

Water Privatization in the Philippines: Creating Inequity in People's Access to Sufficient and Potable Water

According to the 2002 Annual Poverty Indicators Survey conducted by the National Statistics Office, 3.2 million families (20%) do not have access to potable water. The same study showed that majority of families without access to clean drinking water comes from the poorest 40% of families in the Philippines.

The World Bank paints a similar picture as to the Filipinos' equal access to sufficient and safe drinking water. In its 2001 Filipino Report Card on Pro-Poor Services, almost 8 out of 10 poor Filipinos do not have access to home-piped water. Water consumption among half of poor and rural households is unacceptably low at only 30 liters per capita per day.

The situation in rural areas is far worse. The same study showed that rural communities and the major island of Mindanao are underserved as urban households are more likely to be served by waterwork systems with individual household connections.

The same picture is true regarding Filipinos' access to sanitation as 13.9 % of all families do not have a sanitary toilet.

Due to the unequal access to sufficient and safe water, a significant number of Filipinos get their water needs from doubtful sources according to the National Resources Water Board. In fact, the poor are three times more likely to source water from wells, springs, and communal faucets as compared to rich Filipinos, leading to a high incidence of water-borne diseases such as diarrhea, typhoid, gastroenteritis, malaria and dengue fever.

Unfortunately, the poor, despite having less access to water, pays more. The World Bank study showed that on the average, the poor allocate proportionally more of their monthly expenditure than the rich are, amounting to almost 9% of their household expenditures to buy vended and low-quality water.

As a solution to the worsening crisis, the Philippine government has turned to the privatization of the water sector in order to address the lack of and substandard water management and supply systems.

Although climate change, pollution, exploitation and overpopulation contribute to and exacerbate the global water crisis, the occurrence of 'water shortages' (i.e. shortage for the poor), in fact, is primarily a direct result of the globalization policies of privatization and commercialization of water.

Privatization leads to exorbitant rates and eventually, water cut-offs for the majority who are not able to pay. Central to the water problem, is to recognize that the problem is not water scarcity *per se*, but who owns and controls the water systems and resources.

The Water for the People Network- Asia (WPNA) firmly believes that the right to water is an extension of the human right to life, and should thus be recognized as a fundamental human right. The WPNA is also firm on the stand that water privatization has not and will definitely not lead to the realization of the human right to water and thus, alternatives should be explored by the governments as to the management of water resources utilization and distribution systems.

The WPNA takes the opportunity to provide relevant information to the UN Office of the High Commissioner on Human Rights on the water crisis situation in the Philippines and how the water privatization policy of the Philippine government has done nothing to alleviate the water crisis and has in fact, made water more inaccessible to the poor majority.

The Water Privatization Policy in the Philippines

Privatization became an official government policy during the Marcos administration by virtue of Presidential Decree 2029, which led to the creation of Government-Owned and Controlled Corporations (GOCC), and by virtue of PD 2032 which promulgated privatization as a policy, prior to the People Power in 1986.

The implementation of the privatization policy started with the sale of particular GOCCs (supposed white elephants or corporations owned by Marcos cronies) by virtue of Presidential Proclamation 50. The scope of privatization widened and included the water sector with the passage of the Aquino administration's RA 6957 or the BOT Law which defined BOT schemes as " a contractual arrangement whereby a contractor undertakes the construction, including financing, of a given infrastructure facility, and the operation and maintenance thereof."

The succeeding administration of Ramos warned of a national water crisis during the early 1990s that became the justification for further privatization of the water sector. From 1995-2000, it was estimated that national demand for water (outside Manila) would jump by 75%. To address the crisis, the Ramos administration passed RA 8041 or the National Water Crisis Act of 1995 which provided President Ramos a one-year emergency power that resulted to the privatization of the Metropolitan Waterworks and Sewerage System (MWSS). It be noted however, that the privatization of MWSS was part of the implementation of the neoliberal globalization framework in the Philippines and due to mounting pressures from International Financial Institutions.

Several laws and Executive Orders were passed during this period that further intensified water privatization. And on February 2004, President Arroyo signed EO 279, which aims to reform the financing policies for local water service providers. By doing so, government subsidy for local government-run water service providers will be cut and thus pave the way for further corporatization and eventually, privatization.

The Results of Water Privatization in the Philippines

As a result of the privatization of MWSS, water rates drastically increased by 357.6% for Maynilad and by 414.4% for Manila Water in a span of only a decade, between August 1997 and January 2007.

Aside from the increased water rates, corporations are fast eating up freshwater resources. The US mining firm Bnguet Corporation for example, holds 65 water appropriation permits fir springs, creeks and rivers in Itogon, Benguet. Nestle's mineral water plant in San Pablo City is being blamed by local residents and farmers for the declining freshwater availability.

The following are case studies of water privatization and its impact on people's access to sufficient and safe water.

Case Study 1: The Privatization of MWSS

Background

Prior to privatization, MWSS was supplying 85% of water demand in its service area, 65% of which have individual water connections. Water was available for 16 hours daily. However, 60% of MWSS water were leaked due to illegal connections and damaged pipes. In addition, MWSS has incurred a debt of US\$307 million by 1995, US\$204 million of which were debts from World Bank and the Asian Development Bank (ADB).

World Bank is MWSS' biggest creditor and to ensure repayment of debts, WB proposed privatization as the solution to the problem.

As one of MWSS' biggest creditors, the World Bank had to ensure that the water agency would be able to repay its debts and the World Bank saw privatization as the solution. In 1995, the World Bank became the Ramos administration's consultant on the privatization through the International Finance Corporation, even designing the bidding process and drawing up the Concession Agreement. In August 1997, the Concession Agreement took effect and will last for 25 years

Under the Concession Agreement, the service area of MWSS was divided into the west and east zone. The west zone was taken over by the Maynilad Water Services, a consortium by the Suez subsidiary Lyonnaise des Eux and the Lope -owned Benpres Holdings Corporation while the east zone was taken over by Manila Water Company Inc., a consortium of Ayala Corporation, International Water, United Utilities and Mitsubishi.

In separate Concession Agreements that MWSS signed, Maynilad would be shouldering 90% of MWSS debts while Manila Water would be shouldering 10% through payments of concession fees. The agreements also retained government ownership of all MWSS facilities; however, concessionaires are allowed to use MWSS facilities related to the production and distribution of water.

The Concession Agreements also created a Regulatory Office under MWSS which will determine proper water rate adjustments and would ensure that concessionaires comply with their obligations.

The Ramos administration promised the consuming public that privatization of the MWSS would lead to lower rates. True enough, average tariff under in the west zone fell by 44% while that of the east zone fell by 74%.

However, two years after, water rates started their steady climb and by January 2004, the average tariff of Manila Water has increased by 348% at P10.4 per cubic meter. Maynilad has also increased its average tariff by P130% at P11.39 per cubic meter from only P4.96 in 1997. Government actually allowed Maynilad to impose an average tariff of P15.76 per cubic meter in 2003 and P16.3 in 2004 but the water firm refused to implement the said rates because of its dispute with MWSS. The architects behind the privatization of MWSS ensured that the 'commercial viability' of firms operating the water system through a pricing scheme that automatically generates profits.

For instance, water companies can automatically adjust their rates everyday every year due to changes in the consumer price index (CPI). An increase in CPI means that the prices of basic goods and services have increased. Thus a water rate hike due to an increase in CPI is a double burden for the people.

Furthermore, the Concession Agreement also identified several grounds to implement the extraordinary price adjustment (EPA). The Regulatory Office computes the EPA, which is implemented once a year. It considers all possible factors that may affect the finances of the water firms.

Meanwhile, another mechanism that increases water charges is the Rate Rebasing. It allows the concessionaires to recover historical capital, operating and investment expenditures, and review future capital, operating, and investment plans. The first Rate Rebasing was conducted in 2002 and implemented on January 2003. It must be exercised every five years throughout the 25-year life of the Concession Agreement.

In March 2001, Maynilad stopped paying concession fees to force MWSS to amend the Concession Agreement. It claimed that the Asian financial crisis devalued the peso and bloated its dollar-denominated debts.

Thus, through Amendment No. 1, government allowed the private concessionaires to recover foreign exchange losses through various mechanisms. They introduced the foreign currency differential adjustments (FCDA) and the accelerated extraordinary price adjustment (AEPA).

The FCDA is a rate adjustment made on a quarterly basis. Its purpose is to recover present and future foreign exchange losses starting on January 1, 2002 until the expiration of the contract on 2021. meanwhile, the AEPA is a rate adjustment of P4.21 per cubic meter for Maynilad and P1 per cubic meter for Manila Water. Its purpose is to recover foreign exchange losses from August 1, 1997 to December 31, 2000. Water firms can only collect the AEPA from October 15,2001 to December 31,2002.

In spite of the implementation of the FCDA and AEPA, the Concession Agreement still allows water firms to collect P1 per cubic meter in currency exchange rate adjustment (CERA). The MWSS used to collect CERA to offset losses in foreign exchange fluctuation. The CERA and FCDA essentially serve the same purpose. Thus, Maynilad and Manila Water are extracting money from consumers twice for every foreign exchange fluctuation.

Poor Service Performances

In spite of the very favorable terms given to them by government, Maynilad and Manila Water have failed to deliver efficient water services. Their own service performances reports show that most of the targets in terms of water supply, sewerage, and sanitation have been missed.

Manila Water promised to supply water to 4.3 million people but it can only cover 3.2 million. Similarly, Maynilad committed to supply water to 6.7 million people but its actual coverage is only 5.2 million. Both water firms also promised to make water supply available for 24 hours before June 30, 2000. But as of 2002, water supply in Maynilad and Manila Water areas is available for less than 21 hours.

Before it was privatized, the rate of water losses due to leaks and illegal connections (non-revenue water or NRW) of MWSS was 61 percent. The average NRW of the private concessionaires, meanwhile, is even higher at 62 percent.

Maynilad-MWSS dispute

In December 2002, Maynilad filed a notice of early termination of its contract with MWSS after the latter refused to grant the rebased rate Maynilad wanted. An international arbitration panel was convened to resolve the dispute and in November 2003, it included that there is no basis to terminate the MWSS-Maynilad contract. The panel ordered both parties to continue fulfilling their obligations and allowed MWSS to draw from the \$120-million performance bond of Maynilad, guaranteed by a consortium of local and foreign banks, to cover for unpaid concession fees of private concessionaire.

But it stopped paying such fees in March 2001 citing company losses. To prevent MWSS from drawing from the performance bond, Maynilad filed a petition for rehabilitation at Branch 90 of the Quezon City Regional Trial Court. In March 2004, the Department of Justice facilitated the controversial Amendment No. 2 wherein MWSS would assume the debts of Maynilad in exchange for a 61% equity and drawing of \$50 million from the bond.

The National Economic Development Authority turned down Amendment No. 2 after strong public protests. Maynilad drafted a new rehabilitation plan and submitted it to Branch 90 on September 9, 2004. The new rehabilitation plan no longer requires government to assume majority ownership of Maynilad but still calls for debt restructuring and debt-to-equity swap arrangements with its other creditors. Furthermore, the plan also allows for a full government draw from the Maynilad performance bond. As of this writing, the Maynilad's rehabilitation plan is still with Branch 90.

While the rehabilitation proposal of Maynilad has already undergone several revisions, the plan essentially still bails out Benpres and Suez from their financial obligations through debt restructuring, which includes unpaid concession fees not covered by performance bond. For the consumers, Maynilad's rehabilitation means higher water rates and poorer services.

The MWSS Regulatory Office's already allowed Maynilad Water Services Inc. to collect P30.19 per cubic meter from its present all-in tariff of P19.92 per cubic meter by January 2005. Such increase is tied to the rehabilitation of Maynilad. The performance targets of Maynilad would also be scaled down by at least two years. The 2006 water supply coverage target of 97% and the sewer coverage target of 20% will be moved to 2008.

But Maynilad has no right to implement a rate increase because it owes around P7.45 billion in unauthorized collection of FCDA and AEPA. The Regulatory Office said that Maynilad could only collect the FCDA and AEPA if it resumes paying its concession fees which it has not done since March 2001.

Powerless Regulation

The MWSS-Maynilad row exposed the fundamental defects of the Concession Agreement. On government regulation, for instance, the contract created a Regulatory Office that has no real powers.

The said body, which is under the MWSS, is supposed to safeguard public interest. Its main task is to monitor service performance and price adjustments. However, the Regulatory Office cannot impose sanctions on the water companies.

To illustrate, the Regulatory Office issued a 'desist order' on Maynilad to stop it from illegally collecting the FCDA and AEPA, which the water firm ignored. Meanwhile, Maynilad customers continue to pay such illegal fees even if an Arbitration Panel is resolving the case.

Resolving disputes through an Arbitration Panel is also unjust. It makes government regulation virtually meaningless since the water firms can reverse the decisions of the Regulatory Office through the Arbitration Panel.

It does not help that the process lacks transparency. It is assumed that the MWSS representative in the Arbitration Panel stands for public interest. But without public access to the actual hearing, it remains an assumption.

Milking Cow

The dispute between MWSS and Maynilad revealed as well how private firms have made water service a milking cow. It was disclosed, for instance, that mismanagement was responsible for Maynilad's financial problems.

Maynilad overshot its projected operating expenses by around P800 million for the period 1997-2001 as it incurred questionable expenses. The water firm has been outsourcing its consultancy and management development to firms associated with Benpres and Suez. From 1999 to 2000 alone, it spent P1.2 billion for such services.

It has also been importing computers, brass fittings for water meters, etc. from French companies affiliated with Suez.

In the case of Manila Water, almost 70% of its capital expenditures went to fees of consultants and experts from firms controlled by Ayala Corporation and Bechtel.

Financial Burden

Government claimed that the privatization of MWSS would relieve it of unnecessary financial burden. In reality, however, it has aggravated the financial worries of government.

Maynilad's unilateral decision to defer concession fee payments forced government to shoulder the water firm's financial obligations. MWSS has been borrowing from the bonds market to finance Maynilad's unpaid concession fees. In the second half of 2003 alone, Maynilad raised \$150 million from the bonds market.

Government is also forced to spend each time it has a dispute with the private concessionaires. In 1999 to 2000, MWSS spend \$400,000 to fund the arbitration of its dispute with Manila Water regarding the latter's petition for a rate hike. It included payments for the services of Manila Water lawyers, which cost \$200,000.

In addition, it is estimated that MWSS' termination dispute with Maynilad has cost government more than P230 million. MWSS could hardly afford such expensive proceedings since it operates on a fixed annual

budget. As such, in 2000 and 2002, it posted a budget deficit of P5.6 billion. For 2003 and 2004, the projected deficit of MWSS are P3.3 billion and P4.5 billion, respectively.

Case Study 2: Water Privatization Fails to Provide Water in Bagong Barrio *Caloocan Folk Virtual Hostage to Unreliable Water Service Provider*

"Mahirap ang tubig dito. Dati may tubig sa maghapon pero unti-unting nawala hanggang sa gabi na lang meron tapos madaling araw, ngayon wala na. Nakikiligo na lang kami sa kapatid ko (Water service here is very poor. We used to have water supply all day but gradually, it became available only during the night, then in the daybreak, until it's totally gone. We have to go to my sibling's place to take a bath.)," lamented 37-year old Annabelle Malacas of Barangay 155 who have been residing in the area since she was a child.

Barangay 155 is one of the 16 barangays (village) in Bagong Barrio, Caloocan City that have been suffering from a serious water supply crisis for several years now. The crisis is felt from Barangays 142 to 157 affecting around 100,000 residents. According to barangay captain (village chief) Patricio Carpio of Barangay 149, their woes started when private firm Maynilad Water Services Inc. began operating the water system in their area.

"Ang masama, patuloy pa ring naniningil ang Maynilad kahit wala namang tubig (Worse, Maynilad continues to bill the people even if there is no water supply)," added Carpio.

The case of Bagong Barrio adds up to the growing list of complaints against the poor performance of the private concessionaires that took over the privatized Metropolitan Waterworks and Sewerage System (MWSS) in August 1997. Maynilad operates the west zone (that includes the affected barangays in Bagong Barrio) while Manila Water Company Inc. manages the east zone.

Water rationing

The lack of water in the communities has resulted in frequent fighting among the residents as they queue for hours for water being delivered by the Caloocan City government and Maynilad. *"Minsan, hindi maiwasan ang mga awayan dahil may ilan na nagmamadali at sumisingit sa pila (Sometimes, arguments erupt because some people who are in a hurry cut into the line),"* one of the residents told IBON Features.

The Environmental and Sanitation Service (ESS) of the Caloocan City government started rationing water in July 2004 to help the affected barangays cope with the water crisis. ESS has employed seven water tankers, of which three trucks deliver water daily to the 16 barangays in Bagong Barrio. The rest serve other "waterless" areas in the city like 11th Avenue, Talipapa, and Sta. Quiteria.

Al Sta. Maria, head of the ESS, said that the water tankers refill from a pump station in the Poblacion Market (former Plaza II) at 10th Avenue. The 20 horsepower deep-well pump, which is owned and operated by the local government of Caloocan City, draws out 25,000 gallons of water for the water tankers. At times, the trucks also pump water from public fire hydrants located in the city.

"The residents do not pay for the water (being rationed by the city government) because expenses are covered by the city budget," Sta. Maria explained. He admitted, however, that the ESS-supplied water is not safe for drinking and must be used only for other household purposes.

The ESS initiative aims to augment the water rationing project of Maynilad. According to Herbert Ico, Maynilad-Caloocan officer-in-charge for water rationing, the company rations water with seven deliveries four times a week in Bagong Barrio. The water comes from the public fire hydrants inside the nearby Araneta Subdivision. Maynilad water tankers can each carry 4,000 liters of water, which Ico claims is potable.

But the ESS head clarified that their initiative is independent from the Maynilad project. "There is only regular communication between Maynilad and the city government (regarding water rationing). But there is no formal agreement," said Sta. Maria.

Hostage

The water rationing, of course, does not substitute for the convenience of individual, 24-hour water supply. Bagong Barrio residents have to line-up for several hours to get their water allocation from the water tankers that come usually at night. Aside from the verbal tussles, the people in the affected areas have to contend with nightly vigils to get their share of the water. It is not uncommon that employees or students in Bagong Barrio miss a day or two from work or school due to lack of sleep.

Once in a while, unemployed elderly members of the households are also forced to spend hours of falling in line for water, exposing them to serious health risks. On 18 August 2005, 76-year old Agripino Samonte of Barangay 155 died of brain aneurism. Samonte had been suffering from high blood, a condition, which his relatives claimed, was aggravated by several days of lack of sleep from fetching water.

Yet, in spite of the problems caused by Maynilad's inefficiency, the water utility continues to collect the minimum monthly charges from the residents of Bagong Barrio. In a recent public forum organized the Alyansa Sigaw Tubig (AST), a network of the affected barangays and cause-oriented groups in Bagong Barrio campaigning for better water service, residents said that they continue to pay at least P100 per month even though not a single drop of water comes out from their faucets.

"Wala naman kaming magagawa. Baka kung hindi kami magbayad, putulan kami ng Maynilad. At pag nagkatubig na, kailangan naming magbayad ng mas mahal na reconnection fee (We are helpless. If we stop paying, Maynilad might disconnect us from the system. And when the water supply resumes, we will have to pay for a much bigger fee for reconnection)," said Danny Bautista of Barangay 149, an officer of the AST, during the forum.

Indeed, Maynilad has practically held the residents of Bagong Barrio hostage to the unreliable service of the water firm. Worse, according to AST spokesperson Larry Canilao, commercial establishments and businesses around the area continue to enjoy uninterrupted water services from Maynilad while the ordinary folks of Bagong Barrio have to suffer from the supposed lack of water.

"Ipinapakita nito kung ano ang prayoridad ng isang pribadong negosyong katulad ng Maynilad (This shows the priorities of a private business like Maynilad)," Canilao declared.

Not an isolated case

The water supply crisis in Bagong Barrio is not an isolated case. According to Arnold Padilla, national coordinator of the broad-based alliance Water for the People Water Network (WPN), water services in Metro Manila have not improved, and in most cases, have even deteriorated since the MWSS was privatized in August 1997.

"More than eight years since the takeover of Maynilad and Manila Water, more than 4 million people in Metro Manila are still without water supply and 11 million are without sewerage connection," Padilla narrated. Yet, the basic water rates have increased by 298% (Maynilad) to 501% (Manila Water) from 1997 to 2005. "The Bagong Barrio case seriously challenges the wisdom of water privatization. Once profits are threatened, water services, no matter how vital, can be readily compromised by companies like Maynilad or Manila Water," argued Padilla.

Maynilad is currently undergoing financial rehabilitation. Former majority owner Benpres Holdings has decided to abandon Maynilad, leaving its French partner Suez and the MWSS to operate the water firm. Benpres said that Maynilad is not making money and consequently, it was not able to upgrade its services in areas like Bagong Barrio.

The WPN, of which the AST is a member, has questioned the rehabilitation plan of Maynilad before the Branch 90 of the Quezon City regional trial court. "It's (the rehabilitation) actually a government bailout of an inefficient company at the consumers and taxpayers' expense. We should not allow Benpres to simply walk out of Maynilad without accounting for its mismanagement of the concession, and all of its obligations to the government and its consumers including the residents of Bagong Barrio," said Padilla.

Excuses

As early as 2002, Bagong Barrio residents have already brought up the matter with Maynilad officials. At that time, water still flows from the faucets although at a very limited amount and only for a couple of hours a day. In the previous dialogues between Maynilad and barangay officials, the company offered a number of explanations for the lack of water supply in Bagong Barrio: low water supply; numerous leakages in the pipelines; broken water valves; water system adjustment, etc.

Maynilad installed a booster water pump at the corner of Zapote and de Jesus Streets three years ago to address the problem of Bagong Barrio but the lack of water in the communities has not only remained but even deteriorated. Local government officials, including Caloocan City mayor Recom Echiverri and Representative Oscar Malapitan (First District) have also called the attention of Maynilad and the MWSS about the situation in Bagong Barrio but have not produced significant results.

Some residents are even skeptical about the real motives of Mayor Echiverri. "*Mukhang di rin naman sya (Echiverri) interesadong ayusin ang problema dahil ginagawa nyang parang campaign propaganda ang pagrasyon ng tubig* (It seems that Mayor Echiverri is not really serious in addressing our problem because he uses the water rationing project as a campaign propaganda)," one of the residents told IBON Features, noting that all the water tankers from the city government bear the name of the mayor.

People's action

After years of fruitless waiting, the people of Bagong Barrio finally decided to take the matter into their own

hands through the formation of the AST in November this year. On 22 November, AST leaders and members trooped to the Caloocan office of Maynilad to protest the neglect of the water firm and demanded an immediate resumption of water services. "We cannot endure another dry Christmas," declared Canilao during the rally.

Mayor Echiverri joined the protesters as the AST leaders, including the barangay captains, held a dialogue with Maynilad officials led by Jaime Bartolome, technical manager at the firm's South Caloocan Business Center. Bartolome explained that the water shortage was due to the low water level in Bagbag Dam, elevated location of the barangays, and the increasing number of consumers. Pressed for solutions, Maynilad proposed to readjust the valve settings for stronger water pressure and larger coverage in Bagong Barrio.

Bartolome also declared that the long term solution would be the rehabilitation of the pipeline system in Bagong Barrio. Existing water pipelines are old, denigrated and riddled with numerous illegal connections. However, according to Bartolome, "This plan, of course, is subject to the availability of funds and feasibility of the project."

Lack of funds is the same old excuse of Maynilad for failing to improve the water system, according to the WPN. "If only the MWSS were reformed by making the state-owned water utility more efficiently and democratically managed, the infrastructure in Bagong Barrio and the rest of Metro Manila could have already been improved a long time ago," Padilla said.

A long struggle lies ahead

Nonetheless, the people of Bagong Barrio have begun to reap the initial gains of their unity and direct action. Two days after the AST rally, Maynilad announced in a press statement that the water supply in Bagong Barrio had increased by 30% after "valve manipulations" to increase water pressure and improve water supply. Consequently, Maynilad trimmed its water rationing in the communities from eight to two deliveries per week.

A preliminary check by IBON Features confirmed that several households in Bagong Barrio now have water flowing from their faucets from midnight until the early morning. But the people know that they could not yet afford to relax as they still see a long struggle ahead. "*Patuloy namin itong babantayan. Ang isinisigaw namin ay 24-oras na suplay ng tubig sa bawat bahay* (We shall continue to monitor these developments. We remain firm in our demand for a 24-hour individual water connection and supply)," Canilao declared.

But the question is: Does the present policy of water privatization allow such access for the poor like the majority of residents in Bagong Barrio?

"The long-term solution is people's control," Padilla said. "Water belongs to the people; it is a basic necessity, a condition for people to live. Thus, it's the state's responsibility to ensure that everyone, with due bias to the poor and marginalized, have access to water. Private corporations, because of their inherent limitations such as their profit-orientation, simply could not perform this task." IBON Features

Case study 3: The Magdalena Water Project

Background

Magdalena is one of the first municipalities that availed of a World Bank loan under the \$283-million LGU-WSSP. It is located in the western part of the province of Laguna and is approximately 105 kilometers away from Metro Manila and six kilometers from Sta.Cruz, the provincial capital.

Magdalena used to source its water requirements from the nearby municipality of Liliw. On July 27, 1953, the municipal governments of Liliw and Magdalena forged an agreement allowing the residents of Magdalena to use water from the Sungi Spring in Barangay Oples in Liliw. The said contract was supposed to end in 2003 (or after 50 years) but can be renewed upon agreement.

According to the feasibility study prepared for the Magdalena water system project, the Sungi water supply system was unsatisfactory due to the deterioration of its facilities, which were constructed in 1926. With the municipal population expected to grow by 66% between 1995 and 2010, the old water system may not meet the increased demand especially since the water supply from Sungi is inadequate and the water pressure is low.

World Bank-Funded Privatization

Thus, in 1998, the Municipal Government of Magdalena, through the Development Bank of the Philippines (DBP), applied for a World Bank loan under the LGU-WSP to finance a water system project. The loan application, worth P24.2 million, was approved in March 1999. Construction started in September of the same year and was completed in June 18, 2001.

The project included digging three deep wells, construction of three pumping stations and an elevated reservoir, rehabilitation of existing pipeline and reservoir, construction of 15.6 kilometers of distribution pipelines, and provision of disinfection facilities for wells. The new waterworks system is expected to achieve 24-hour a day availability of water supply, and the installation of 1,950 service connections by the civil works contractor with service to 1,712 consumers. Furthermore, the system is also expected to achieve non-revenue water of 20%; an employer per connection ratio of 1:130; collection efficiency of 97%; and 100% service coverage of 2004.

While the ownership of the system will belong to the Municipal Government of Magdalena, Bayan Water Services Inc., a private joint venture between Benpres Holdings (also one of the owners of Maynilad) and the Montgomery-Watson New Zealand will handle its operation and maintenance. Bayan Water and the Municipal Government of Magdalena signed a 15-year, P70-million Lease Agreement on August 4, 1999.

Unfit for Drinking

But even before the project was completed, several tests conducted by the regional offices of the Department of Science and Technology (DOST) and the Department of Health (DOH) showed that the water coming from its wells is not potable. In a special session of the Municipal Council on October 16, 2001, a DOST chemist argued that the new system produces water that exceeds the maximum permissible limit of the Philippine National Standards for Drinking Water (PNSDW) as it has a high level of dissolved solid, total hardness, and turbidity.

In a separate test conducted in December 2001, the DOH's Center for Health Development (CHD) Region IV found that the water coming from the Magdalena water system is 'not fit for drinking.' It proposed that 'drinking water must be prohibited unless it passes the criteria on standard parameters set by the PNSDW and after the issuance of the certificate of potability.' The same agency reaffirmed its position after conducting another test in June 2002.

In spite of these findings and the absence of a certificate of potability, the municipal mayor declared in March 2002 that the water coming from the new system is already '100% potable.' Even the World Bank is trumpeting the 'success' of the Magdalena water project. In an article published in its newsletter *In Touch* in September 2002, the World Bank claimed that 'clean, safe water' is now available 24 hours a day for Magdalena folk. But according to some residents, many people in their community have already experienced illnesses due to the poor quality of water coming from the new system.

Meanwhile, Bayan Water Services terminated its agreement with the municipal government of Magdalena because of the local government's failure to complete the construction of the facilities and turn them over to the water firm before the system start-up date (not later than August 4, 2001). Bayan Water Services also cited the decision of the municipal vice-mayor to reopen the old water system in October 2001, which was contrary to the lease agreement. The decision of the vice-mayor came amid intense pressure from the people of Magdalena and some local officials due to the unacceptable condition of the new water system. But in February 2002, access to the old system was permanently cut off except in three barangays (villages).

People's Burden and Response

In spite of the obvious failure of the Magdalena water project, residents of the municipality are forced to pay high tariffs. Under the old water system, people only pay P8 per cubic meter. Under the new system, the rates have jumped by 157% to P20.54 per cubic meter.

The municipal government issued an order on September 10, 2001 requiring the people to pay for the new rates. But the residents refused and one week later staged a protest rally in front of the municipal hall demanding for lower tariffs. They also asked the local government to maintain the old system until the water from the new system passes the quality requirements. The municipal government responded by cutting off the water supply from Liliw.

Due to the new system's poor quality but high-priced water, Magdalena residents are forced to spend extra money for drinking (bottled or distilled) water. In some cases, people also buy water from vendors for cooking and cleaning. This is on top of what they pay under the new system.

Magdalena residents are also now burdened of shelling out millions of pesos to repay the obligations of the municipal government. Based on a Commission on Audit report, Magdalena started paying P1.9 million per year beginning in 2002 for the interest and P3.2 million per year starting in 2003 for principal amortization to settle its obligations, which are set to mature in November 2014.

Total interest payments for the P24.2 million World Bank loan used to finance the Magdalena water project would reach P26.7 million. This means that the poor folk of the municipality would have to settle a total obligation of P50.9 million to the World Bank.

These issues prompted two members of the Municipal Council to file a complaint against town mayor before the Office of the Ombudsman. The councilors argued that the town mayor entered into an agreement that is disadvantageous to the people of Magdalena. They also questioned the failure of the water project to provide clean and safe drinking water as well as the onerous rates charged to consumers.

Meanwhile, the local residents have also set up a broad coalition called the People's Watch for Potable Water (which is part of the national campaign alliance Water for the People Network). The municipal-wide coalition now leads the campaign against the World Bank-funded water project. Among their demands are safe, drinking water and an alternative water system directly controlled by the communities.

(Source: IBON field research, February-March 2003)

Case Study 4: Corruption and Violence at the Leyte Metropolitan Water District

On October 15, 2004, the Regional Coordinator of Anakpawis Partylist/Kilusang Mayo Uno (KMU) was shot dead while his companion, a member of the Leyte Metropolitan Water District-Employees Association (LMWD-EA) was seriously wounded. What started as a peaceful protest against the illegal dismissal of 26 LMWD regular employees has turned bloody. Anakpawis and KMU linked the killing to the general manager of the LMWD, Engineer Ranulfo Feliciano.

Sammy Bandila of Anakpawis and Bernardo Devaras, one of the 26 dismissed employees, were on board a motorcycle when two unidentified gunmen fired at them. Bandila died while Devaras was wounded in what Anakpawis termed as part of the government's Operational Plan "Peace in Visayas" that targets militant organizations (bulatlat.com). Bandila was said to have just come from an interview with Radyo Diwa in Tacloban where he lambasted Feliciano and the management's alleged connivance with the police and military in neutralizing foes.

This is the second time a person was killed in relation to allegations of corruption within the LMWD. Last year, Eleazar Josef, an employee of the LMWD was killed when it was discovered that he had documents to prove the corrupt acts going on in the LMWD.

Water Districts

Water districts, as provided in PD 198 (as amended) are considered quasi-public corporations. This only means that they are performing public service and supplying public wants while they can exercise the powers, rights and privileges given to private corporations under existing Philippine laws. They are tasked to provide Level III water services (with water source, reservoir, and a piped distribution network).

In September 13, 1991, the Supreme Court declared that the Commission on Audit has jurisdiction over local water districts. GM Feliciano, also the president of the Philippine Association of Water Districts (PAWAD), filed a petition asking the High Court to reverse its decisions. He asserted that the nature of water districts is quasi-public or private as stated in PD 198. Before the media, he claimed that with the decision, water districts would not be exempted from paying taxes anymore and would have no choice but to pass on the burden to its consumers.

However, GM Feliciano has already been passing on to the concessionaires the burden of paying its franchise and income taxes. According to COURAGE-Eastern Visayas, these taxes were included in LMWD's cash flow projections and were used as basis for approving his petition for water rate increases.

Illegally Dismissed

The LMWD-EA is currently waging a battle against the management, specifically GM Feliciano. Twenty-six regular employees were dismissed after joining a multi-sectoral rally in February protesting increased water rates, and the pervasive corruption and exploitation happening inside the water district. Protesters were also calling for the ouster of Feliciano. The management then formed a fact-finding committee to investigate the action of the employees. The committee recommended the dismissal of all the 26 employees who joined the rally for disloyalty to the office. The dismissed employees argue that they were never disloyal to the office. They were disloyal to Feliciano, perhaps, but they were also fighting for the rights of the consumers.

That February 5, 2004 multi-sectoral rally proved to be the turning point for the members of the union. The notice of their dismissal was filed on October 12, 2004 at 4:30 in the afternoon. It was to be effective the next day. Civil service rules provide that a minimum of 30 days should be given to an employee before a notice of dismissal is to take effect. The employees claimed that they were illegally dismissed and assembled in front of the LMWD office to form a picket. Up to this moment, the workers are still extolling their rights as regular employees.

Water Rate Increases, Graft and Corruption, Mismanagement

According to Mr. Santiago Dasmariñas, Secretary-General of COURAGE, water rates of the LMWD shoot up by 120-300% in 2003. No hearing was conducted in lieu of the increase. On the part of the consumers, services of the LMWD did not improve. For many people, the management of the LMWD could not provide sufficient basis for the unheralded increase in the costs of water services. For the union members, there was knowledge that the increase in water rates was to service the loans incurred by LMWD from lending institutions.

Another point of argument on the part of the LMWD-EA is the presence of a number of job order employees who were beginning to dominate the regular employees. They were given jobs that were currently performed by the regular employees. What's more frustrating was that the regular workers were even accused of inefficiency and laziness.

According to Mr. Ferdinand Gaité, President of COURAGE, several anti-corruption groups in Eastern Visayas have uncovered evidence of questionable financial transactions at LMWD. A partial total of P108.7 million unliquidated cash advances and needless expenses. The documents are now in the hands of the leaders of the Alliance of Water Concessionaires (ALWACON), COURAGE-EV, BAYAN-SB and KATUNGOD-SB.

One of the questioned transactions was a P68.3 million alleged loan from the Local Water Utilities Administration (LWUA) for the construction of the 8,635 lineal meters 12" diameter sub-transmission line from BIR Pawing, Palo, Leyte to Nula-Tula, Tacloban City with an unknown contractor. The use of P21.3 million special deposit trust account of water concessionaires and the alleged overpayment of salaries of GM Feliciano in the total sum of P2.4 million. Furthermore, there were reported unliquidated cash advances for Engineer Feliciano's various domestic travels and unliquidated intelligence and emergency travel fund.

The different sectors in Leyte, including the youth, the workers and the peasants, have expressed their outrage against the anomalous goings-on inside LMWD. Even the Alliance of Water Concessionaires (ALWACON) has joined the protests against the management of LMWD. The different sectors are still opposing the 125% unjustified series of water rate increases. Consumers are also demanding for genuine water service available to all and have gained the support for the rank-and-file employees of Tacloban.

"I am not stupid".

General Manager Feliciano has two points of contention for Anakpawis and KMU. First, he is not stupid so he will not kill or order anyone to kill somebody. Second, he is not stupid so he will not give in to the demands of the 26 employees to approach their picket line and talk to them. Murder and frustrated murder charges have been filed by the Task Force "Justice for Sammy, Justice for All" last week against GM Feliciano.

Feliciano was also quick to defend the alleged job order employees as "returnees". They were previously hired by the LMWD and just resumed their work in the water district when he assumed as head of office again. Furthermore, Feliciano, as reported in a local newspaper, added that the "returnees are more efficient than the employees of the union." "Members of the union," he said, "are all negligent workers who cared nothing about their work." He denied that he had any hand in the firing of the workers because his job was supposedly only ministerial. However, as fact-finding committees go, they only recommend; they do not impose.

For Responsible Water Service

The multi-sectoral clamor for the ouster of GM Feliciano and the reinstatement of the 26 dismissed employees are just a part of the whole resistance against the corrupt and anomalous practices happening in various water districts in the country. There are other water districts that reportedly have questionable transactions.

GM Feliciano in insisting that water districts are private corporations ensures that he will be free from the scrutiny of COA and the personnel evaluation of the Civil Service Commission. Alleged anomalies may be proven true when the hands of COA begin perusing his record. The friction between the management and the LMWD-EA is turning into a personal battle waged by GM Feliciano against those who oppose his policies. The Supreme Court, on January 14, 2004, had turned down a petition of GM Feliciano to stop the Commission on Audit (COA) from examining the books of LMWD and charging the LMWD audit fees.

It has been emphasized a thousand times that water is life. Water districts are government corporations supplying a vital need. Since, water districts are not directly accountable to the consumers, government regulation is necessary to ensure that the provision of water services is not ridden with questionable and corrupt practices that will compromise the quality and quantity of service that goes to the people.

(Lifted from "Dirty Water: Corruption and Violence at the Leyte Metropolitan Water District," by Glennis Balangue, IBON Features, Vol. Xno. 58, November 30, 2004)

Legal Framework

While privatization of infrastructure development in the water sector is a relatively recent policy, private control of water resources in the form of water rights is an age-old practice in the Philippines. Section I Article XIII of the 1935 Constitution mentioned “water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power.” The exact phrase was retained in Section 8 Article XIV of the 1973 Constitution and Section I Article XII of the 1987 Constitution. Water right is fundamentally different from the right to water. The former allows private and profit-oriented monopoly control of water resources while the latter essentially means human right to access and use water.

Water Governance in the Philippines

At present, the following provide the legal framework for water governance in the Philippines:

- The 1987 Constitution
- PD 1067 in 1974 or the Water Code of the Philippines
- RA 8041 or the National Water Crisis Act of 1995

Article XII (National Economy Patrimony) Section 2 of the 1987 Constitution mandates that all water resources are owned by the State and shall not be alienated. Furthermore, it maintains that the exploration, development, and utilization of natural resources shall be under the full control and supervision of the State.

But it says as well that while the State may directly undertake such activities, it may also enter in a maximum of 50-year co-production, joint venture, or production-sharing agreements with the private sector including Filipino citizens, or corporations or associations at least 60% owned by Filipino citizens. In other words, the Constitution allows private sector participation in water resources management and infrastructure development.

Meanwhile, the basic principles and framework relating to the ownership, appropriation, utilization, exploitation, development, conservation and protection of water resources in the Philippines are embodied in the Water Code. The NWRB has been tasked as the main government agency to implement the Water Code. Created in 1974, the NWRB is the authoritative government organization to coordinate and integrate all activities in water resources development and management.

The Water Code allows the appropriation of water by the public and private sector. Appropriation refers to the acquisition of rights over the use water or the taking or diverting of water from its natural source for the following purposes: Domestic, irrigation, fisheries, industrial, municipal, power generation, livestock raising, and recreation.

The appropriation of water is expressed through the “water right”, or the privilege granted by government of appropriate and use water. Government owned and controlled corporations and other government bodies, private corporations 100% or at least 60% owned by Filipino, and Filipino citizens may be granted a water right, which is evidenced by a document called a water permit. A water permit may last for as long as the water is 'beneficially used'. The beneficial use of water pertains to the utilization of water in the right amount during the period that water is needed for producing the benefits for which it is appropriated.

Under RA 8041, the State declared its policy to adopt urgent and effective measures relevant to the nationwide water crisis including but not limited to supply, distribution, finance, privatization of state-run

water facilities, the protection and conservation of watersheds and the waste and pilferage of water. This law gave then President Fidel Ramos a one-year emergency power to enter into negotiated contracts under the BOT Law (RA 6957 as amended by RA 7718) for the financing, construction, repair, rehabilitation, improvement, and operation of water facilities and projects relating to increasing water supply, treatment and distribution.

Philippine IWRM

While the existing legal and policy environment already allows for substantial private sector participation in the water service and resource management, the national government still feels that important reforms must be implemented to further promote water privatization and corporatization. According to the NWRB, the Philippine government has gone through a wide range of problems to effectively managing water resources in the country such as extreme weather events, increasing demand conflicts, and environmental degradation.

To address the issues on water resources management, the National Water Forum was held last March 22, 2004 and called for the immediate adoption and implementation of IWRM based on river basin as the direction for future water resources planning and investment. According to the NWRB, IWRM is not new in the Philippines. It has supposedly been recognized as a guiding principle and policy direction in the earliest laws and resolutions on the water crisis including the Water Code of 1976 and a NEDA Board Resolution in 1975 that established the Multipurpose concept of Water Resources Development.

The IWRM seeks to change the existing water-based development planning paradigm into a more rational, integrative, and total approach. This thrust on water resources management is also reflected in the Medium-Term Development Plan 2004-2010 of the Arroyo administration.

Medium-Term Development Plan for Water Resources

- General strategy: Adopt the IWRM approach;
- Identify/establish Water Resources Regional Councils (WRRCs)/River Basin Organizations (RBOs) while strengthening existing RBOs to promote devolution of decision-making processes to the lowest appropriate levels capable of handling such tasks, normally to local government and community-based institutions;
- Pursue raw water pricing to effect efficient allocation and conservation. Raw water is not currently priced to reflect its real value leading to wasteful practices and allocations that are not in the best interest of the country. Water should be priced and allocated according to its economic value so as to attain efficiency and sustainability in the development and allocation of the resource;
- Maintain and sustain data collection and database for water resources (i.e. Rainfall, stream flow, groundwater and water quality etc.)
- Conduct water assessment in terms of availability and demand for prioritized water constraint areas as identified in the 1998 Master Study on Water Resource Management in the Philippines.

One of the most critical issues confronting the Philippine water sector that the IWRM aims to address is the lack of an appropriate institutional framework to address issues of development and management of water resources. At present, there are over 30 government agencies and departments separately dealing with water supply, irrigation, hydropower, flood control, pollution, watershed management, etc. in the Philippines. This fragmented approach to water management results in fractional water management plan that does not adequately meet the requirements for sustainability.

Water Agencies in the Philippines

National Water Resources Board (NWRB)

It was created in 1974 as the government coordinating and regulating agency for all water resources management and development activities. It is tasked with the formulation and development of policies on water utilization and appropriation, the control and supervision of water utilities and franchises, and the regulation and rationalization of water rates. Its objective is to achieve a scientific and orderly development of all water resources of the Philippines consistent with the principles of optimum utilization, conservation and protection to meet present and future needs.

Local Water Utilities Administration (LWUA)

It is a specialized lending institution mandated by law to promote and oversee the development of provincial waterworks systems in the Philippines. The Agency was established by virtue of PD 198 as amended on September 18, 1973. Amendments are contained in PD Nos. 768 and 1479, Letter of Instruction Nos. 683, 700, 744, and RA No.7286. It is run by a five-man Board of Trustees through and Administrator who implements the policies set by the Board. LWUA functions through five services, namely; Office of the Administrator, Office of the Senior Deputy Administrator, Investment and Financial Services, Area Operations, and Administrative and Institutional Development Services.

Metropolitan Waterworks and Sewerage Systems (MWSS)

It is one of the oldest government organizations in the Philippines. Its predecessors include the Carriedo System that laid out the first water system in old Manila in 1878, the Manila Water Supply in 1908, the Metropolitan Water District in 1919, and the National Waterworks and Sewerage Authority (NAWASA) in 1944. In June 1971, RA No. 6234 dissolved NAWASA and created the present MWSS. Since then, the MWSS has had jurisdiction and control over all waterworks and sewerage systems in a service area including Metro Manila, the entire province of Rizal and part of the province of Cavite. In 1997, the MWSS was privatized and the agency's responsibilities were reduced to regulatory and administrative functions.

National Irrigation Administration

It is a government-owned and controlled corporation (GOCC) primarily responsible for irrigation development in the Philippines. NIA was created under RA 3601 on 22 June 1963. Its charter was later amended by PD 552 on 11 September 1974 and PD 1702 on 17 July 1980, both increasing its capitalization and broadening its authority. NIA's forerunner was the Irrigation Division of the defunct Bureau of Public Works. PD No. 1, dated 23 September 1972, integrated all irrigation activities under NIA.

Laguna Lake Development Authority

It was organized in 1966 by virtue of RA 4850 as a quasi-government agency with regulatory and proprietary functions. By virtue of PD 813 in 1975 and EO 927 in 1983, its powers and functions were further strengthened to include environmental protection and jurisdiction over surface waters of the lake basin. In 1993, the Administration Supervision over LLDA was transferred to the Department of Environment and Natural Resources through EO 149.

Agno River Basin Development Commission

It was created by virtue of EO 442 in September 1997. It has been mandated to oversee and coordinate developmental activities in the Agno River basin to ensure resources planning and management for sustainable development. Its functions include the development of a comprehensive plan for the basin that would ensure maximized benefits between upland and lowland people, and preservation and enhancement of indigenous cultural communities.

Consistent with the IWRM approach, government intends to reform the current water pricing system in the Philippines, which does not reflect the "realities of scarcity or abundance of water with minimal attention on economic value of water. Consequently, the current pricing system does not serve the function of allocating the scarce resource to the most productive users and does not provide economic incentive for efficient use and conservation of water. To 'correct' this, government wants to implement raw water (i.e. Untreated water) pricing supposedly to promote efficient allocation and water conservation, encourage reduction of non-revenue water (NRW) and generate revenues. For irrigation farmers who use raw water, this means higher production cost and less income. For consumers, it may also mean higher water rates as WSPs could pass the additional cost on raw water to them.

The NWRD is also now looking at making the Water Code of the Philippines 'IWRM-compliant'. According to the NWRB, the principle in the Water Code of 'first in time first in priority' may no longer be an equitable approach in resolving conflicting rights and allocation issues on water given its growing scarcity. Current allocation procedure is insufficient to cover all aspect of water allocation like economic aspect. Thus, the government is considering using a system of tradable water rights where water rights would be sold freely at negotiated prices to any one for any purpose. According to the NWRB, they want to amend the Water Code by 2005. If implemented, this opens more opportunities for TNCs and other large businesses to monopolize water resource in the Philippines since they can now buy water rights from other holders.

People's Alternatives to Water Privatization

Clearly, privatization makes water accessible ONLY for the rich who can afford to pay the exorbitant rates and who are prioritized by privatized water supply and distribution systems. For the human right to water to be realized, the people must demand for the reversal of water privatization, in addition to demanding for better facilities and lower rates. The people should also oppose schemes that only reinforce privatization such as raw water pricing and tradable water rights.

Eventually, the people should turn to a more viable and sustainable solution to the water crisis through an effective control over their water resources and water systems.

Lifted from Water Privatization: Corporate Control versus People's Control and Water for the People Network-Asia documents.

Water Privatization: Corporate Control versus People's Control is written and published by IBON Foundation, Inc., a research-education-advocacy NGO

THE FILIPINO PEOPLE'S WATER CODE

Adopted by 369 participants (from 128 organizations nationwide) to the First National People's Convention on Water last 10-11 August 2004 organized by the Water for the People Network Philippines, the Filipino people's water code outlines the people's aspirations on water. It provides an alternative paradigm to private, foreign corporations-led development, management, and operation of water resources and services. It enumerates guiding principles for implementing pro-people policies and programs on water services, water supply infrastructure management, and water resource utilization.

Preamble

Water is life. More than anything else, people need water to physically survive. Further, people need water for a better quality of life – for sanitation, for food production, for production of basic needs, for leisure, and more. The Philippines has abundant water resources, much more than Thailand, China, or India. Access to potable water should not be a problem for its people but the majority of the people face water scarcity, which will increase further in the near future.

Over and above problems of environmental conservation, over-consumption, and degradation of water resources, the people face a fundamental problem of inequity in access to water whether for individual household use or for livelihood as irrigation for farmers or aquatic resources for fishing.

Now the Filipino people face an even greater danger as neoliberal policies of privatization, deregulation, and liberalization are being implemented in various sectors, including the water sector of the country. Water supply infrastructure like dams, and water utilities and services are turned over to global transnational corporations (TNCs) and their local partners.

Consequently, water has become a commodity for TNC profit. Water resources are now under the control of corporations and allocated for their needs instead of fulfilling the basic human needs for water by the people. As a result of their commercial priorities and increase in water rates, the poor and marginalized sectors that comprise the majority of the people are principally victimized and lose access to water.

Statement of Principles

1. As water is most essential to life, the right to water is an extension of the basic human right to life. Every Filipino and every human being has a fundamental, inalienable right to clean, potable, sufficient water for survival and sanitation. [a]
2. Water is part of our national patrimony and should never be subject to exploitation for foreign, private interests.
3. Water should be treated as a people's resource, allocated mainly for the basic needs of the people's survival and livelihood.
4. As a public good, water should remain in the public domain, and conservation of freshwater ecosystems, prevention of over-consumption and degradation of water systems, and protection of watersheds as a public and government responsibility, and the provision of water services is responsibility of government.
5. In the allocation of water resources, there should be preferential treatment and affirmative action for the poor and marginalized sectors.
6. In the conservation of water resources, the ancestral domains of indigenous communities and national minorities must be given precedence.

7. In the conservation and development of water resources and provision of water services, community management should be promoted.

Conservation and rehabilitation of water resources and freshwater ecosystems

1. Sustainable, pro-people policies and programs to conserve freshwater ecosystems should be put in place. Consequently, corporate logging, large-scale corporate mining and similar large-scale corporate exploitation of natural resources as well as large development projects that destroy freshwater ecosystems must be terminated.[b]

2. Effective conservation and rehabilitation programs for freshwater resources and ecosystems such as lakes, rivers, wetlands, groundwater and the like must be implemented, and renewable freshwater supply developed.

3. Degradation and pollution of water systems by large industrial concerns, large-scale mining, export zones and industrial estates, military bases and camps, water transport systems and the like must be immediately stopped.

4. Because of its particular devastating impact on the ecosystem, the policy and program for large scale dams must be terminated.

Development and management of sustainable and pro-people water supply infrastructure

1. A new paradigm for infrastructure development for water supply management must be developed and the current paradigm that is premised on large-scale dams that require large investment through official development assistance (ODA) loans and global TNCs participation and control must be ended.

2. In particular, small-scale hydropower systems and community-based and controlled irrigation and water supply systems must be developed as the overall alternative.

3. Large-scale water supply systems for densely populated areas like Metro Manila and Metro Cebu should maximize and develop available renewable water supply based on a rational allocation and sustainable utilization of resources.

4. Multi-purpose infrastructure development projects for lakes, river systems, and wetlands should not dramatically alter or destroy ecosystems nor divert utilization of water resources towards the few.

Water services/utilities is the responsibility of government and privatization must be reversed

1. Institute a policy of public control and management of all water infrastructure, utilities, and services such as dams, irrigation systems, hydropower plants, and public water services at various levels of government down to municipal or barangay level.

2. Government should dismantle, take over or nationalize, as appropriate, the control of private companies over any or all aspects of operations of water-related infrastructure and water services.

3. Government water services must be premised on full respect and realization of workers' rights and welfare.

4. Water as a public good must be upheld. End the commodification of water and water services, such as the promotion of bottled water as basic source of drinking water or regularization of water service fees.

Effectively provide water for people's use

1. The people's interests must be upheld at all times in all matters related to water. In the development and allocation of water resources, public consumption must be the paramount concern.
2. Ensure access to water for all, especially the poor and marginalized. Provide safe and potable clean running water for all households, urban or rural.
3. User fees for water services to households must be scrapped and instead a socialized fee structure that charges for water use beyond basic household consumption should be put in place.

Develop and manage irrigation and promote genuine agrarian reform, as well as freshwater aquatic resources with preference for small fisher folk

1. Conservation, rehabilitation, and management of freshwater resources such as lakes and rivers should aim to develop aquatic resources to support the livelihood of small fisher folk, peasants, indigenous peoples, and other marginalized sectors.
2. Regulation of aquaculture must be rationally implemented so that it does not marginalize small fisher folk, while programs should be developed to promote aquaculture livelihood for small fisher folk.
3. Municipal/community managed irrigation systems must be developed on a massive scale in order to develop productivity in agriculture while assuring sustainability and peasant and farmer participation.
4. The prevalent practice of user fees and other payments or charges for irrigation must be ended and the policy preference for large irrigation systems that require user fees while destroying ecosystems and dislocating farmers and livelihood should be terminated.

Promote democratic governance in water supply management and water services

1. Consultation of affected communities and sectors must be ensured in the design and conceptualization of water supply infrastructure, and their participation must be ensured in every step of the implementation of such projects.
2. Consultation and participation of affected sectors must be ensured in the operations and policy formulation of water services and utilities.
3. Transparency and accountability in financing and management of projects in the water sector must be ensured. Collusion between government bureaucrats/agencies and corporation involved in construction and water services should be ended and all forms of graft and corruption must be investigated and punished.

Notes:

a. Right here refers restrictively to human right and not corporate ownership rights or water rights.

b. Sustainability here refers restrictively to the water system's capability to replenish itself and not the World Bank-defined sustainable development.

PRESIDENTIAL DECREE NO. 1067

December 31, 1976

THE WATER CODE OF THE PHILIPPINES

A DECREE INSTITUTING A WATER CODE, THEREBY REVISING AND CONSOLIDATING THE LAWS GOVERNING THE OWNERSHIP, APPROPRIATION, UTILIZATION, EXPLOITATION, DEVELOPMENT, CONSERVATION AND PROTECTION OF WATER RESOURCES.

WHEREAS, Article XIV, Section 8 of the New Constitution of the Philippines provides, *inter alia*, that all waters of the Philippines belong to the State;

WHEREAS, existing water legislations are piecemeal inadequate to cope with increasing scarcity of water and changing patterns of water use;

WHEREAS, there is a need for a Water Code based on rational concepts of integrated and multi-purpose management of water resources and sufficiently flexible to adequately meet future developments:

WHEREAS, water is vital national development and it has become increasingly necessary for government to intervene actively in improving the management of water resources;

NOW, THEREFORE, I, FERDINAND, E. MARCOS, President of the Philippines, by virtue of the powers in me vested by the Constitution, do hereby orders and decree the enactment of the water Code of the Philippines of 1776, as follows:

CHAPTER I

DECLARATION OF OBJECTIVES AND PRINCIPLES

Article 1. This Code shall be known as "*The Water Code of the Philippines.*"

Article 2. The objectives of this Code are:

- a. To establish the basic principles and framework relating to the appropriation, control and conservation of water resources to achieve the optimum development and rational utilization of these resources;
- b. To define the extent of the rights and obligation of water users and owners including the protection and regulation of such rights;
- c. To adopt a basic law governing the ownership, appropriation, utilization, exploitation, development, conservation and protection of water resources and rights to land related thereto; and
- d. To identify the administrative agencies which will enforce this Code.

Art. 3. The underlying principles of this code are:

- a. All waters belong to the State.
- b. All waters that belong to the state can not be the subject to acquisitive prescription.
- c. The State may allow the use or development of waters by administration concession.
- d. The utilization, exploitation, development, conservation and protection of water resources shall be subject to the control and regulation of the government through the National Water Resources Council, hereinafter referred to as the Council.
- e. Preference in the use and development of waters shall consider current usages and be responsive to the changing needs of the country.

Art. 4. Waters, as used in this Code, refers to water under the grounds, water above the ground, water in the atmosphere and the waters of the sea within the territorial jurisdiction of the Philippines.

CHAPTER II OWNERSHIP OF WATERS

Art. 5. The following belong to the state:

- a. Rivers and their natural beds;
- b. Continuous or intermittent waters of springs and brooks running in their natural beds and the beds themselves
- c. Natural lakes and lagoons;
- d. All other categories of surface waters such as water flowing over lands, water form rainfall whether natural or artificial, and water from agriculture runoff, seepage and drainage;
- e. Atmospheric water;
- f. subterranean or ground water; and
- g. Seawater

Art. 6. The following waters found on private lands also belong to the States:

- a. Continuous or intermittent waters rising on such lands;
- b. Lakes and lagoons naturally waters rising on such lands;
- c. Rain water and falling on such lands;
- d. Subterranean or ground waters; and,
- e. Waters in swamps and marshes.

The owner of the land where the water is found may use the same for domestic purposes without securing a permit, provided that such use shall have be registered, when required by the Council. The Council, however, may regulate such use when there is wastage, or in times of emergency.

Art. 7. Subject to the provisions of this Code, any person who captures or collects water by means of cisterns, tanks, or pools shall have exclusive control over such water and the right to dispose of the same.

Art. 8. Water legally appropriated shall be subject to the control of the appropriator from the moment it reaches the appropriator's canal or aqueduct leading to the place where the water will be used or stored and, thereafter, so long as it is being beneficially used for the purposes for which it was appropriated.

CHAPTER III APPROPRIATION OF WATERS

Art. 9. Waters may be appropriated and used in accordance with the provisions of this Code.

Appropriation of water, as used in this Code, is the acquisition of rights over the use of waters or the taking or diverting of waters from a natural source in the manner and for any purpose allowed by law.

Art. 10. Water may be appropriated for the following purposes:

- a. Domestic;
- b. Municipal;
- c. Irrigation;
- d. Power generation;
- e. Fisheries;
- f. Livestock raising;
- g. Industrial;
- h. Recreational; and
- i. Other purposes;

Use of water for domestic purposes is the utilization of water for drinking, washing, bathing, cooking or other household needs, home gardens, and watering or lawns or domestic animals.

Use of water for municipal purposes is the utilization of water for supplying the water requirements of the community.

Use of water for irrigation is the utilization of water for producing agricultural crops.

Use of water for power generation is the utilization of water for producing electrical or mechanical power.

Use of water for power fisheries is the utilization of water for the propagation and culture of fish as a commercial enterprise

Use of water for livestock raising is the utilization of water for large herds or flocks of animals raised as a commercial enterprise.

Use of water for industrial purposes is the utilization of water in factories, industrial plants and mines, including the use of water as an ingredient of a finished product.

Use of water for recreational purposes is the utilization of water for swimming pools, bath houses, boating, water skiing, golf courses and other similar facilities in resorts and other places of recreation.

Art. 11. The state, for reasons of public policy, may declare waters not previously appropriated, in whole or in part, exempt from appropriation for any or all purposes and, thereupon, such waters may not be appropriated for those purposes.

Art. 12. Waters appropriated for a particular purpose may be applied for another purpose only upon prior approval of the Council and on condition that the new use does not unduly prejudice the rights of other permittees, or require an increase in the volume of water.

Art. 13. Except as otherwise herein provided, no person, including government instrumentalities or government-owned or controlled corporations, shall appropriate water without a water right, which shall be evidenced by a document known as a water permit.

Water rights is the privilege granted by the government to appropriate and use water.

Art. 14. Subject to the provisions of this Code concerning the control, protection, conservation, and regulation of the appropriation and use of waters, any person may appropriate or use natural bodies of water without securing a water permit for any of the following.

a. Appropriation of water by means of hand carried receptacles; and

b. Bathing or washing, watering or dipping of domestic or farm animals, and navigation of watercrafts or transportation of logs and other objects by flotation.

Art. 15. Only citizens of the Philippines, of legal age, as well as juridical persons, who are duly qualified by law to exploit and develop water resources, may apply for water permits.

Art. 16. Any person who desires to obtain a water permit shall file an application with the Council who shall make known said application to the public for any protests.

In determining whether to grant or deny an application, the Council shall consider the following: protests filed, if any; prior permits granted; the availability of water; the water supply need for beneficial use; possible adverse effects; land-use economics; and other relevant factors.

Upon approval of an application, a water permit shall be issued and recorded.

Art. 17. The right to the use of water is deemed acquired as of the date of filing of the application for a water permit in case of approved permits, or as of the date of actual use in a case where no permit is required.

Art. 18. All water permits granted shall be subject to conditions of beneficial use, adequate standards of design and construction, and such other terms and conditions as may be imposed by the Council.

Such permits shall specify the maximum amount of water which may be diverted or withdrawn, the maximum rate diversion or withdrawal, the time or times during the year when water may be diverted or withdrawn, the points or points of diversion or location of wells, the place of use, the purpose for which water may be used and such other requirements the Council deems desirable.

Art. 19. Water rights may be lent or transferred in whole or in part to another person with prior approval of the Council, after due notice and hearing.

Art. 20. The measure and limit of appropriation of water shall be beneficial use.

Beneficial use of water is the utilization of water in the right amount during the period that the water is needed for producing the benefits for which the water is appropriated.

Art. 21. Standards of beneficial use shall be prescribed by the council for the appropriator of water for different purposes and conditions, and the use of waters which are appropriated shall be measured and controlled in accordance therewith.

Excepting those for domestic use, every appropriator of water shall maintain water control and measuring devices, and keep records of water withdrawal. When required by the council, all appropriators of water shall furnish information on water use.

Art. 22. Between two or more appropriation of water from the same sources of supply, priority in time of appropriation shall give the better right, except that in times of emergency, the use of water for domestic and municipal purposes shall have a better right over all other uses; Provided, That where water shortage is recurrent and the appropriator for municipal use has a lower priority in time of appropriation, then it shall be his duty to find an alternative source of supply in accordance with conditions prescribed by the Council.

Art. 23. Priorities may be altered on grounds of greater beneficial use, multi-purpose use, and other similar grounds after due notice and hearing, subject to payment of compensation in proper cases.

Art. 24. A water right shall be exercised in such a manner that rights of third persons or of other appropriators are not prejudiced thereby.

Art. 25. A holder of a water permit may demand the establishment of easements necessary for the construction and maintenance of the works and facilities needed for the beneficial use of the waters to be appropriated subject to the requirements of just compensation and to the following conditions:

- a. That he is the owner, lessee, mortgage or one having real right over the land upon which he purposes to use water; and
- b. That the proposed easement is the most convenient and the least onerous to the servient estate.

Easement relating to the appropriation and use of waters may be modified by agreement of the contracting parties provided the same is not contrary to law or prejudicial to third persons.

Art. 26. Where water shortage is recurrent, the use of the water pursuant to a permit may, in the interest of equitable distribution of benefits among legal appropriators, be reduced after due notice and hearing.

Art. 27. Water users shall bear the diminution of any water supply due to natural causes or force majeure.

Art. 28. Water permits shall continue to be valid as long as water is beneficially used; however, it may be suspended on the grounds of non-compliance with approved plans and specifications or schedules of water distribution; use of water for a purpose other than that for which it was granted; non-payment of water charges, wastage; failure to keep records of water diversion, when required; and violation of any term or condition of any permit or of rules and regulations promulgated by the Council.

Temporary permits may be issued for the appropriation and use of water for short periods under special circumstances.

Art. 29. Water permits may be revoked after due notice and hearing on grounds of non-use; gross violation of the conditions imposed in the permit; unauthorized sale of water; willful failure or refusal to comply with rules and regulations or any lawful order; pollution, public nuisance or acts detrimental to public health and safety; when the appropriator is found to be disqualified under the law to exploit and develop natural resources of the Philippines; when, in the case of irrigation, the land is converted to non-agricultural purposes; and other similar grounds.

Art. 30. All water permits are subject to modification or cancellation by the Council, after due notice and hearing, in favor of a project of greater beneficial use or for multi-purpose development, and a water permittee who suffers thereby shall be duly compensated by the entity or person in whose favor the cancellation was made.

CHAPTER IV UTILIZATION OF WATERS

Art. 31. Preference in the development of water resources shall consider security of the State, multiple use, beneficial effects, adverse effects and cost of development.

Art. 32. The utilization of subterranean or ground water shall be coordinated with that of surface waters such as rivers, streams, springs and lakes, so that a superior right in one is not adversely affected by an inferior right in the other.

For this purpose, the Council shall promulgate rules and regulations and declare the existence of control areas for the coordinated development, protection, and utilization of subterranean or ground water and surface waters.

Control area is an area of land where subterranean or ground water and surface water are so interrelated that withdrawal and use in one similarly affects the other. The boundary of a control area may be altered from time to time, as circumstances warrant.

Art. 33. Water contained in open canals, aqueducts or reservoirs of private persons may be used by any person for domestic purpose or for watering plants as long as the water withdrawn by manual methods without checking the stream or damaging the canal, aqueduct or reservoir; Provided, That this right may be restricted by the owner should it result in loss or injury to him.

Art. 34. A water permittee or appropriator may use any watercourse to convey water to another point in the watercourse for the purpose stated in a permit and such water may be diverted or recaptured at that point by said permittee in the same amount less allowance for normal losses in transit

Art. 35. Works for the storage, diversion, distribution and utilization of water resources shall contain adequate provision for the prevention and control of diseases that may be induced or spread by such works when required by the Council.

Art. 36. When the reuse of waste water is feasible, it shall limited as much as possible to such uses other than direction human consumption. No person or agency shall distribute such water for public consumption until it is demonstrated that such consumption will not adversely affect the health and safety of the public.

Art. 37. In the construction and operation of hydraulic works, due consideration shall be given to the preservation of scenic places and historical relics and in addition to the provisions of existing laws, no works that would required the destruction or removal of such places or relics shall be undertaken without showing that the destruction or removal is necessary and unavoidable.

Art. 38. Authority for the construction of dams, bridges and other structures across of which may interfere with the flow of navigable or floatable waterways shall first be secured from the Department of Public Works, Transportation and Communications.

Art. 39. Except in cases of emergency to save life or property, the construction or repair of the following works shall be undertaken only after the plans and specifications therefore, as may be required by the Council, are approved by the proper government agency; dams for the diversion or storage of water; structures for the use of water power; installations for the utilization of subterranean or ground water and other structures for utilization of water resources.

Art 40. No excavation for the purpose of emission of a hot spring or for the enlargement of the existing opening thereof shall be made without prior permit.

Any person or agency who intends to develop a hot spring for human consumption must first obtain a permit from the Department of Health.

Art. 41. No person shall develop a stream, lake, or spring for recreational purposes without first securing a permit from the council.

Art. 42. Unless otherwise ordered by the President of the Philippines and only in times of national calamity or emergency, no person shall induce or restrain rainfall by any method such as cloud seeding without a permit from the proper government agency.

Art. 43. No person shall raise or lower the water level of a river, stream, lake, lagoon or marsh nor drain the same without a permit.

Art. 44. Drainage systems shall be so constructed that their outlets are rivers, lakes, the sea, natural bodies of water, such other water course as any be approved by the proper government agency.

Art. 45. When a drainage channel is constructed by a number of persons for their common benefit, cost of construction and maintenance of the channel be borne by each in proportion to the benefits derived.

Art. 46. When artificial means are employed to drain water from higher to lower land, the owner of the higher land shall select the routes and methods of drainage that will cause the minimum damage to the lower lands, subject to the requirements of just compensation.

Art. 47. When the use, conveyance or storage of water results in damage to another, the person responsible for the damage shall pay compensation.

Art. 48. When a water resources project interferes with the access of landowner to a portion of his property or with the conveyance of irrigation or drainage water, the person or agency constructing the project shall bear the cost of construction and maintenance of the bridges, flumes and other structures necessary for maintaining access, irrigation, or drainage in addition to paying compensation for land and incidental damages.

Art. 49. Any person having an easement for an aqueduct may enter upon the servient land for the purpose of cleaning, repairing or replacing the aqueduct or the removal of obstructions therefrom.

Art. 50. Lower estates are obliged to receive the waters which naturally and without the intervention of man flow from the higher estates, as well as the stones or earth which they carry with them.

The owner of the lower estate can not construct works which will impede this natural flow, unless he provides an alternative method of drainage; neither can the owner of the higher estate make works which will increase this natural flow.

Act. 51. The banks or rivers and streams and the shores of the seas and lakes throughout their entire length and within a zone of three (3) meters in urban areas, twenty (20) meters in agricultural areas and forty (40) meters in forest areas, along their margins, are subject to the easement of public use in the interest of recreation, navigation, flotage, fishing and salvage. No person shall be allowed to stay in this

zone longer than what is necessary for recreation, navigation, flotage, fishing or salvage or to build structures of any kind.

Art. 52. The establishment, extent, from, and conditions of easement of water not expressly determined by the provisions of this Code shall governed by the provisions of the Civil Code.

CHAPTER V CONTROL OF WATERS

Art. 53. To promote the best interest and the coordinated protection of flood plain lands, the Secretary of Public Works, Transportation and Communications may declare flood control areas and promulgate guidelines for governing flood plain management plans in these areas.

Art. 54. In declare flood control areas, rules and regulations may be promulgate to prohibit or control activities that may damage or cause deterioration of lakes and dikes, obstruct the flow of water, change the natural flow of the river, increase flood losses or aggravate flood problems.

Art. 55. The government may construction necessary flood control structures in declared flood control areas, and for this purpose it shall have a legal easement as wide as may be needed along and adjacent to the river bank and outside the bed or channel of the river.

Art. 56. River beds, sand bars and tidal flats may not be cultivated except upon prior permission from the Secretary of the Department of Public works, Transportation and Communication and such permission shall not be granted where such cultivation obstructs the flow of water or increase flood levels so as to cause damage to other areas.

Art. 57. Any person may erect levees or revetments to protect his property from flood, encroachment by the river or change in the course of the river, provided that such constructions does not cause damage to the property of another.

Art. 58. When a river or stream suddenly changes its course to traverse private lands, the owners or the affected lands may not compel the government to restore the river to its former bed; nor can they restrain the government from taking steps to revert the river or stream to its former course. The owners of the lands thus affected are not entitled to compensation for any damage sustained thereby. However, the former owners of the new bed shall be the owners of the abandoned bed proportion to the area lost by each.

The owners of the affected lands may undertake to return the river or stream to its old bed at their own expense; Provided, That a permit therefore is secured from the Secretary of Public Works, Transportation and Communication and work pertaining thereto are commenced within two years from the changes in the course of the river or stream.

Art. 59. Rivers, lakes and lagoons may, upon the recommendation of the Philippines Coast Guard, be declared navigable either in whole or in part.

Art. 60. The rafting of logs and other objects on rivers and lakes which are floatable may be controlled or prohibited during designated season of the year with due regard to the needs of irrigation and domestic water supply and other uses of water.

Art. 61. The impounding of water in ponds or reservoirs may be prohibited by the Council upon consultation with the Department of Health if it is dangerous to public health, or it may order that such pond or reservoirs be drained if such is necessary for the protection of public health.

Art. 62. Waters of a stream may be stored in a reservoir by a permittee in such amount as will not prejudices the right of any permittee downstream. Whoever operates the reservoir shall, when required, release water for minimum stream flow.

All reservoir operations shall be subject to rules and regulations issued by the Council or any proper government agency.

Art. 63. The operator of a dam for the storage of water may be required to employ an engineer possessing qualifications prescribed for the proper operations, maintenance and administration of the dam.

Art. 64. The Council shall approve the manner, location, depth, and spacing in which borings for subterranean or ground water may be made, determine the requirements for the registration of every boring or alteration to existing borings as well as other control measures for the exploitation of subterranean or ground water resources, and in coordination with the Professional Regulation Commission prescribe the qualifications of those who would drill such borings.

No person shall drill a well without prior permission from the Council.

Art. 65. Water from one river basin may be transferred to another river basin only with approval of the Council. In considering any request for such transfer, the Council shall take into account the full costs of the transfer, the benefits that would accrue to the basin of origin without the transfer, the benefits would accrue to the receiving basin on account of the transfer, alternative schemes for supplying water to the receiving basin, and other relevant favors.

CHAPTER VI CONSERVATION AND PROTECTION OF WATERS AND WATERSHEDS AND RELATED LAND RESOURCES

Art. 66. After due notice and hearing when warranted by circumstances, minimum stream flows for rivers and streams and minimum water levels for lakes may be established by the Council under such conditions as may be necessary for the protection of the environment, control of pollution, navigation, prevention of salt damage, and general public use.

Art. 67. Any watershed or any area of land adjacent to any surface water or overlying any ground water may be declared by the Department of Natural Resources (DENR) as a protected area. Rules and regulations may be promulgated by such Department to prohibit or control such activities by the owners or occupants thereof within the protected area which may damage or cause the deterioration of the surface

water or ground water or interfere with the investigation, use, control, protection, management or administration of such waters.

Art. 68. It shall be the duty of any person in control of a well to prevent the water from flowing on the surface of the land, or into any surface water, or any porous stratum underneath the surface without being beneficially used.

Art. 69. It shall be the duty of any person in control of a well containing water with minerals or other substances injurious to man, animals, agriculture, and vegetation to prevent such waters from flowing on the surface of the land or into any surface water or into any other aquifer or porous stratum.

Art. 70. No person shall utilize an existing well or pond or spread waters for recharging subterranean or ground water supplies without prior permission of the Council.

Art. 71. To promote better water conservation and usage for irrigation purposes, the merger of irrigation associations and the appropriation of waters by associations instead of by individuals shall be encouraged.

No water permit shall be granted to an individual when his water requirement can be supplied through an irrigation association.

Art. 72. In the consideration of a proposed water resource project, due regard shall be given to ecological changes resulting from the construction of the project in order to balance the needs of development and the protection of the environment.

Art. 73. The conservation of fish and wild life shall receive proper consideration and shall be coordinated with other features of water resources development programs to insure that fish and wildlife values receive equal attention with other project purposes.

Art. 74. Swamps and marshes which are owned by the State and which have a primary value for waterfowl propagation or other wildlife purposes may be reserved and protected from drainage operations and development.

Art. 75. No person shall, without prior permission from the National Pollution Control Commission, build any works that may produce dangerous or noxious substance or perform any act which may result in the introduction of sewage, industrial waste, or any pollutant into any source of water supply.

Water pollution is the impairment of the quality of water beyond a certain standard. This standard may vary according to the use of the water and shall be set by the National Pollution Control Commission.

Art. 76. The establishment of cemeteries and waste disposal areas that may affect the source of a water supply or a reservoir for domestic or municipal use shall be subject to the rules and regulations promulgated by the Department of Health.

Art. 77. Tailings from mining operations and sediments from placer mining shall not be dumped into rivers and waterways without prior permission from the Council upon recommendation by the National Pollution Control Commission.

Art. 78. The application of agriculture fertilizers and pesticides may be prohibited or regulated by the National Pollution Control Commission in areas where such application may cause pollution of a source of water supply.

CHAPTER VII
ADMINISTRATION OF WATERS AND ENFORCEMENT
OF THE PROVISIONS OF THIS CODE

Art. 79. The Administration and enforcement of the provisions of this Code, including the granting of permits and the imposition of penalties for administrative violations hereof, are hereby vested in the council, and except in regard to those functions which under this Code are specifically conferred upon other agencies of the government, the Council is hereby empowered to make all decisions and determinations provided for in this Code.

Art. 80. The Council may deputize any official or agency of the government to perform any of its specific functions or activities.

Art. 81. The Council shall provide a continuing program for data collection, research and manpower development need for the appropriation, utilization, exploitation, conservation, and protection of the water resources of the country.

Art. 82. In the implementation of the provisions of this Code, the Council shall promulgate the necessary rules and regulations which may provide for penalties consisting of a fine not exceeding One thousand Pesos (P1,000.00) and/or suspension or revocation of the water permit or other right to the use of water. Violations of such rules and regulations may be administratively dealt with by the Council.

Such rules and regulations shall take effect fifteen (15) days after publication in newspapers of general circulation.

Rules and regulations prescribed by any government agency that pertain to the utilization, exploitation, development, control, conservation, or protection of water resources shall, if the council so requires, be subject to its approval.

Art. 83. The Council is hereby authorized to impose and collect reasonable fees or charges for water resources development from water appropriators, except when it is for purely domestic purpose.

Art. 84. The Council and other agencies authorized to enforce this Code are empowered to enter upon private lands, with previous notice to the owner, for the purpose of conducting surveys and hydrologic investigations, and to perform such other acts as are necessary in carrying out their functions including the power to exercise the right of eminent domain.

Art. 85. No program or project involving the appropriation, utilization, exploitation, development, control, conservation, or protection of water resources may be undertaken without prior approval of the Council, except those which the council may, in its discretion, exempt.

The Council may require consultation with the public prior to the implementation of certain water resources development projects.

Art. 86. When plans and specifications of a hydraulic structure are submitted for approval, the government agency whose functions embrace the type of project for which the structure is intended, shall review the plans and specifications and recommend to the Council proper action thereon and the latter shall approve the same only when they are in conformity with the requirements of this Code and the rules and regulations promulgated by the Council. Notwithstanding such approval, neither the engineer who drew up the plans and specifications of the hydraulic structure, nor the constructor who built it, shall be relieved of his liability for damages in case of failure thereof by reason of defect in plans and specifications, or failure due to defect in plan construction, within ten (10) years from the completion of the structure.

Any action recover such damages must be brought within five (5) years following such failure.

Art. 87. The Council or its duly authorized representatives, in the exercise of its power to investigate and decide cases brought to its cognizance, shall have the power to administer oaths, compel the attendance of witnesses be *subpoena duces tecum*.

Non-compliance or violation of such orders or *subpoena* and *subpoena duces tecum* shall be punished in the same manner as indirect contempt of an inferior court upon application by the aggrieved party with the proper Court of First Instance in accordance with the provisions of Rule 71 of the Rules of Court.

Art. 88. The Council shall have original jurisdiction over all disputes relating to appropriation, utilization, exploitation, development, control, conservation and protection of waters within the meaning and context of the provisions of this Code.

The decisions of the Council on water rights controversies shall be immediately executory and the enforcement thereof may be suspended only then a bond, in a amount fixed by the Council to answer for damages occasioned by the suspension or stay of execution, shall have been filed by the appealing party, unless the suspension is by virtue of an order of a competent court.

All dispute shall be decide within sixty (60) days after the parties submit the same for decision or resolution.

The Council shall have the power to issue writs of execution and enforce its decisions with the assistance of local or national police agencies.

Art. 89. The decisions of the Council on water rights controversies may be appealed to the court of first Instance of the province where the subject matter of the controversy is situated within fifteen (15) days from the date the party appealing receives a copy of the decision, of any of the following grounds: (1) grave abuse of discretion; (2) question of law; (3) questions of fact and law.

CHAPTER VIII PENAL PROVISIONS

Art. 90. The following acts shall be penalized by suspension or revocation of the violator's water permit or

other right to the use of water and/or a fine of not exceeding One thousand Pesos (P1,000.00), in the discretion of the Council :

- a. Appropriation of subterranean or ground water for domestic use by an overlying landowner without registration required by the Council;
- b. Non-observance of any standard of beneficial use of water.
- c. Failure of the appropriator to keep a record of water withdrawal when required.
- d. Failure to comply with any of the terms or conditions in a water permit or a water rights grant.
- e. Unauthorized use of water for a purpose other than that for which a right or permit was granted.
- f. Construction or repair of any hydraulic work or structure without duly approved plans and specifications, when required.
- g. Failure to install a regulating and measuring device for the control volume of water appropriated, when required.
- h. Unauthorized sale, lease, or transfer of water and/or water rights.
- i. Failure to provide adequate facilities to prevent or control diseases when required by the Council in the construction of any work for the storage, diversion, distribution and utilization of water.
- j. Drilling of a well without permission of the Council.
- k. Utilization of an existing well or ponding or spreading of water for recharging subterranean or ground water supplies without permission of the Council.
- l. Violation of or non-compliance with any order, rules and regulation of the Council.
- m. Illegal taking or diversion of water in an open canal, aqueduct or reservoir.
- n. Malicious destruction of hydraulic works or structures valued at not exceeding P5,000.00.

Art. 91. A. A fine of not exceeding Three Thousand Pesos (P3,000.00) or imprisonment for not more than three (3) years, or both such fine and imprisonment, in the discretion of the Court, shall be imposed upon any person who commits any of the following acts:

1. Appropriation of water without a water permit, unless such person is expressly exempted from securing a permit by the provisions of this code;
2. Unauthorized obstruction of an irrigation canal.
3. Cultivation of river bed, sand bar or tidal flat without permission.

4. Malicious destruction of hydraulic works or structure valued at not exceeding Twenty-Five Thousand Pesos (P25,000.00)

B. A fine exceeding Three Thousand Pesos (P3,000.00) but not more than Six Thousand Pesos (P6,000.00) or imprisonment exceeding three years (3) years but not more than (6) years or both such fine and imprisonment in the discretion of the Court, shall be imposed on any person who commits any of the following acts:

1. Distribution for public consumption of water which adversely affects the health and safety of the public.

2. Excavation or enlargement of the opening of a hot spring without permission.

3. Unauthorized obstruction of a river or waterway, or occupancy of a river bank or seashore without permission.

4. Establishment of a cemetery or a waste disposal area near a source of water supply or reservoir for domestic or municipal use without permission.

5. Constructing, without prior permission of the government agency concerned, works that produce dangerous or noxious substances, or performing acts that result in the introduction of sewage, industrial waste, or any substance that pollutes a source of water supply.

6. Dumping mine tailings and sediments into rivers or waterways without permission.

7. Malicious destruction of hydraulic works or structure valued more than Twenty-five Thousand (P25,000.00) but not exceeding One Hundred Thousand Pesos (P100,000.00)

C. A fine exceeding Six Thousand Pesos (P6,000.00) but not more than ten Thousand Pesos (P10,000.00) or imprisonment exceeding six (6) years but not more than twelve (12) years, or both such fine and imprisonment, in the discretion of the Court, shall be imposed upon any person who commits any of the following acts:

1. Misrepresentation of citizenship in order to qualify for water permit.

2. Malicious destruction of a hydraulic works or structure, valued at more than One Hundred Thousand Pesos (P100,000.00).

Art. 92. If the offense is committed by a corporation, trust, firm, partnership, association or any other juridical person, the penalty shall be imposed upon the President, General Manager, and other guilty officer or officers of such corporation, trust, firm, partnership, association or entity, without prejudice to the filing of a civil action against said juridical person. If the offender is an alien, he shall be deported after serving his sentence, without further proceedings.

After final judgment of conviction, the Court upon petition of the prosecution attorney in the same proceedings, and after due hearing, may when the public interest so requires, order the suspension of or dissolution of such corporation, trust, firm, partnership association or juridical person.

Art. 93. All actions for offenses punishable under Article 91 of this code shall be brought before the proper court.

Art. 94. Actions for offenses punishable under this Code by a fine of not more than Three Thousand (P3,000.00) or by an imprisonment of not more than three (3) years, or both such fine and imprisonment, shall prescribed in five (5) years; those punishable by a fine exceeding Three Thousand Pesos (3,000.00) but not more than six thousand Pesos (P6,000.00) or imprisonment exceeding three (3) years but not more than six years (6) years or both such fine and imprisonment, shall prescribe in seven (7) years; and those punishable by a fine exceeding Six Thousand Pesos (P6,000.00) but not more than Ten Thousand Pesos (P10,000.00) or an imprisonment exceeding Six (6) years but not more than Twelve (12) years, or both such fine and imprisonment, shall prescribe in ten (10) years.

CHAPTER IX TRANSITORY AND FINAL PROVISIONS

Art. 95. Within two (2) years from the promulgation of this code, all claims for a right to use water existing on or before December 31, 1974 shall be registered with the council which shall be confirm said rights in accordance with the provisions of this Code, and shall set their respective priorities.

When priority in time of appropriation from a certain source of supply cannot be determined, the order of preference in the use of the waters shall be as follows :

- a. Domestic and municipal use;
- b. Irrigation;
- c. Power generation;
- d. Fisheries;
- e. Livestock raising;
- f. Industrial use; and
- g. Other uses.

Any claim not registered within said period shall be considered waived and the use of the water deemed abandoned, and the water shall thereupon be available for disposition as unappropriated waters in accordance with the provisions of this code.

Art. 96. No vested or acquired right to the use of water can arise from acts or omissions which are against the law or which infringe upon the rights of others.

Art. 97. Acts and contracts under the regime of old laws, if they are valid in accordance therewith, shall be respected, subject to the limitations established in this Code. Any modification or extension of these acts and contracts after the promulgation of this code, shall be subject to the provisions hereof.

Art. 98. Interim rules and regulations promulgated by the Council shall continue to have binding force and effect, when not in conflict with the provisions of this Code.

Art. 99. If any provision or part of this Code, or the application thereof to any person or circumstance, is declared unconstitutional or invalid for any reason, the other provisions of parts therein shall not be affected.

Art. 100. The following laws, parts and/or provisions of laws are hereby repealed:

a. The provisions of the Spanish law of waters of August 3, 1866, the Civil Code of Spain of 1889 and the Civil Code of the Philippines (R. A. 386) on ownership of waters, easement relating to waters, use of public waters which are inconsistent with the provision of the Code;

b. The provisions of R. A. 6395, otherwise known as the Revised Charter of the National Power Corporation, particularly section 3, paragraph (f), and section 12, so far as they relate to the appropriation of waters and the grant thereof;

c. The provisions of Act. No. 2152 as amended, otherwise know as the Irrigation Act, section 3, paragraphs (k) and (m) of P.D. No. 813, R. A. 2056; Section 90, C. A. 137; and

d. All Decrees, Laws, Acts, parts of Acts, Rules of Court, executive orders, and administrative regulations which are contrary to or inconsistent with the provisions of this Code.

Art. 101. This Code shall take effect upon its promulgation.

Done in the City of Manila, this 31st day of December, Nineteen Hundred and Seventy-Six.

FERDINAND E. MARCOS
President of the Philippines

By the President:

JACOBO C. CLAVE
Presidential Executive Assistant

REPUBLIC ACT NO. 8041
AN ACT TO ADDRESS THE NATIONAL WATER CRISIS AND FOR OTHER PURPOSES.

Sec. 1 *Short Title.* - This Act shall be shown as the " National Water Crisis Act of 1995".

Sec. 2. *Declaration of Policy.* - It is hereby declared the policy of the State to adopt urgent and effective measures to address the nationwide water crisis which adversely allocate the health and well-being of the population , food production and industrialization process.

Pursuant thereto the government shall address the issues relevant to the water crisis including, but not limited to, supply, distribution, finance, privatization of state-run water facilities, the protection and conservation of watersheds and the waste and pilferage of water, including the serious matter of graft and corruption in all the water agencies.

Sec. 3. *Organization of Joint Executive-Legislative Water Crisis Commission.*- Within thirty (30) days after the effectivity of this Act, there shall be organized a Joint Executive -Legislative Water Crisis Commission. The Commission shall be chaired by the Executive Secretary, with the secretaries of the Department of Public Works and Highways and the Department of Environment and Natural Resources, and the chairmen of the appropriate Senate and House committees, as designated by the leaders of both Houses of Congress, as well as a representative of the minority from each House , as members.

There shall be a technical staff constituted by by representatives of the National Water Resources Board (NAIROBI) , the Metropolitan Waterworks and Sewerage System (MWSS) , the Local Water Utilities Administration (LWUA), the appropriate committees of the Senate and the House , and the certified workers' union in the affected water institutions.

Sec. 4. *Purposes and Objectives.* - The Commission shall have the following purposes and objectives:

- a. to undertake nationwide consultations on the water crisis and in depth and detailed study and review of the entire water supply and distribution structure;
- b. To enhance and facilitate cooperation and coordination between Congress and the executive department in formulating and implementing the government's water crisis management policy and strategy;
- c. To recommend measures that will ensure continuous and effective monitoring of the entire water supply and distribution system of the country;and
- d. To conduct continuing studies and researches on policy options, strategies and approaches to the water crisis including experiences of other countries similarly situated, and to recommend such remedial and legislative measures as may be required to address the problem.

Sec. 5. *Powers and Functions.* - To carry out the aforementioned purposes and objectives, the Commission is hereby authorized:

a. To secure from any department, bureau, office, agency or instrumentality of the government such assistance as may be needed, such as technical information, the preparation of reports, and the submission of recommendations or plans, as it may require;

b. To designate by resolution the watershed areas in which developmental undertakings are to be suspended; and

c. Generally, to exercise all the powers necessary, relevant and incidental to attain the purposes and objectives for which it is organized.

Sec. 6. *Negotiated contracts.* - For projects to be implemented under Build-operate-Transfer (BOT) and/or related schemes, the President of the Republic may, for a period of one (1) year after the effectivity of this Act, enter into negotiated contracts for the financing, construction, repair, rehabilitation, improvement and operation of water facilities and projects related to increasing water supply, its treatment and its distribution to industrial and household consumers: Provided, That there is no government financing or financing guarantee for the contracts, except for the acquisition of right-of-way.

The contracts shall be awarded only to contractors with proven competence and experience in similar projects, competent key personnel, efficient and reliable equipment, and sound financial capacity.

Sec. 7. *Reorganization of the Metropolitan Waterworks and Sewerage System (MWSS) and the Local Waterworks and Utilities Administration (LWUA).* - Within six (6) months from the approval of this Act, the President of the Republic is hereby empowered to revamp the executive of any or all segments of these agencies, operations or facilities if necessary, to make them more effective and innovative to address the looming water crisis. For this purpose, the president may abolish or create offices, transfer functions, equipment, properties, records and personnel; institute drastic cost-cutting and other related measures to carry out said objectives. Moreover, in the implementation of this provision, the prescriptions of Republic Act No. 7430, otherwise known as the "Attribution Law" shall not apply. Nothing in this section shall result in the diminution of the present salaries, and benefits of the personnel in the MWSS and the LWUA: Provided, That any official or employee of the said agencies who may be phased out by reason of the reorganization authorized herein shall be entitled to such benefits as may be determined by existing laws.

The President may upgrade the compensation of the personnel of the MWSS and the LWUA at rates commensurate to the improved and efficient revenue collection of the two agencies as determined by the Board of Trustees and the same shall be exempted from the provisions of Republic Act No. 6750, otherwise known as the "Salary Standardization Law", to take effect upon a reduction of non-revenue water to forty percent (40%) and upon approval by the respective board of trustees of the MWSS and the LWUA of their budgets.

Sec. 8. *Anti-Pilferage.* - It is hereby declared unlawful for any person to:

a. Destroy, damage or interfere with any canal, raceway, ditch, lock, pier, inlet, crib, bullhead, dam, gate, service, reservoir, aqueduct, water mains, water distribution pipes, conduit, pipes, wire benchmark,

monument, or other works, appliance, machinery buildings, or property of any water utility entity, whether public or private;

b. Do any malicious act which shall injuriously affect the quantity or quality of water or sewerage flow of any waterworks and/or sewerage system, or the supply, conveyance, measurement, or regulation thereof, including the prevention of, or interfere with any authorized person engaged in the discharge of duties connected therewith;

c. Prevent, obstruct, and interfere with the survey, works, and construction of access road and water mains and distribution network and any related works of the utility entity;

d. Tap, make, or cause to be made any connection with water lines without prior authority or consent from the water utility concerned;

e. Tamper, install or use tampered water meters, sticks, magnets, reversing water meters, shortening of vane wheels and other devices of steal water or interfere with accurate registry or metering or water usage, or otherwise result in its diversion in a manner whereby water is stolen or wasted;

f. Use or receive the direct benefit or water service with knowledge that diversion, tampering, or illegal connection existed at the time of that use, or that the use or receipt was otherwise without the authorization of water utility;

g. Steal or pilfer water meters, main lines, pipes and related or ancillary facilities;

h. Steal water for profit or resale;

i. Knowingly possess stolen or tampered water meters ;and

j. Knowingly or willfully allow the occurrence of any of the above.

Sec. 9. *Prima Facie Evidence.* - The presence of any of the following circumstances shall constitute prima facie evidence of theft, pilferage, or of any unlawful acts enumerated in Section 8 hereof:

a. The existence of illegal or unauthorized tapping to the water main or distribution pipe;

b. The existence of any illegal connection such as a reversed meter, shortened vane wheel, bypass or other connections which adversely affect the registration of the water meter;

c. The presence of a bored hole in the glass cover of the water meter, or at the back of or any part of the meter including the vertical vane;

d. The presence of tampered, or fake seals on the meters. Inspection of tampered water meters shall be done in the presence of the registered water consumer;

e. The presence of a reversed meter in the premises, insertion of rod, wire, or stick in the meter, filed or shortened vane wheel, removal or altering of any part of the meter mechanism, use of magnet and any similar illegal devices which interfere with the meter registration;

f. Destruction of the meter protection and other metering accessories; or

g. Abnormal imprints, traces or marks found in the meter assembly.

The prima facie evidence shall not apply to tenants who have occupied the house or dwelling for ninety(90) days or less.

Sec. 10. *Special Aggravating Circumstances.* - The following shall considered as aggravating:

a. When the violation is committed in conspiracy with at least another person, both of whom shall be considered as principals;

b. when the offense is committed by, or in connivance with, private plumber, officer or employee, of the water utility concerned, who shall all be considered as principals; or

c. when the violation is coupled with the sale from a source which is illegal, unregistered, or a source with a tampered meter.

Sec. 11. *Penalties.* - The Water utility concerned shall have the right and authority to disconnect the water services, five (5) days after-service of written notice to that effect, except on Sundays and holidays, without need of a court or administrative order, and deny restoration of the same, when a prima facie evidence of theft or pilferage shall have been established in accordance with Section 8 hereof: Provided, That a notice shall have been issued even upon discovery for the first time of the presence of any of the circumstances herein enumerated: Provided further, That the water service shall not be disconnected or shall be immediately restores upon deposit, by the person concerned, of the concerned, of the difference in the billing made by the water utility concerned: Provided, finally, That the deposit shall be credited against future billings , with legal interest thereon where the alleged theft, pilferage or current diversion has not been committed, without prejudice to being indemnified for damages in accordance with the Civil Code and other existing laws.

A written notice of seventy-two (72) hours is necessary to effect water service disconnection upon the discovery for the second time of any of the circumstances enumerated in Section 8 hereof.

Any person who shall violate Section 8 hereof shall be punished by imprisonment of six (6) months to two (2) years and a fine of not exceeding double the amount of the value of the water stolen or the value of the damaged facilities: Provided, however, That if the offender is assisted in the commission of the crime by a plumber, officer or employee of the water utility concerned, the said employee, officer or plumber shall be punished by imprisonment of two (20 years to six (6) years: Provided, further, That if the water is stolen for profit or resale, the offender shall be punished imprisonment from six (6) to twelve (12) years.

If the offender is a juridical person, the penalty shall be imposed on the chairman, president, general manager, administrator, and the officers thereof who shall have knowingly permitted, or are otherwise responsible for the commission of the offense .

Sec. 12. *Issuance of Guidelines, Implementing Rules and Regulations.* -

Within one (1) month from its organization, the Commission shall cause the issuance of guidelines, implementing rules and regulations necessary to carry out the provisions of this Act.

Sec. 13. *Commission's Report.* - The Commission shall submit a quarterly report to the President and to Congress on the implementation of this Act.

Sec. 14. *Sunset Clause.* - The Joint Executive-Legislative Water Crisis Commission shall complete its report and submit its recommendation to the President and the Congress within a period of six (6) months after its formal organization. After such period, it shall cease *functus officio*.

Sec. 15. *Separability Clause.* If, for any reason, any provision of this Act is declared unconstitutional or invalid, other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

Sec. 16. *Repealing Clause.* - All laws, orders, rules and regulations, or portions thereof, inconsistent with this Act are hereby repealed or modified accordingly.

Sec. 17. *Effectivity Clause.* - This Act shall take effect fifteen (15) days following its publication in at least two (2) national newspapers of general circulation or in the Official Gazette.

This Act which is consolidation of H.B. No. 14471 and S.B. No. 2061 was finally passed by the House of Representatives and the Senate on June 5, 1995 and June 2, 1995, respectively.

Approved: 07 June 1995.