A DAM A LONG SUO RIVER

The Committee considered the report and came up with the following observations and recommendations:

Observations

a) There is no proposed construction of water dam along Sio River by West Kenya Sugar Company instead the company intends to abstract water from the river at Nambale – Malanga bridge point.
b) West Kenya Sugar Company has been authorized to abstract 1500M^3 /day which is 0.011% of the allocable amount (75,859.5 M^3 /day), therefore there is adequate water to support use by both the residents and factories in the area.
c) No proactive steps were taken by NEMA and WARMA to inform the community on the intention of the West Kenya Sugar company to abstract water from Sio River at Nambale – Malanga Bridge leading to the misconception that a dam was being constructed.
d) There is an alleged business rivalry between West Kenya Sugar Company and Busia Sugar Company which are only10km apart;
e) There is no evidence that Water Resource Users Association in Nambale exists; this disputes the claims by WARMA that public consultation was done.
f) The establishment of the sugar factory was welcomed by majority of the stakeholders.

Recommendations

a) There is no ongoing construction of a dam as indicated in the prayers of the petitioners and therefore the prayer cannot be granted. There is also enough water in the Sio River as per the submissions by the Water Resources Management Authority to support use by the residents of Busia and its environs and also for use by factories;

b) The National Environment Management Authority (NEMA) and Water Resource Management Authority (WRMA) should carry out public participation as required under Article 69 (d) of the Constitution for major projects that may affect water levels at the river and undertake continuous monitoring of the river flow;

c) Proactive steps should be taken by NEMA and WRMA to inform the community on the intention of the West Kenya Sugar company to abstract water at Nambale – Malanga bridge;

d) The Committee recommends that the issue of distance between sugar factories need to be addressed through legislation since it is leading to unhealthy business rivalry that is not suitable for the development of the sugar sector in the region.

MIN.NO. DC/ENR/279/2015 ADJOURNMENT

There being no other business the meeting was adjourned at Twelve O'clock.

SIGNED.....

(Chairperson)

DATE.....1/OCTOBER/2015.....

ANNEX 3

ANNEX I

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY

Tel: (254)-(020)-6005522 / 3 / 6 / 7, 6001945, 6008767
Mobile line: 0724 253 398, 0723 363 010, 0735 013 046, 0735 010 237
Telkom Wireless: 020-2101370
Fax: (254)-(020)-6008997
Hotline: 020-6006041, 0786 101 100, 0704 846 019

P. O. Box 67839 - 00200
Popo Road-off Mombasa Road,
Nairobi, Kenya
E-mail: dgnema@nema.go.ke
website: www.nema.go.ke

Ref: NEMA/PR/5/2/10,756

25th June, 2013

Ministry of Environment,
Water and Natural Resources
P.O. Box 49720
NAIROBI

RE: ENVIRONMENTAL IMPACT ASSESSMENT (EIA) STUDY REQUIREMENT FOR THE PROPOSED SMALL MULTIPURPOSE MAIRA DAM IN THE SIO - MALABA – MALAKISI SUB –BASIN, BUNGOMA COUNTY

Initial review of the Project Report for the above mentioned development has revealed that the risks and magnitude associated with the project demands wider public consultation and in depth coverage of the foreseen impacts and mitigation measures.

Pursuant to Section 58 of the Environment Management and Coordination Act, 1999 and Regulation 10 of the Environmental (Impact Assessment and Audit) Regulations, 2003 Legal Notice No. 101, you are hereby asked to initiate an Environmental Impact Assessment Study to facilitate in depth evaluation of potential impacts associated with the proposed project and to materialize harmony with the affected and interested stakeholders.

The following also needs to be included in the Study Report:-

1. Resettlement Action Plan.

Please liaise with your EIA experts for further guidance on the same and develop Terms of Reference for approval by the Authority.

SALOME MACHUA
For: DIRECTOR GENERAL

MN/kab

BRIEF ON THE PROPOSED 1250 TCD SUGAR PLANT BY WEST KENYA SUGAR COMPANY LIMITED AT OLEPITO VILLAGE,TANGA KONA AREA, BUSIA COUNTY

ANNEX 2

Submission of the EIA Report

1. The Environmental Impact Assessment (EIA) project report for the Proposed West Sugar Factory was submitted to the Authority on the 25th of June, 2013.

2. Noting the magnitude and nature of the project, the Authority upgraded the Project Report to Environmental Impact Assessment (EIA) full study report. The proponent prepared the Terms of Reference for approval by NEMA as required.

3. Full EIA Study Report was then submitted to NEMA on 18th July 2013.

Institutional Recognition

4. The report was immediately dispatched for comments (within a period of 30 days) to the following relevant lead agencies:

a) *The Ministry of Environment, Water and Natural Resources*
b) *The Ministry of Agriculture*
c) *The Kenya Sugar Boards*
d) *Ministry of Industrialization and Enterprise Development*
e) *The Governor, County Government of Busia*
f) *Lake Victoria North Water Catchment Area*
g) *The County Environment Officer for field visit Reports*

Public Disclosure

5. A notice to the public to submit comments on the proposed project was prepared and the project was advertised in the Kenya Gazette on the 23rd and 30th August 2013 and in the Daily Nation on the 16th and 22nd of August 2013.

6. The public notice gives affected and interested stakeholders 30 days to give oral and written comments on the proposed project.

Comments from Stakeholders

7. By the end of the commenting period, only the key Ministry of Agriculture, Livestock and Fisheries had submitted their comments.
8. The Ministry had no objection to the implementation of the project and advised on the need for Resettlement Action Planning for the affected communities and

liaison with other government agencies such as Kenya Sugar Board, KARI and KESREF.

Review and Decision Making

9. The EIA Report was reviewed on 1st October 2013 and the condition for approval was issued on 2nd October 2013. The Authority's decision was guided by the following decision making principles:

a) Adequacy of the EIA report

b) Conformity with the land use trend in the area

c) The adequacy of public participation

d) The acceptable Resettlement Action Plan

e) That the proponent shall not interfere with any river or wetland riparian reserves.

f) Adequacy of impact mitigation-Negative environmental impacts and their mitigation measures were appropriately identified in the report;

g) The adequacy of the Environmental Management Plan;

h) Risk Assessment Considerations

i) Institutional Recognition-comments from the key ministry of Agriculture, Livestock and Fisheries.

10. An EIA licence No. 0019069 was issued on the 14th October, 2013 after the proponent consented to the conditional approval.

A. REGULATION ON WETLANDS

EMCA, 1999 Provisions

Section 42 of EMCA, 1999 gives provision on the restricted use and protection of rivers, lakes and wetlands.

Environmental Management and Coordination (Wetlands, Lakeshores and Sea Shore Management) Regulations, 2009

This Regulation gives provision for the management of wetlands and wetland resources including the inventory of wetlands, permitted use of wetlands and procedures for declaration of a protected wetland.

ANNEX 3

REPUBLIC OF KENYA

MINISTRY OF AGRICULTURE, LIVESTOCK & FISHERIES
State Department of Agriculture

Telegraphic Address "MINAG"NAIROBI
Telex: 22766
Telephone: 718870/9
Fax: 2711149
When replying please quote;

Kilimo House
Cathedral Road
P.O Box 30028-00100
Nairobi

Ref No: MOA/ENG/NEMA/24/11/2/39

Date: 13th August , 2013

The Director General
National Environment Management Authority
P.O BOX 67839-002200
NAIROBI

RE: COMMENTS ON ENVIRONMENTAL IMPACT ASSESSMENT PROJECT REPORT FOR THE PROPOSED SUGAR MILL AT OLEPITO IN BUSIA COUNTY

Reference is made to your letter ref: NEMA /EIA/5/2/1015 dated 18th July 2013 on the above subject. The Ministry of Agriculture, Livestock & Fisheries, through the State Department of Agriculture, has reviewed the report and made the following observations:

1. PROJECT SITE

The project site is considered adequate and suitable as there is a total of 147 acres earmarked for this and it is accessible and fairly central to all the Busia sugarcane growers. The site is along the Busia-Mumias road at Tanga Kona in Olepito village. However there is need for the proponent to acquire more land around the site for nucleus cane development.

2. POTENTIAL NEGATIVE ENVIRONMENTAL IMPACTS

- Waste emanating from the Factory operations- The factory will install modern technology machine that will reduce toxic emissions, the generated solid wastes will be recycled and reused as fuel, and this will ensure less bagasse being disposed into the environment

- The other potential negative environmental impact is the depletion of the water downstream of river-increased water demand

- Water quality pollution by effluents from the factory

- Noise pollution from the factory

- Air pollution by excessive emission of toxic gasses into the atmosphere

3. IDENTIFICATION OF MITIGATION MEASURES FOR THE IMPACTS

- The proponent to submit quarterly water analysis report as per the standard required by NEMA and WRMA. The waste water from the factory will flow into the wetland after treatment. No effluent or waste water should be discharged directly into the environment. The proponent should be guided by this law

- A clear system and plan should be in place to continuously monitor the implementation of the Environmental Management Plan (EMP)
- Wells and boreholes should be constructed to provide clean drinking water for the local population

- Wetland should be built to treat the effluent before it is discharged into the common water body shared by the community

- The amount of water abstracted for factory operations should be regulated to ensure sustainability

- The chimney should be constructed very high up so that it emits the gases way up into the atmosphere

- The Company to install silencers to reduce on the noise pollution

ALTERNATIVE PROJECT SITE, TECHNOLOGIES AND MATERIALS

- The proposed site is the best available for this area due to its accessibility, central nature of the location and gentle slope of the land. The flatness of the site would mean much reduced landscaping costs

- The project should consider diversification and production of other products to shield it from losses. For example generation of electricity, production of methanol, clean water processing and bottling, dairy production

- The company only owns a total of 147 acres of land and therefore does not have plans for nucleus cane development. This is not prudent as the factory cannot only depend on cane supply from farmers

5. ADEQUACY OF ENVIRONMENTAL MANAGEMENT PLAN (EMP)

- The measures highlighted in the study are adequate. However the following activities to be undertaken after the completion of the construction phase

- Close-down audit to verify that all the proposed mitigation measures are being implemented

- Inclusion of an environmental monitoring and management programme for maintenance.

6. SECTORAL CONCERNS

The capacity of the factory and cane availability right now and plans for cane development in future should have been captured under the executive summary.

Quite a number of grammatical mistakes and misspellings were also noted and these should be corrected.

There is absolutely no mention of nucleus cane development and we cannot imagine a factory operating sustainably without factory owned sugarcane supply.

The proposed project is important for the economic development of the area and perfectly in line with the objectives of devolution currently being implemented by the Government but is likely to lead to loss of land, property and displacement of a number of persons but these should be managed through adequate compensation by the proponent.

The Factory Management should be all inclusive to incorporate all the key players and stakeholders such as the Kenya Sugar Board, KARI, KESREF etc.

The Farmers' Organization should be strengthened to play a key role in produce marketing and land development which is a big challenge at the moment.

Eng. J.A.M. Nkanya, OGW
FOR: PRINCIPAL SECRETARY

ANNEX 4

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY

Tel: (254-020)-6005522 / 3 / 6 / 7, 6001945, 6008767
Mobile line: 0724 253 398, 0723 363 010, 0735 013 046, 0735 010 237
Telkom Wireless: 020-2101370
Fax: (254-020)-6008997
Hotline: 020-8077233, 020-6006041

P. O. Box 67839 - 00200
Popo Road, Nairobi, Kenya
E-mail: dgnema@nema.go.ke
website: www.nema.go.ke

REF: NEMA/EIA/5/1015
Your Ref: AFFA/SD/ST/WKSBU/A1/VOL.I/17

April 20, 2015

Interim Head,
Sugar Directorate,
Agriculture, Fisheries and Food Authority,
Sukari Plaza, off Waiyaki Way,
P.O. Box 51500-00200
NAIROBI

Attention: R. Mkok,

RE: CONSTRUCTION OF A SUGAR FACTORY WITHOUT AUTHORITY.

The National Environment Management Authority (NEMA) acknowledges receipt of your letter dated April 8, 2015 on the above project by West Kenya Sugar Company.

Attached, please find an earlier brief on the project, answers to parliamentary queries on issues relating to the project, and comments on the Environmental Impact Assessment (EIA) study report from the Ministry of Agriculture, Fisheries and Livestock Development endorsing the project.

We shall be providing further information when and as you shall require.

ZEPHANIAH O. OUMA
FOR: DIRECTOR GENERAL

Copy to:
Mr. Tejveer S Rai
Managing Director
West Kenya Sugar Company
P.O. Box 2101,
KAKAMEGA

Attachments

1. Comments from the Ministry of Agriculture, Fisheries and Livestock Development
2. Answers to questions raised
3. Brief

VISIT BY THE PARLIAMENTARY COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES TO BUSIA REGARDING THE PETITION ON THE CONSTRUCTION OF A DAM ALONG RIVER SUO/SIO

Following the visit, the National Environment Management Authority (NEMA) was required to comment on the following issues:

(i) Has NEMA licensed a construction of a dam along the Sio River by West Kenya Suga?

(ii) Action taken by NEMA on the Abstraction of Water by West Kenya Sugar from Sio River.

(iii) Why EIA License was issued to West Kenya Sugar despite Objection by Agriculture, Fisheries and Food Authority in their letter dated 8th April, 2015.

The Authority states as follows:

i. Has NEMA licensed a construction of a dam along the Sio River by West Kenya Suga?

NO construction of a dam by West Kenya Sugar has been licensed by NEMA. It is hereby clarified that the company has proposed to abstract water from Sio River and NOT to dam.

Maira Multipurpose Dam

The only proposed major dam along the Sio River is the Maira Dam by the Ministry of Water and Irrigation. An Environmental Impact Assessment Project Report was submitted on 31st January, 2013. The sources of water for the proposed dam are Sio River catchment at the confluence with Nangeni River, River Malaba and River Malakisi.

The proposed multipurpose Maria Dam will have a capacity of 4.6 mm^3 with a height of 11m; length of 637m and the crest width of 6m. The surface area of the proposed reservoir at maximum water level will be 1.26km^2.

The project will result in displacement, resettlement and compensation of locals. A preliminary resettlement action plan was prepared alongside an indicative property likely to be affected and the type of assets in the affected area. A Resettlement Action Plan (RAP) detailing individual affected persons, sizes of land and other individual property, grievances procedure, eligibility and criteria, payment mechanism and others will be carried out in the next phase. Actual valuation of the property likely to be affected to be done before construction.

Noting the magnitude and associated social risks, the project was upgraded to Full ESIA Study (*attached is a copy of letter upgrading to full study-**Annex 1***). The Ministry has **NOT** submitted the ESIA Study to date.

ii. Action taken by NEMA on the Abstraction of Water by West Kenya Sugar from Sio River.

NEMA, through the Busia County Director of Environment, WRMA and other lead agencies had inspected the site and stopped ongoing works at intake until Environmental and Social Impact Assessment (ESIA) and adequate public participation is undertaken. The need for disclosure and associated social anxiety/risk justified the prescription for ESIA.

Works have stopped and EISA is being undertaken. Adequate public consultation and participation shall be achieved during this process and Zone of Possible Agreement (ZOPA) reached.

iii. <u>The Proposed 1250 TCD Sugar Plant by West Kenya Sugar Company Limited at Olepito Village, Tanga Kona Area, Busia County. Why EIA licence was issued to West Kenya despite objection by Agriculture, Fisheries and Food Authority in their leter dated 8th April 2015?</u>

Attached is a brief ***(Annex 2)*** on the processing of ESIA submitted for the proposed 1250 TCD Sugar Plant by West Kenya Sugar Company. The brief illustrates that Institutional, Public and Technical Recognition was considered and due diligence adhered to.

The then key Ministry of Agriculture, Livestock and Fisheries had endorsed the project (*copy of letter attached for reference-**Annex 3)***.

NEMA, through our letter dated 20th April, 2015 clarified this Institutional Conflict to the Agriculture, Fisheries and Food Authority (*copy of letter attached-**Annex 4***).

Note that Agriculture, Fisheries and Food Authority is a recently created Authority under the Ministry of Agriculture. Furthermore the ESIA was submitted and processed in the year 2013.

ANNEX 4..

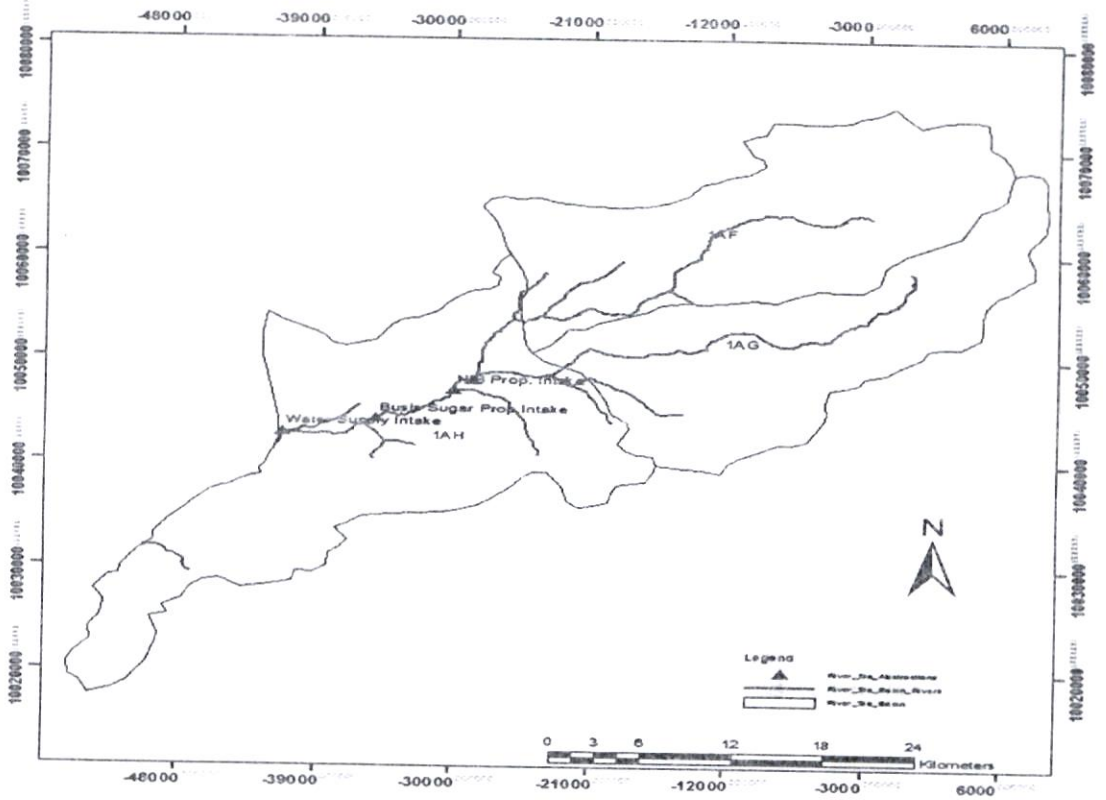
REPORT ON WATER ABSTRACTIONS FROM RIVER SIO (SUO) IN NAMBALE AND MATAYOS SUB COUNTIES OF BUSIA COUNTY.

Background of River Sio System

The Sio River originates North West of Bungoma town, and drains into Lake Victoria. The Catchment covers an area of about 1,448 km2. The drainage pattern of Sio River catchment is dendritic and the drainage density is high. The main stream of Sio River stretches approximately 85 km from the source in Kenya to the mouth in Sio Port, which is at the Kenya/Uganda border. The Walatsi is the main tributary of the Sio River, and joins it upstream of Nambale Market. Its total length is about 25 km long with catchment area of 674 km2, which represents about 46.5% of the Sio's catchment area. Other smaller tributaries of the Sio include the Mererak, Namwitsula, musokoto, and Wakhungu which also join the Sio near Nangina town. The Sio forms the border between Kenya and Uganda about 3 km South of the Kisumu-Busia road, passing through an extensive wetland in its middle reaches, and then along the border to Lake Victoria. As it enters Lake Victoria, the river widens. However, during the rainy seasons (March to May and October to November), the river widens considerably at the end as the land is quite flat in the last 5 km of its lower reach.

The Sio River is of tremendous importance for the economy of the local community and the environment. The river is of national, regional and international importance as it forms part of the Lake Victoria basin and the Nile basin shared among eleven riparian countries. It provides water for major domestic and industrial water supplies. The demands on the river, its tributaries and water bodies in the catchment are growing and are expected to increase in the future due to increase in population of the people living within the catchment.

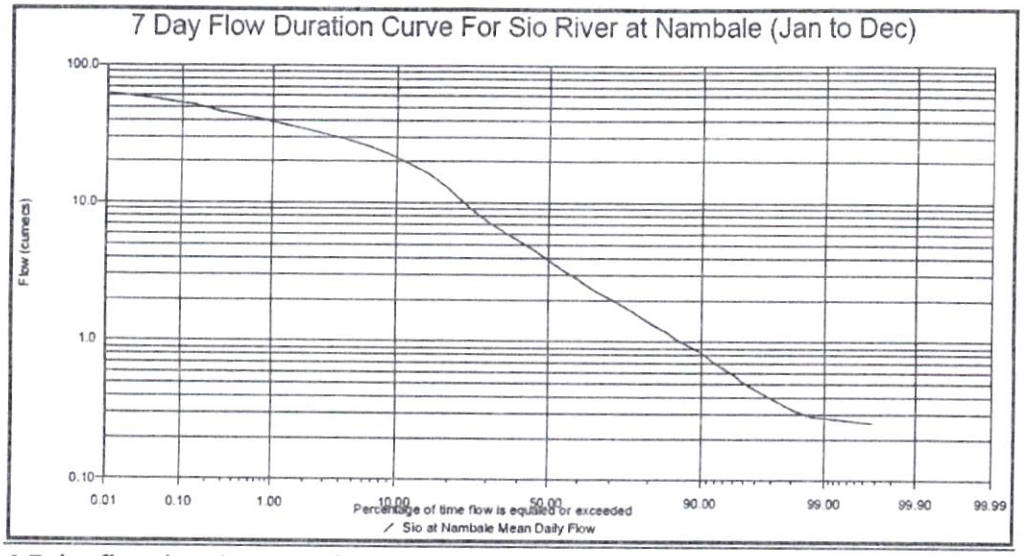
Map of River Sio Basin showing major abstractors



Water Situation analysis

Discharge measurements carried out on the 19th of October 2014 gave a river discharge of 35.744m^3/s. streamflow analysis based on derived data from RGS 1AH01 at Mundika bridge indicate that the total available mean daily flow at the proposed project site is 7.583m^3/s (655,171.20m3/day, 19,655,136 m^3/Month and 235,861,632 m^3/year). The flow in the river indicates that for a 7 day average, 80% of the time (Q80), a flow of 1.387 m^3/s (119, 836.8 m^3/day) is available. Similarly, the reserve flow (Q95) resulting from this analysis is 0.509 m^3/s (43,977.6 m^3/day).

It therefore follows that the available allocatable flow from the derived discharge for river Sio at the proposed project site is equal to the available normal flow (Q80) less the reserve flow (Q95) which in this case is 0.878 m3/s (75,859.2 m^3/day).



A 7-day flow duration curve for River Sio at the proposed intake for West Kenya Sugar.

There are a number of tributaries into the river Sio downstream of the abstraction points such as Nambale, Mererak, Namwitsula among others.

Water abstractions

The main abstractions directly from Sio river are as follows:

1. National Irrigation Board, Luigebu-Nasimu: 83,160m^3/Day (From flood flows. Will require a 90-day storage to be used during low flows).
2. Busia Sugar Company: 3,980m^3/Day
3. Lake Victoria (N) Water Services Board: 15,000m^3/Day
4. West Kenya Sugar company 1500m^3/Day

However, only LVNWSB is currently active, the rest are at various levels of development as illustrated by the pictures below:

Intake works excavation for West Kenya Sugar

Weir construction at NIB site on River Sio

REPUBLIC OF KENYA

THE REGISTERED LAND ACT

(*Chapter* 300)

Title Deed

Title Number SOUTH TESO/ANGOROMO/8343

Approximate Area =6.33= HA

Registry Map Sheet No. 22

This is to certify that WEST KENYA SUGAR COMPANY LIMITED

P.O. BOX 2101-50100 KAKAMEGA + +

+ + +

+ + +

is (are) now registered as the absolute proprietor(s) of the land comprised in the above-mentioned title, subject to the entries in the register relating to the land and to such of the overriding interests set out in section 30 of the Registered Land Act as may for the time being subsist and affect the land.

GIVEN under my hand and the seal of the

BUSIA District Land Registry

this 8TH day of NOVEMBER 20 11

Land Registrar

(To be completed only when the applicant has paid the fee of Sh. 125)

At the date stated on the front hereof, the following entries appeared in the register relating to the land:

DITION: 1

PENED: 13.10.011

PART A—PROPERTY SECTION

REGISTRATION SECTION	EASEMENTS, ETC.	NATURE OF TITLE
S.TESO/ANGOROMO		
PARCEL NUMBER 8343		ABSOLUTE
APPROXIMATE AREA (6.33= Ha.		
REGISTRY MAP SHEET No. 22		

SUBDIVISION OF PLOT 1812

PART B—PROPRIETORSHIP SECTION

No.	Date	Name of Registered Proprietor	Address and Description of Registered Proprietor	Consideration and Remarks	Signature of Registrar
2.	4.11.011	WEST KENYA SUGAR COMPANY LIMITED		TRANSFER	SIGNED
3.	8.11.011	TITLE	DEED	ISSUED	

KENYA REVENUE AUTHORITY

Tax Compliance Certificate

For General Tax Questions
Contact KRA Call Centre
Tel: +254 (020) 4999 999
Cell: +254(0711)099 999
Email: callcentre@kra.go.ke

www.kra.go.ke

Taxpayer PIN : P000627038X

Name and Address :

WEST KENYA SUGAR COMPANY LIMITED

WEST KENYA SUGAR COLONY, KAKAMEGA, Kakamega South District,
PO Box:2101,
Postal Code:50100

Certificate Date: 24/11/2014

Certificate Number:

KRALTO0220912014

This is to confirm that WEST KENYA SUGAR COMPANY LIMITED,
Personal Identification Number P000627038X
has filed relevant tax returns and
paid taxes due as provided by Law.

This Certificate will be valid for
twelve (12) months up to 24/11/2015.

Caveat: This certificate is issued on the basis of information available with the authority as at the certificate date mentioned above. The Authority reserves the right to withdraw the certificate if new evidence materially alters the tax compliance status of the recipient.

Disclaimer : This certificate is system Generated and therefore does not require signature.You may confirm validity of this certificate on the iTax Portal by using the TCC Checker.

No. C. 19888

CERTIFICATE OF INCORPORATION

I hereby Certify, that—

WEST KENYA SUGAR COMPANY LIMITED .....

.....

.....

.....

is this day Incorporated under the Companies Act (Cap. 486) and that the Company is LIMITED.

Given under my hand at Nairobi this SIXTH day

of NOVEMBER One Thousand Nine Hundred and SEVENTY NINE.

Dy. Registrar of Companies

GPK 1049—5m—6/77—(F9)

INCOME TAX DEPARTMENT

PERSONAL IDENTIFICATION NUMBER CERTIFICATE

PIN: P000627038X

NAME: WEST KENYA SUGAR CO LTD

DATE OF BIRTH: *

PLACE OF BIRTH: *

Date: 14 DEC 1992

ASSISTANT COMMISSIONER OF INCOME TAX
PIN
14 DEC 1992
P.O. Box 1970
SENIOR * KISUMU, KENYA *

Signature

CRM PIN 1

WEST KENYA SUGAR CO. LTD.
P. O. BOX. 2101,
KAKAMEGA, KENYA

The Chief Executive Officer,
Water Resources Management Authority,
P.O. Box 45250 – 00100
NAIROBI

Form: WRMA 001A
Catchment: _____
WRMA ID: _____
File: _____

Water Resources Management Authority

APPLICATION FOR WATER PERMIT

(To be submitted in triplicate) *(Rules 23,24,71,72)*

Type of Water Use	Surface Water				Groundwater		Effluent Discharge	Swamp Drainage
	Diversion	Abstraction	In-stream Works	Storage	Shallow well	Borehole		
Tick Box								
Attach Form	1B	1B ✓	1B	1C	1D	1D	1E	1F

PARTICULARS OF APPLICANT		DETAILS	
1. Full name of applicant(s) (In Block Letters)		WEST KENYA SUGAR CO. LTD	
2. Category of Applicant - Individual, Group [Association, Society], Company, Institution		COMPANY	
3. ID Number of Applicant (Individual) or Certificate of Incorporation or Registration for Groups or Companies		NO. C. 19888	
4. PIN Number (where available)			
Physical Address where water is to be used		**Contact Address of Applicant**	
5. L.R Number(s)	S. KISII/APOKOROMO/1885	10. Box Number	2101
6. Village(s)/Ward(s)	Musoma	11.Town	KAKAMEGA
7. Sub-location(s)	Sia Kenya	12. Post Code	50100
8. Location(s)	Nambale township	13. Telephone Contact (Landline)	(020) 2036320
9. Division(s)	Matayo	14. Telephone Contact (Mobile)	0722786084
10. District(s)	Nambale	15. Email Contact	info@wksugar.com

WATER RESOURCE DETAILS

16. Name of Body of Water or Aquifer where water is to be diverted, abstracted or stored	SIO
17. Is the point of abstraction or storage in a Protected Area or a Groundwater Conservation Area? (yes/no)	
18. Sub-catchment Number	
19. Class of Water Resource	
20. Name of Body of Water or Aquifer where effluent is to be discharged	
21. Sub-catchment Number (Effluent)	
22. Class of Water Resource (Effluent)	
23. Category of Application (Class of Permit)	
MIXING WATERS	
24. State the authorization(s) and permits already issued in respect of the water use on the land described in No. 4. (If NIL, state "Nil", if YES, list authorisation or permit numbers).	

Note: Shaded Areas to be filled in by WRMA Officials

LVRMCDA
Please process
10/3/2015

SIAYA SUB-REGIONAL OFFICE
RECEIVED
By
11/03/2015
WRMA – LVNCDA

...xecutive Officer,
...ources Management Authority,
... x 45250 – 00100
...OBI

Form: WRMA 001A
Catchment: _____
WRMA ID: _____
File: _____

LAND	
25. Does applicant own all the land related to the permit application? Yes/No	
26. If No, have easement(s) been attached (Yes = 1, no = 0)	
27. Does application involve land located within or adjacent to a riparian, protected or groundwater conservation area? Yes/No	
28. Is proposed activity permitted within the riparian area, protected or groundwater conservation area? Yes/No	
OWNERSHIP OF WORKS	
29. Will the applicant own all the works related to the permit application?	YES
30. If No, have agreement(s) been obtained from owner(s) of all works and these agreements are adequate and are attached (Yes/no)	N/A
SUPPLEMENT TO PERMIT/AUTHORISATION	
31. Is application made under Section 21 of WRMA Rules? Yes/No	
32. Provide Permit Number for Main Permit	

QUANTITY WATER REQUIRED

33. Brief Description of Project and Intended Use for Water				
Type of Water Use	**Groundwater (m^3/day)**	**Surface Water (m^3/day)**		
		River - Normal Condition	**River - Flood Condition**	**Lake**
34. Public				
35. Domestic		50		
36. Livestock				
37. Subsistence Irrigation				
38. Commercial Irrigation				
39. Industry/Commercial		145C		
40. Hydropower				
41. Others				
42. Sub-total				
43. Quantity Returned				
44. Water Used (row 41-row 42)				
45. Effluent Discharge		45C		

PERIOD OF CONSTRUCTION

46. State the estimated period of construction of the works (months)	
47. State the period for which the permit is required (year – maximum 5 years)	5 YEARS

Executive Officer,
Sources Management Authority,
x 45250 – 00100
OBI

Form: WRMA 001A
Catchment: _____
WRMA ID: _____
File: _____

DESCRIPTION OF WATER USE

DOMESTIC

Population to be served (number of people)	
Basic Human Needs (m^3/day)	
Domestic Water Demand (m^3/day)	50

LIVESTOCK

Type of Livestock	Number of Animals
Number of Grade Cattle	
Number of Local Cattle or donkeys	
Number of goats & sheep	N/A
Number of camels	
Other	

PUBLIC PURPOSE

Supply Area (km^2)	
Population to be served	N/A

SUBSISTENCE IRRIGATION –Water for Household Food Security

Number of connections	
Area per connection (ha)	
Total Irrigated Area (ha)	N/A
Expected Rate of Water Use m^3/ha/day	
Total Expected Water Requirements (m^3/day)	

COMMERCIAL IRRIGATION

Type of Crop (hectares)	Type of Production System (Outdoor, GH, hydroponics)	Type of Irrigation Technology (overhead, micro-sprinkler, drip)	Expected Rate of Water Use m^3/ha/day	Total Expected Water Requirements (m^3/day)
TOTAL				

INDUSTRIAL

Number of Persons Employed			
Type of Industry (tick whichever is appropriate)			
Food Processing		Pulping (Coffee, sisal, sugar,)	✓
Horticultural Packaging		Tea	
Chemical Manufacturing		Bottling	
Tanning		Others (state type)	
Water Requirements			
Water required for Plant/Processing (m^3/day)		1450	
Water required for Sanitation Facilities (m^3/day)			
Water required for other purposes (m^3/day)			
Total Water Requirements (m^3/day)			

POWER

Maximum static head (m)	
Expected Power Generated (KVa-hr) at Maximum Static Head	

OTHER USES

Fishponds (volume – m^3)	

xecutive Officer,
ources Management Authority,
x 45250 – 00100
OBI

Form: WRMA 001A
Catchment: _____
WRMA ID: _____
File: _____

EES SUBMITTED

Category A, B, C or D Application	Fees for Examination of Application
AMOUNT PAID	
Receipt Number	

ATTACHEMENTS	Attached (Yes/No)	Comments/Remarks
Form 1B		
Form 1C		
Form 1D		
Form 1E		
Form 1F		
Copy of Identification Documents	YES	
Copy of Land Documents	YES	
Copy of Agreements on Land Use		
Copy of Agreements on Use of Water Works		
Relevant Maps		
Copy of EIA License	YES	
Site Assessment Report		
Technical Reports		
Hydrological Assessment Report		
Hydrogeological Survey Report		
Technical Design Report		
Dam Design Report		
Effluent Discharge Control Plan	NO	
Soil and Water Conservation Plan		
Copy of Receipt for Payment		
WRUA Comment Form		

I agree to supply any further information which may be required by the Water Resources Management Authority.

SIGNATURE

Signature of Applicant or duly Authorised Agent	
Name	SOHAN KUMAR SHARMA
Date of Application	4/12/14

SIGNATURE OF WRMA OFFICIAL RECEIVING APPLICATION

Signature of WRMA Official	
Name	W. O. Hamisi
Position	ATLM
Date Application Received	10TH March 2015

Executive Officer,
esources Management Authority,
ox 45250 – 00100
OBI

Form: WRMA 001A
Catchment: _____
WRMA ID: _____
File: _____

OFFICIAL SECTION

(To be filled in by WRMA officials)

	Tick	Date	Officer
Submission			
WRUA advice received			
Recommended			
Rejected			
Conditional Recommendation			
CAAC advice received			
Recommended			
Rejected			
Conditional Recommendation			
WRMA National Office (Category D)			
Recommended			
Rejected			
Conditional Recommendation			
WRMA Regional Office			
Recommended			
Rejected			
Authorisation			
Issue of Authorisation			
Validity Period (months)			
Expiry			
Extension of Validity Period (months)			
Revised Expiry Date			
Inspection of Final Completion			
Date of Issue of Permit			
Date of Expiry of Permit			

The Chief Executive Officer,

Water Resources Management Authority,

P.O. Box 45250-00100.

Nairobi.

Form: WRMA 004

Catchment: **Lake Victoria North (LVN)**

WRMA ID: **WRMA\11\00787**

File: **WRMA/11/SYA/1AH/10420/S**

Water Resources Management Authority

AUTHORISATION TO CONSTRUCT WORKS

FOR THE USE OF WATER

Dear Sir/ Madam;

Rule (33)

I have the honour to inform you that the Water Resources Management Authority has given you approval to construct the proposed works based on your application dated **09-March-2015** for a Water Permit.

Authorization No. WRMA	**WRMA/11/SYA/1AH/10420/S**	Dated	**10-March-2015**

Type Of Water use	Surface water				GroundWater		Effluent discharge	Swamp Drainage
	Diversion	Abstraction	In-stream Works	Storage	Shallow Well	BoreHole		
Tick Box		X						

PARTICULARS OF APPLICANT	DETAILS		
1. Full name of applicant(s) (In Block letters)	**WEST KENYA SUGAR CO. LTD**		
3. Category of Applicant - Individual, Group [Association, Society], Company, Institution	**Company**		
4. ID Number of Applicant (Individual) or Certificate of Incorporation or Registration for Groups or Companies	**NO.C.19888**		
5. PIN Number (where available)	**P000627038X**		
Physical Address where water is to be used		**Contact of Applicant**	
6. L/ R Number(s)	**S.TESO/ANGOROMO/7885**	7. Box Number	**2101**
8. Village(s)/ Ward(s)	**SIEKUNYA**	9. Town	**KAKAMEGA**
10. Sub-location(s)	**NAMBALE**	11. Post Code	**50100**
12. Location(s)	**NAMBALE**	13. Telephone Contact (Landline)	**0202036320**
14. Division(s)	**NAMBALE**	15. Telephone Contact (Mobile)	**+254722786084**
16. District(s)	**BUSIA**	17. Email Contact	

WATER RESOURCE DETAILS	
18. Name of Body of Water or Aquifer where water is to be diverted, abstracted or stored	**RIVER SIO**
19. Is the point of abstraction or storage in a Protected Area or a Groundwater Conservation Area? (yes/no)	**NO**
20. Sub-catchment Number	**1AH**
21. Class of Water Resource	
22. Name of Body of Water or Aquifer where effluent is to be discharged	
23. Sub-catchment Number (Effluent)	
24. Class of Water Resource (Effluent)	
25. Category of Application (Class of Permit)	**B**

The Chief Executive Officer,

Water Resources Management Authority,

P. O. Box 45250-00100.

Nairobi.

Form: WRMA 004

Catchment: **Lake Victoria North (LVN)**

WRMA ID: **WRMA\11\00787**

File: **WRMA/11/SYA/1AH/10420/S**

SUPPLEMENT TO PERMIT/AUTHORISATION	
26. Are there any supplements approved under Section 21 of WRMA Rules (yes/no)	**NO**
27. Supplement No.	

28. Brief Description of Project and Intended Use for Water Type of Water Use		**TO ABSTRACT RIVER WATER FOR DOMESTIC AND INDUSTRIA**		
		Surface Water (m3/day)		
Type of Water Use	**Groundwater (m3/day)**	**River - Normal Condition**	**River - Flood Condition**	**Lake**
29. Public				
30. Domestic		**50**		
31. Livestock				
32. Subsistence Irrigation				
33. Commercial Irrigation				
34. Industry/Commercial		**1450**		
35. Hydropower				
36. Others				
37. Sub-total		**1500.00**		
38. Quantity Returned				
39. Water Abstracted (row 34 - row 35)		**1500.00**		
40. Effluent Discharge				

Having filed the necessary application, maps and plans, and having complied with the provisions of the Water Act 2002, and the Rules there under relating to the applications for Water Permits *is/ are hereby authorized to construct, subject to the acquisition of the necessary rights of way or easements therefore, if any, the works shown by the said applications, maps and plans in accordance with provisions of the Water Act 2002, the Rules there under, and the following conditions:

1. The construction of the works hereby authorized shall commence within a period of **0** days and shall be completed within a period of **2** months from the date of this authorization.

2. (a)Any person who erects or constructs temporary works shall be entitled to divert, abstract, impound, obstruct, store or use water to such extent only as may be necessary for the construction or erection of the works, and whenever it shall be necessary to divert, abstract or impound water during the erection or construction of the works authorized, such diversion, abstraction, obstruction, impounding, or use of water shall be made at such time and in such manner that the works of other operators are interfered with as little as possible and that no damage will be caused to property of another landholder. Provided that if any damage is caused it shall, failing agreement between the parties concerned, be settled by arbitration under the Arbitration Act.

(b)Unless empowered thereto by the Water Resources Management Authority in writing, all temporary works shall be removed within a period of three months from the date of completion of the works authorized or from the date of determination of the authorization (whichever be the earlier) and where any temporary works exist, such as quarries, burrow-pits, excavations, cuttings, tunnels or things of a like nature which cannot be economically removed, efficient precautions to the satisfaction of the Water Resources Management Authority shall be taken, by the person named in the authorization, to render and to maintain all such temporary works safe in the interest of life and property. The Water Resources Management Authority reserves the right to inspect the works authorized by this authorization, and attention is drawn to section 90 of the Act.

3. Any changes between the original proposed design and final as-constructed arrangement has been documented and such documentation submitted to the Authority.

The Chief Executive Officer,
Water Resources Management Authority,
P.O. Box 45250 – 00100
NAIROBI

Form: WRMA 004
Catchment: Lake Victoria North (LVN)
WRMA ID: WRMA\LI\00787
File:WRMA/LI/SYA/IEB/10420/S

3. CONDITIONS OF AUTHORISATION	DETAILS
Measuring device	SHALL INSTALL A MASTER METER , LOCATED AT THE POINT WHERE THE WATER IS ABSTRACTED, OR DIVERTED
Controlling device	SHALL INSTALL A SLUICE GATE, VALVE OR OTHER WORKS LOCATED AT THE POINT WHERE THE WATER IS ABSTRACTED, OR DIVERTED
Water Quality Report	
Evidence of EMCA Compliance	SUBMIT LETTER OF COMPLIANCE OR EIA LICENSE FROM NEMA
Soil and Water Conservation Plan	
Compensation Flow (m^3/day)	
Inspection Milestones	
1	
2	
Notification Requirements	
1	
2	
3	
4	
Storage	
Airline	
Test pumping	
Other Technical Details	
Effluent Discharge Requirements	

4. This Authorization will be automatically cancelled, when the authorized period expires, without any further reference to you unless extension of time limit is applied for prior to date of expiry.

5. The following details/documents/fees are required to complete your application before a Permit may be issued:

(a) FILL FORM WRMA 008: CERTIFICATE OF COMPLETION

(b) FILL FORM WRMA 007: INSPECTION REPORT

(c) PERMIT FEES KSHS 7,500

SIGNATURE
Yours faithfully,

Signature of WRMA Officer	
Name of Officer	H. O. Hamisi
Position	ATCM
Date of Signature	10th March 2015

ORIGINAL

WATER RESOURCES MANAGEMENT AUTHORITY
P.O. Box 45250-00100, Nairobi, Tel. 2732291

402576

MISCELLANEOUS RECEIPT

24/3, 2015

RECEIVED from West Kenya Sugar Co. Ltd.

the sum of Kenya shillings Twelve thousand five hundred only.

being payment of Permit Fee.

Account No.

KSh. 12500/-

Cash/Cheque No.

WATER RESOURCES MANAGEMENT AUTHORITY
SIAYA SUB-REGIONAL OFFICE
P.O.BOX 374, SIAYA
DATE.....
WITH THANKS

GPK 5363—300 Bks.—7/2009

Application Reference No.: EIA/1015
Registration No: 00190c9

For official use

nema

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (NEMA)

THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT
ENVIRONMENTAL IMPACT ASSESSMENT LICENSE

This is to certify that the Project Report/Environmental Impact Assessment Study Report received from WEST KENYA SUGAR COMPANY LIMITED (Name of of individual/firm) of P.O. BOX 2101, KAKAMEGA (Address su' itted to the National Management Environment Authority (NEMA) in accordance with the E. ironmental Impact Assessment and Audit Regulations regarding the Proposed 1250 TCD Sugar Plant (title of project) whose objective is to carry on construction of a 1250 capacity sugar facility with an effluent treatment plant, diesel tank and weigh bridge, among other facilities (briefly describe purpose) located at at Olepito Village, Tanga Kona Area, Busia County (locality and district) has been reviewed and a licence is hereby issued for implementation of the project, subject to attached conditions.

Dated this 14TH Day of OCTOBER, 2013

Signature.....

(SEAL)

Director General
The National Environment Management Authority

CONDITIONS OF LICENSE

1. This licence is valid tor a period of 24 months (time within which the project should commence) from the date hereof.
2. The Director-General shall be notified of any transfer/variation/surrender of this license.

P.T.O.

1.0 General Conditions

1.1 This development is for the construction of a TCD sugar plant at Olepito Village in Tanga Kona area, Busia County, at an estimated cost of USD.40.38 million.

1.2 Without prejudice to the other conditions of this license, the proponent shall implement and maintain an environmental management system, organizational structure and allocate resources that are sufficient to achieve compliance with the requirements and conditions of this license.

1.3 The Authority shall take appropriate action against the proponent in the event of breach of any of the conditions stated herein or any contravention to the Environmental Management and Coordination Act, 1999 and regulations therein.

1.4 This license shall not be taken as statutory defence against charges of environmental degradation or pollution in respect of any manner of degradation/pollution not specified herein.

1.5 The proponent shall ensure that records on conditions of licenses/approval and project monitoring and evaluation shall be kept on the project site for inspection by NEMA's Environmental Inspectors.

1.6 The proponent shall submit an Environmental Audit report in the first year of occupation/operations/commissioning to confirm the efficacy and adequacy of the Environmental Management Plan.

1.7 The proponent shall comply with NEMA's improvement orders throughout the project cycle.

1.8 The proponent shall provide the final project accounts (final project costs) on completion of construction phase. This should be done prior to project commissioning/operation/occupation.

2.0 Construction Conditions

2.1 The proponent shall put up a project signboard as per the Ministry of Transport and Infrastructure standards indicating the NEMA EIA license number among other information.

2.2 The proponent shall ensure that adequate and appropriate sanitary facilities are provided for the workers during construction phase and that proper decommissioning of the facilities is carried out once construction is complete.

2.3 In the event that the project site borders a river or a stream, the proponent, pursuant to Regulation 6 (c) of the Water Quality Regulations of 2006, shall protect the riparian reserve by ensuring that **NO** development activity is undertaken within the full width of the river or stream to a minimum of six (6) meters and a maximum of 30 meters on either side, based on the highest recorded flood level.

2.4 The proponent shall ensure that the cooling systems fitted are suitable alternatives with zero ozone depleting potential as per the Environmental Management and Coordination (Controlled Substances) Regulations of 2007.

2.5 The proponent shall ensure that construction is supervised by qualified personnel and is done as per the approved drawings in adherence to the Building Code of Kenya of 1968.

2.6 The proponent shall ensure that mitigation measures for dust control are implemented during the construction phase.

2.7 The proponent shall obtain approval from all the relevant authorities prior to commencement of construction works.

2.8 The proponent shall strictly adhere to the provisions of the National Construction Act of 2011.

2.9 The proponent shall ensure strict adherence to the provisions of Environmental Management and Coordination (Noise and Excessive Vibrations Pollution Control) Regulations of 2009.

2.10 The proponent shall ensure strict adherence to the Occupational Safety and Health Act (OSHA), 2007.

2.11 The proponent shall ensure that construction workers are provided with adequate personal protection equipment (PPE) as well as adequate training.

2.12 The proponent shall ensure that construction activities are undertaken during the day (and not at night) between 0800 hours and 1700 hours and that transportation of construction material to site are undertaken during weekdays at off peak hours.

2.13 The proponent shall ensure strict adherence to the Environmental Management Plan developed throughout the project cycle.

2.14 The proponent shall ensure that the development adheres to zoning specifications issued for development of such a project within the jurisdiction of the County Government of Busia, with emphasis on approved land use for the area.

3.0 Operational Conditions

3.1 The proponent shall obtain an effluent discharge license from NEMA for the proposed waste water treatment plant within the first year of operation.

3.2 The proponent shall obtain a water abstraction permit from Water Resources Management Authority in case additional water will be required from the river.

3.3 The proponent shall ensure that all process water is pre-treated before discharge into the environment as per the standards provided under the Water Quality Regulations of 2006.

3.4 The proponent shall ensure that all waste water is disposed as per the standards set out in the Environmental Management and Coordination (Water Quality) Regulations of 2006.

3.5 The proponent shall ensure that all drainage facilities are fitted with adequate functional grease/oil water separators and silt traps.

3.6 The proponent shall ensure that appropriate and functional efficient air pollution control mechanisms are installed to control all air emissions.

3.7 The proponent shall ensure that all equipment used are well maintained in accordance with the Environmental Management and Coordination (Noise and Excessive Vibration Pollution Control) Regulations of 2009.

3.8 The proponent shall ensure that all solid waste is handled in accordance with the Environmental Management and Coordination (Waste Management) Regulations of 2006.

3.9 The proponent shall comply with the relevant principal laws, by-laws and guidelines issued for development of such a project within the jurisdiction of the County Government of Busia, Ministry of Agriculture, Livestock and Fisheries, National Construction Authority, Ministry of Health, Directorate of Occupational Health and Safety Services, Kenya Sugar Board, Ministry of Industrialization and Enterprise Development, Water Resources Management Authority and other relevant Authorities.

3.10 The proponent shall ensure that environmental protection facilities or measures to prevent pollution and ecological deterioration such as traffic management plan, soil erosion control mechanism, solid and liquid waste management plan, landscaping and tree planting, emergency response plan/fixtures, energy and water saving fixtures, occupational safety and health of workers, provision of personal protective equipment, functional drainage system, noise abatement measures, dust control measures are designed, constructed and employed simultaneously with the proposed project.

4.0 Notification Conditions

4.1 The proponent shall seek written approval from the Authority for any operational changes under this license.

4.2 The proponent shall ensure that the Authority is notified of any malfunction of any system within 12 hours on the NEMA hotline No. **020 6006041/0786101100** and mitigation measures put in place.

4.3 The proponent shall keep records of all pollution incidences and notify the Authority within 24 hours.

4.4 The proponent shall notify the Authority in writing of its intent to decommission the facility **three (3) months** in advance.

5.0 Decommissioning Conditions

5.1 The proponent shall ensure that a decommissioning plan is submitted to the Authority for approval at least three (3) months prior to decommissioning.

5.2 The proponent shall ensure that all pollutants and polluted material is contained and adequate mitigation measures provided during the phase.

The above conditions will ensure environmentally sustainable development and must be complied with.