



Recalibrating the Meter:

A ten-year overview of the MWSS Privatization Deal

Freedom from Debt Coalition

Foreword

In December of 2004, the Freedom from Debt Coalition published a special water edition of the coalition's regular publication, *PAID!*. Co-written by Mae Buenaventura and Bubut Palattao, *Taking Stock of Water Privatization in the Philippines* presented a detailed case documentation of the Metropolitan Waterworks and Sewerage System's privatization and the failures plaguing the said privatization scheme.

Four years since, the MWSS Privatization remains a focal area of study for FDC's advocacy against water privatization. The said privatization of the Philippine capital region's waterworks and sewerage service, implemented via concession contracts with two private corporations, still stands as a distressing testament to all that is wrong with the operational framework being employed by the Philippine government in the provision of water and other essential services. Water rates have continued to skyrocket while service coverage has expanded at a dismal and discriminatory pace. Safety mechanisms contained and inserted into the concession agreements continue to be implemented like clockwork, prioritizing the financial security of the private concessionaires over and above consumer interests. Despite the persistence of such issues, there is little (if any) initiative on the part of either the MWSS or the national government to review or reassess the priorities which shaped the entire privatization scheme. As of press time, the Philippine government has even indicated tentative approval of a proposal to extend the concession contracts by another ten years.

It is within this existing context that FDC now publishes this updated documentation of the MWSS privatization scheme, reaffirming the significance of the MWSS privatization in appreciating the dangers emanating from the Philippine government's continued espousal of water privatization as a policy thrust. Legislative bills are now pending in both the Philippine Senate and the House of Representatives for the establishment of a national regulatory commission with the end view of replicating the so-called "success" of the MWSS privatization in other areas of the Philippines. Even beyond the Philippine territory, the said privatization scheme, the first of its kind in Asia, and the largest as well, continues to be touted by multi-lateral institutions and water corporations as a prime example of how water privatization "works".

This publication builds on the work begun by *Taking Stock*, documenting ten whole years under the MWSS' privatized set-up. Specific sections particularly with respect to the outcomes witnessed between the years 1997 and 2004 borrow heavily from the previous case documentation. Statistics and graphs have been updated with the most recent available data. A broader discussion on the background of the MWSS and its privatization is also provided. Further documentation of the years that followed 2004 have also been integrated into this new publication, particularly with respect to the re-bidding of the West zone concessionaire (Maynilad) and the legal battle undertaken by FDC against MWSS' arbitrary decision to remove the concessionaires from within the ambit of public utility restrictions.

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Executive Summary

In the course of many decades spanning its existence, the Philippine government had failed to adequately invest in building adequate water supply and distribution systems that would provide safe, adequate and affordable potable water to its entire citizenry. National revenues that would have been vital in providing such investments were instead siphoned and automatically appropriated to servicing the country's crippling foreign debt. These circumstances resulted in an archipelago where, at best estimate, only 87% of the population had basic and often unreliable access to safe potable water by 1990.

The situation in Metro Manila, the nation's capital, aptly illustrated the state of potable water provision in the Philippines. By 1995, the Metropolitan Waterworks and Sewerage System (MWSS) was able to maintain water supply at an average of merely 16 hours a day which in turn reached only 67 percent of Metro Manila's 12 Million residents. It was also reportedly burdened with an US\$800 million debt owed, among others, to the Asian Development Bank (ADB), the World Bank and the Japan Bank for International Cooperation. Although large loan amounts had been approved and allocated with the aim of improving the system's service, accounts of pervasive corruption practices within the water system put to doubt whether these project funds were fully and strictly applied to necessary infrastructure projects. Rather than instituting a comprehensive review of the debts incurred by the MWSS and other government agencies and corporations, however, Corazon Aquino took these loans at face value upon assuming the presidency in 1986. Debt and interest payments for these numerous loans undertaken by the MWSS thus constituted one of the biggest debt servicing components in the country's national budget, thereby reinforcing the perception of MWSS as a burden to the state.

President Corazon Aquino also launched in 1986 the Philippine Privatization Program (Proclamation No. 50), which provided among others, the policy basis and procedural framework for the "divestment, disposition and liquidation of non-relevant and non-performing government assets and corporations". By the time the privatization process of the MWSS was initiated by the Ramos administration, therefore, an enabling environment for various forms of privatization was already quite well in place.

As the private sector was often perceived to be less prone to political maneuverings, corrupt practices, and inefficient bureaucracies, it was touted as the proper antidote to mitigate the graft and corruption often alluded to the MWSS. Through privatization, government was also said to expect some relief from the financial burden brought on by MWSS debt payments, operational expenses and government subsidies by transferring responsibility for these expenses to the private sector. Rather than burden the entire taxpaying population with MWSS' indebtedness and operational inefficiencies, the private sector could be enticed to take on such burdens in return for a reasonable return on their investment.



Ten Years Later

A plethora of controversies and problems have been spawned in the course of ten years since the concession agreement was sealed. Even the concession contract itself has not been spared from damage. This has not come as a surprise for those who have been wary of the privatization deal at the very onset. Fueled by blind faith in the market's capacity to correct and regulate itself, the entire privatization process had been fast-tracked, thereby allowing no time for public consultations to be conducted with various sectors.

The outcomes of Ramos' much-paraded “win-win solution” belie a precariously calculated deal borne out of flawed assumptions and a faulty framework. Similar to many cases of water privatization all over the globe, water rates have skyrocketed. Expansion of water service coverage has been slow, particularly with regards to the West Zone, and has been undertaken only in return for exploitative rates and compromises. In less than five years since the commencement of the concession agreement, government has undertaken new debts from bridge financiers to bail out one of the private concessionaires from corporate bankruptcy. With the privatization scheme firmly in place, consumers are also blind-sided into automatically paying balance and interest payments for MWSS loans without benefit of review or the option to refuse.

Upon commencement of the concession agreement between MWSS and its two concessionaires, a drastic reduction in water tariff was immediately implemented in Metro Manila. In the West zone, Maynilad's winning bid of Php 4.96/m³ resulted in a 43.5% reduction from MWSS' previous 1996 rate. In the East zone, Manila Water's dive bid of Php2.61/m³ redounded in a reduction of 73.6%. By January 2008, however, water rates in Metro Manila have already risen by at least 665 percent for West Zone consumers and 891 percent for East Zone consumers from the original bid rates submitted by the two concessionaires. Ten full years after the commencement of the concession agreement between MWSS and the two concessionaires, Manila Water and Maynilad's all-in-tariffs had risen to Php 26.98 and Php 32.032, respectively.

Maynilad and Amendment 1

Financially bleeding in 2000, Maynilad proposed the institution of an Automatic Currency Exchange Rate Adjustment (Auto-CERA) – a new mechanism not contained in the concession agreement which would provide for automatic price adjustments based on foreign exchange losses to be implemented without having to seek approval from the MWSS Board. Although the Auto-CERA had difficulties in gaining government approval from both the Estrada and the Arroyo administrations, MWSS was directed to sit down with Maynilad and jointly discuss “other ways” by which Maynilad could recover its foreign exchange losses. By October of 2001, Maynilad and the MWSS came up with an amendment package to the Concession Agreement now known as Amendment 1.



All in all, Amendment 1 enabled both concessionaires to immediately recover foreign exchange losses incurred during the Asian Financial Crisis through the Special Transitory Mechanism (STM) and the Accelerated Extraordinary Price Adjustment (AEPA), and to recover post-crisis and future foreign exchange losses through automatic implementation of the FCDA. As a result, the water rates of both Maynilad and Manila Water have drastically and consistently hiked up since then.

Included also in the amendment package known as Amendment 1 was a provision mandating the conduct of the first rate-rebasing exercise in 2002, or at the end of the concession's fifth year. The first rate rebasing exercise thus transpired in June 2002, less than a year since the last round of rate increases resulting from Amendment 1. While under corporate rehabilitation (initiated in 2004), Maynilad was restricted from undergoing its second scheduled rate-rebasing exercise in 2007, for which reason Manila Water alone undertook the said exercise and implemented a newly recomputed base rate in January of 2008. Only rate increases resulting from fluctuations in the consumer price index and foreign currency exchange, as implemented through the FCDA and EPA mechanisms, were permitted for Maynilad while under corporate rehabilitation.

Eager to rid itself of its restricted predicament, Maynilad prepaid its loans and exited out of corporate rehabilitation in February 2008, thereby paving the way for its second rate-rebasing exercise. By the end of 2008, Maynilad's second rate-rebasing exercise had been conducted by the MWSS and Maynilad, and another monumental increase of Php 10.96 in Maynilad's all-in-tariff was presented to the public.

Manila Water and the ADR Battle

Although Manila Water's contractual commitment for the payment of MWSS' dollar-denominated loans was significantly 9 times less than that of Maynilad, Manila Water wasted no time in also implementing the amendments Maynilad had brokered for the recovery of its foreign exchange losses. And while the “better concessionaire” has maintained its rates well below the corresponding tariffs of the West concessionaire, it is significant to note that the exponential rate of tariff increases in the East zone has been markedly higher than that of the West zone.

Furthermore, Manila Water has not steered free from trouble with the MWSS. In 1998, Manila Water and the MWSS-RO became embroiled in a dispute concerning the so-called market-based Appropriate Discount Rate (ADR) – or “the real (i.e., not inflation adjusted) weighted average cost of capital (after taxes payable by the concession business).” Manila Water demanded an upward adjustment in its ADR and thereby proposed a Php2.26/m³ increase in its tariff for a four-year period starting in 1999 and thereafter a yearly increase of Php0.97/m³ beginning 2003. The MWSS-RO refused Manila Water's proposed ADR adjustment, as this would have translated into an improvement of Manila Water's original bid, more than a year after the winning bidders had been announced. Manila Water thereby sought relief through the International Arbitration Panel (IAP), and consequently, was granted a higher ADR of 9.3 percent.



The decision to retroactively reset Manila Water's ADR shattered the integrity of the whole bidding process conducted in 1997 wherein Manila Water won its concession agreement with an ADR bid of 5.2 percent. In effect, with the retroactive application of a new ADR level granted by the International Arbitration Panel, Manila Water would have lost in its 1997 bid for the East zone concession.

By 2007, Manila Water geared for another round of significant increases in its basic water tariffs with the onset of its second rate-rebasing exercise. The contested ADR of 9.3 was once again applied to Manila Water's projected expenditures, contributing to an average all-in-tariff increase of Php 14.00/cu.m. Civil society groups including FDC registered their opposition to the proposed increase, citing the impropriety of applying the contested ADR of 9.3 in Manila Water's submitted business plan, the absence of transparency in the rate-rebasing exercise, and the absence of due diligence in the implementation of infrastructure projects on which the projected expenditures were based.

Continuing Inefficiencies

The lowering of water rates through the MWSS privatization was heavily premised on the private concessionaires' capacity, efficiency, and dedication in bringing down Non-Revenue Water levels in order to maximize revenues with the same production and operational cost. This, however, did not happen as predicted in 1997. Contrary to Manila Water's bright projections in 1997, for instance, the 31% NRW level it had set out to achieve in a year's time was achieved only in 2005. Such inefficiencies and miscalculations in the lowering of NRW levels resulted in further rate adjustments as the company came to terms with the its own ineptness in achieving the voluntarily submitted targets at the time of bidding.

The same degree of inefficiency is also attributable to the West Zone where NRW levels rose to volumes higher than that in pre-privatization. While it can be argued that the 1997 financial crisis did cost Maynilad large foreign exchange losses and affected its ability to repair leaking pipes, this does not totally explain why its NRW percentages rose to 69.5 percent in 2003, from 57.4 percent in 1997. The reduction of Maynilad's NRW levels after 2003 has similarly proceeded at a snail's pace, with 2007 NRW levels estimated at 68%. While recent business projections and goals of Maynilad are now said to provide greater focus on the reduction of NRW levels, the degree by which such plans are to be implemented at least cost to the consumer remains to be seen.

The question of operational efficiency and financial prudence in the conduct of service operations and infrastructure projects figure significantly in the entire scheme of things. This is so because by the very design of the rate rebasing exercise as well as the privatization setup as a whole, profits for the concessionaires can actually be maximized by bloating capital and operational expenditures under the pretext that such expenses are required in order to improve the service. Whatever is spent on infrastructure projects is certain to be recovered from consumers, and higher costs reap higher returns. With such a risk-free setup, any incentive on the part of the concessionaires to reduce infrastructure costs or to bolster efficiency measures is highly questionable.



Sadly, the impact of concessionaire inefficiency has not been limited to tariff and expansion issues but has also endangered the health and lives of Metro Manila consumers. While minimum standards provided in the concession agreement clearly state that the quality of water should conform to the Philippine National Drinking Water Standards, this has not been realized. Meanwhile, connection charges remain prohibitive for large numbers of poor households in Metro Manila, thereby limiting the actual service coverage of the two concessionaires. The connection charge for residential connection or reconnection to a water main or public sewer located within 25 meters from the connection point, for instance, was pegged at PhP4,246.67 in 2003, up from PhP3,722.07 in 2000. By 2008, this had risen to more than PhP7,186.60 in the East zone.

Financially unable to connect to the piped water system, poor communities still continue to access water in ways that turn out to be more expensive in terms of actual payments made, as well as increased health and sanitation risks caused by low quality water. One study of communities in the West Zone, for instance, found out that households paid as much as PhP160 for a 2-cubic meter tank and PhP25 for a .2-cubic meter drum in 2004. These rates greatly vary though, and could even be higher depending on the water source of the bulk water provider. An earlier study has also reported that resold utility water in the West Zone fetched as high as PhP264/m³ while water from deep wells averaged PhP132/m³ in 2003.

Meanwhile, the two concessionaires have also been exploiting another profit-generating window by charging homeowners' associations and community groups the highest residential block rate for bulk water provision, which is about three times the lowest block rate. Communities and associations that have undertaken their own initiative to ensure water access for themselves are further disenfranchised by contractual agreements that force them to take on volume payments for non-revenue water, much to the capitalist advantage of the two concessionaires.

While the two concessionaires have both instituted community programs for bringing water access to slum communities, the viability, success, and equitability of such schemes remains to be validated by independent groups.

New Debt Burdens

At the onset of the MWSS privatization, the Ramos administration boasted of the scheme's projected impact of relieving government of MWSS' accumulated foreign debts. With the concessionaire's commitment to service these debts through their concession fee payments, government and the tax-paying public was said to be freed from the heavy burden of supporting the debt-ridden MWSS. In less than five years since the commencement of the concession agreement, however, both the government and the MWSS found itself incurring new debts for the sole purpose of preserving the concession scheme.



In 2001, Maynilad responded to government's initial rejection of its Auto-CERA proposal by unilaterally stopping payment of its concession fees. And although the concessionaire eventually got what it wanted through Contract Amendment 1, it continued to refuse the resumption of concession fee payments. Maynilad's unilateral cessation of concession fees translated into the sudden absence of funds with which to pay off 90% of MWSS' accumulated debts. All told, Maynilad's non-payment of its long overdue concession fees that already amounted to more than PhP10 billion in 2004, forced MWSS to incur more debts from bridge financiers to finance maturing obligations in its attempt to avoid defaulting on maturing old loans of MWSS.

Saving Maynilad from Itself

Maynilad's revised corporate rehabilitation plan further provided greater doubt of MWSS ever recovering the unpaid concession fee payments owed by Maynilad. The revised rehabilitation plan, which contained a Debt and Capital Restructuring Agreement (DCRA), provided for a debt-to-equity swap to be undertaken as a partial resolution to the fiasco surrounding Maynilad's unpaid concession fees. Under this scheme, about US\$ 22.67 million worth of concession fees were converted into 84 percent equity of Maynilad, to be transferred to government through the MWSS. Rather than learning its lesson and holding on to its regained ownership and control of the West zone, however, government's newly-acquired controlling share in Maynilad was bidden out, resulting in a new and still privatized ownership structure for Maynilad.

Apart from the debt-to-equity conversion, Maynilad's revised rehabilitation plan also provided for late payment of Maynilad's outstanding and future concession fees in scheduled installments. Rather than receiving Maynilad's future concession fees in full, MWSS had to settle for partial payment of due fees and thereby sourced out new funds to finance maturing obligations that should have been shouldered through full payment of these concession fees.

It should be recalled that in 2001, government simply accepted Maynilad's only argument for its heavy foreign exchange losses: the Asian financial crisis. The firm was never put to task for overestimating revenues, underestimating costs and failing to cushion itself for some fall in the dollar-peso exchange rate, considering the events brewing in the region. Other explanations for the high costs of production and operations from the dollar-denominated expenses for foreign consultants and management contracts, however, have surfaced. A consultancy report from Thames Water, for instance, revealed that Maynilad allocated 60 percent of its capital expenditures to paying for consultancy fees of its affiliate companies such as First Philippine Balfour Beatty and Meralco Industrial Engineering Services Corp. Maynilad has also admitted in producing the financial projections it used for its 1997 bid, it had miscalculated the length of water pipes in the West Zone by 1,200 kilometers.

The consistent accommodation of the concessionaires' demands (including those intended to make up for revenues lost because of their own bad business decisions) defines the kind of operations Maynilad and Manila Water enjoy – practically risk-free business.



Regulatory Capture and the “Public Utility” issue

Created pursuant to provisions of the Concession Agreement and placed under the control and jurisdiction of presidential appointees comprising the MWSS Board, one wonders whether the MWSS Regulatory Office even warrants its official designation or name. For one, the MWSS-RO's regulatory tasks are said to be confined to monitoring the implementation of the contract and drafting recommendations when it comes to water tariff setting. Only the MWSS Board, however, can decisively approve proposed water tariffs and rates. Incidentally, even its own budget is subject to MWSS Board approval and is sourced from the concessionaires themselves.

However limited and restricted its functions are, the tasks mandated to be undertaken by the regulatory office, particularly in regards to the monitoring and review of capital expenditures are necessary in protecting consumers from unwarranted tariff increases and imprudent business practices. The MWSS-RO, however, has in many instances shown that it cannot even keep faith with this simple mandate and is equally vulnerable to both political and concessionaire meddling.

In prioritizing the interests of the concessionaires over that of consumers, the MWSS and its regulatory office has also shown that it is well capable of circumventing not only the provisions of the concession agreement but national laws as well. This has been clearly shown in the manner by which the concessionaires have been permitted to continue passing on their corporate income taxes to consumers despite legal decisions prohibiting such practices in the operation of public utilities.

A Supreme Court decision in early 2004 against public utilities charging their income tax payments to consumers would have provided relief to Metro Manila's water consumers but this was not to be the case. Instead government and the concessionaires became embroiled in the various ways of interpreting what “public utility” means, with the concessionaires eventually emerging triumphant from the debate.

In confronting the Meralco decision, both Maynilad and Manila Water disagreed that a Ground for Extraordinary Price Adjustment (GEA) had occurred, even as any change in law or government policy constituted one of 11 grounds for the adjustment of tariffs, whether upwards or downwards. Maynilad averred that the Supreme Court (SC) decision on the Meralco case does not apply to the concessionaires. In sum, Maynilad was contesting that the Supreme Court decision restricting public utilities from passing on their corporate taxes to consumers had no bearing in so far as Manila's water concessionaires were concerned.

To seal the deal and preempt further contest, the MWSS Board itself passed a resolution that summarily declared that Manila Water and Maynilad were not “public utilities” but “mere agents and contractors.”



The implications of the resolutions passed by the MWSS Board are far-reaching. With public utility restrictions held as inapplicable to the two concessionaires, they are effectively free to exceed the 12 percent ceiling imposed on the return on rate base of public utilities. Furthermore, treating the concessionaires as mere “contractors” of MWSS indicates that contractual obligations are the only obligations recognized and acknowledged by the two concessionaires, and that such obligations may be enforced only by the other contracting party, the MWSS.

True to form, the concessionaires and MWSS have all stuck by their earlier declaration and refused to have the concessionaires treated legally as public utilities. In regards to a rates contest filed by civil society groups with the National Water Resources Board (NWRB), Maynilad filed a motion to dismiss the complaint, declaring that the NWRB holds no judicial authority over Maynilad as the concessionaire is legally a mere contractor of MWSS and not a public water utility in and of itself. Maynilad's assertion, however, has already been summarily thrown out by both the NWRB and the Court of Appeals.

Should the Supreme Court affirm the decisions of both the NWRB and the Court of Appeals, Maynilad and Manila Water can no longer assail that they answer only to the MWSS, they shall find themselves legally obliged to answer to the public and to the NWRB, as well they should be.

The Need for a Thorough Assessment

Beyond the issues and anomalies produced by the privatization scheme, extremely troubling also is government's continued espousal of the MWSS privatization scheme as a successful endeavor despite the unmistakable trail of broken promises lining the concessionaires' paths. An overview of the outcomes from the past ten years lead to the conclusion that the results of the said scheme has in fact run counter to common good and in turn, defeats the people's right to water.

In many instances, however, the triumvirate composed of the MWSS, Maynilad, and Manila Water have pointed at general service improvements in Metro Manila's water supply system as evidence of the privatization scheme's success.

In the course of defending the MWSS privatization scheme, supporters have often resorted to a simple enumeration of the changes that have taken place in the area of potable water provision in Metro Manila. This form of simplified logic employed in assessing the impact of the privatization scheme must give way to an honest and comprehensive assessment of what has been compromised in the course of forcing the privatization scheme to “work”. Rather than a simple enumeration of token improvements achieved in the course of ten years, such so-called improvements must be weighed with their corresponding social, economic, and environmental costs.



The conduct of a comprehensive and in-depth assessment of the MWSS privatization by both civil society and the state will be vital in many policy decisions to be undertaken. At present, the absence of an honestly pursued comprehensive assessment of the privatization scheme's outcomes and costs places the people at a severe disadvantage in the face of immediate concerns emanating from a continued espousal of privatization as a policy thrust.

With government's continued espousal of privatization and its faulty assessment of the MWSS privatization as a successful and effective scheme, the welfare of water consumers within and outside the National Capital Region are placed at risk of being compromised in the name of corporate privatization.

Although the concession agreements between MWSS and its two concessionaires provide for a 25-year concession period, various attempts at extending the concession for a longer period have already been undertaken. In the course of Manila Water's second rate-rebasing exercise conducted in 2007, for instance, Manila Water already submitted business and financial projections containing "alternative schemes" that outlined expenditures and tariff rates to be implemented if period extensions were to be integrated into the concession agreement. In various congressional hearings undertaken by the Lower House's Committee on Oversight and Committee on Environment and Natural Resources, contract extensions for the two concessionaires have also been advocated by several Lower House Representatives in return for an escalation in sewer and wastewater treatment targets. In December of 2008, immediately following Maynilad's second rate-rebasing exercise and an escalation of consumer protests against Maynilad's proposed rate hike of Php 10.96, several news reports already revealed that the Office of the President "approved in principle" proposals to extend the concession periods as a method to redistribute and mitigate expected tariff increases.

Other legislative bills now pending in both the Lower House and the Senate also threaten to replicate the MWSS privatization scheme in other urban areas in the Philippines. House Bill 3464 and Senate Bill 518, identical both in form and substance, forward the establishment of Water Regulatory Commission for the purpose of providing centralized regulation of all potable water providers. With a declaration of policy that provides for "*the attainment of complete coverage over the entire country of piped-water supply and sewerage services at reasonable rates and, in this connection, encourage the participation and investment of the private sector, both domestic and foreign,*" the dangers posed by the pending bills cannot be underestimated.

Introduction



For decades, the Philippine government had failed to adequately invest in building adequate water supply and distribution systems that would provide safe, adequate and affordable potable water to its entire citizenry. National revenues that would have been vital in providing such investments were instead siphoned and automatically appropriated to servicing the country's crippling foreign debt.¹ The establishment and maintenance of water distribution systems in different cities and municipalities of the archipelago was largely considered to be entirely within the local responsibility of local government units which in turn enjoyed a largely free but financially-constrained hand in the manner by which they met such need. Regulatory and financial support for local water provision was scant, uncoordinated and extended mostly to large urban water districts. These circumstances resulted in an archipelago where, at best estimate, only 87% of the population had basic and often unreliable access to safe potable water by 1990.²

¹ Sec 26, Book 6 of the Philippine's Revised Administrative Code directs the automatic appropriation of a sufficient amount from the national budget to cover all due balance and interest payments for foreign debt servicing. From 1987 till the present, the largest chunk of the Philippines' national budget every year has been automatically allocated to debt servicing.

² League of Cities of the Philippines. *The Philippine Water Situation Report*. LCP, 2006

The situation in Metro Manila, the nation's capital, aptly illustrated the state of potable water provision in the Philippines. The Metropolitan Waterworks and Sewerage System (MWSS), a government owned and controlled corporation responsible for water provision in the national capital region and its neighboring provinces, was riddled with failures and difficulties. Although grossly overstaffed, operations were highly inefficient. By 1995, MWSS was able to maintain water supply at an average of merely 16 hours a day which in turn reached only 67 percent of Metro Manila's 12 Million residents. Water losses due to leakages and pilferage stood at a staggering 58 percent of the total volume produced. Huge water losses in turn resulted into a scenario wherein of the 3,000 million liters of water that MWSS received daily from the Angat Dam,³ only 42 percent or 1,260 million liters translated into actual revenues for MWSS.

The state-owned water agency was also financially distressed. At the time of privatization, it was reportedly burdened with an US\$800 million debt owed, among others, to the Asian Development Bank (ADB), the World Bank and the Japan Bank for International Cooperation. MWSS' indebtedness to these institutions was accumulated in the course of more than 30 years, beginning with a US\$20.2 million loan approved in 1964 by the International Bank for Reconstruction and Development, now known as the World Bank.⁴ Debt and interest payments for the numerous loans undertaken by the MWSS constituted one of the biggest debt servicing components in the country's national budget, thereby reinforcing the perception of MWSS as a burden to the state.

In the midst of the water system's troubles, privatization was peddled as a solution by both government and multilateral institutions. As the private sector was often perceived to be less prone to political maneuverings, corrupt practices, and inefficient bureaucracies, it was touted as the proper antidote to mitigate the graft and corruption often alluded to the MWSS. In the process of conducting business profitably and competitively, the private sector could improve infrastructure, reduce water losses, expand service coverage, and bring down water tariffs, all to the benefit of Metro Manila's water consumers.

Through privatization, government was also said to expect some relief from the financial burden brought on by MWSS debt payments, operational expenses and government subsidies by transferring responsibility for these expenses to the private sector. Rather than burden the entire taxpaying population with MWSS' indebtedness and operational inefficiencies, the private sector could be enticed to take on such burdens in return for a reasonable return on their investment.

³ A major water reservoir in Central Luzon and from which 97 percent of MWSS' water is being sourced.

⁴ The World Bank loan funded the Manila Metropolitan Water Supply Project, a program for the improvement of the Metro Manila water supply system, which was implemented during President Marcos' first five years in office.

Proponents (including the ADB and the World Bank) further believed in the capacity of the private sector to more easily mobilize much-needed capital for infrastructure investments that would redound into the improvement and expansion of the scope of services of Metro Manila's water distribution system.

At first blush, the MWSS privatization seemed like a win-win solution. In so far as its proponents were concerned, the privatization of Metro Manila's ailing waterworks and sewerage system was the best and most logical way to dispose of the national burden that the MWSS was considered to be at the time.





The Road to MWSS' Privatization

The Metropolitan Waterworks and Sewerage System of Metro Manila manages the oldest water system in the Philippines, and among the largest and oldest in Asia. Originally called the Carriedo system after the Spaniard who donated funds for its construction, the name evolved into the Manila Water Supply System which in turn was changed to the Metropolitan Water District⁵ in 1918. By 1955, the Metropolitan Water District was again renamed into the National Waterworks and Sewerage Authority (NWSA), a name by which many of those in the Metro Manila area still refer to till this day.

The conversion of the Metropolitan Water District into the National Waterworks and Sewerage Authority in 1955 was undertaken through the passage of Republic Act 1383, which effectively turned over the control and management of all water systems in the country to a centralized waterworks and sewerage authority. The creation of the NWSA was the first attempt at consolidating and centralizing all waterworks, sewerage and drainage systems in the Philippines under one control, direction and general supervision.

It was during the period of NWSA's centralized control and supervision that foreign and multilateral loans were first extended to undertake projects directed specifically at improving the local water system of Metro Manila. By then, Metro Manila's local water system was already ailing and underdeveloped, having failed to keep up with the pace of urban population growth. Existing infrastructure was built to accommodate and service a population of 1 million. Metro Manila's actual population, on the other hand, had already ballooned to more than 2 million. Huge infrastructure costs needed to be undertaken if the system was to fully service the population.

⁵ The Metropolitan Water District was established with an expanded coverage that included 14 of the adjoining cities and municipalities.

Under MWSS' corporate structure, now conveniently distinguishable and separate from the management of all other water systems in the republic, a Long-Range Development Plan was initiated for Metro Manila's water system. Thereafter a frenzy of loans and projects were pursued, and accordingly accommodated by multilateral institutions.

The Asian Development Bank followed the World Bank's lead in financing projects to improve Metro Manila's water supply system, extending a loan of \$51.30 million in 1974 for the Manila Water Supply Project. By the end of the Marcos regime in 1986, the ADB had already approved four additional projects, and had extended a total of \$228.4 in loans exclusively for Metro Manila's water system.

Table 1. Summary of ADB loans to MWSS

ADB Loans	Year Approved	Amount (US \$M)
Manila Water Supply Project	1974	51.30
Second Manila Water Supply	1978	49.00
Manila Sewerage	1980	42.80
Water Supply Sector	1981	46.00
Manila Water Supply Rehabilitation	1983	39.30
Second Manila Water Supply Rehabilitation	1989	26.40
Angat Water Supply Optimization	1989	130.00
Manila South Water Distribution	1991	31.40
Umiray-Angat Transbasin Technical Assistance	1992	2.60
Umiray-Angat Transbasin Project	1995	92.00
ADB Loan to Maynilad	1999	170.00
MWSS TA for New Water Source Development Project	2003	3.26

Table 2. Summary of World Bank loans to MWSS

World Bank Loans	Year Approved	Amount (US \$M)
Manila Metropolitan Water Supply Project	1964	20.20
Manila Water Supply Project 2	1978	88.00
Metropolitan Manila Water Distribution Project	1986	69.00
Angat Water Supply Optimization Project	1989	40.00
Manila Second Sewerage Project	1996	57.00
Manila Third Sewerage Project	2007	84.46

The World Bank, on the other hand, approved two more loans in 1978 and 1986, thereby pouring in a total amount of \$177 Million by the end of the Marcos regime. Despite these numerous multilateral loans and the large amounts poured into Metro Manila's water supply system, the water system continued to fail in meeting its targets. Although large loan amounts had been approved and allocated with the aim of improving the system's service, accounts of pervasive corruption practices within the water system put to doubt whether

these project funds were fully and strictly applied to necessary infrastructure projects.

Rather than instituting a comprehensive review of the debts incurred by the MWSS and other government agencies and corporations, Corazon Aquino took these loans at face value upon assuming the presidency in 1986. Contractual obligations to pay all foreign loans, including those incurred by the MWSS, were declared to be respected and complied with and automatic appropriation for all due balance and interest payments were effectively enshrined into the Revised Administrative Code of 1987. As such, the loans and debts incurred by the MWSS during the Marcos regime were validated without benefit of a proper review for possible malversation and corruption practices.

Aquino's decision to respect all incurred foreign loans at face value and to automatically appropriate national revenues for the payment of these loans impacted the MWSS in two ways. First, MWSS could not expect a reprieve from the indebtedness it had incurred during the Marcos regime despite alleged corruption practices that had siphoned such funds away from the actual aim of improving Metro Manila's water supply. Second, the automatic appropriation for debt payments in the national budget left little to be allocated to sectors badly in need of budgetary attention, including Metro Manila's water supply sector. As such, more multilateral and foreign loans were undertaken by the MWSS to proceed with necessary infrastructure projects, and the system slipped even deeper into the quagmire of indebtedness that it found itself in when the privatization process was initiated in 1995. These dollar-denominated loans would later on figure prominently in the failures of the privatization scheme as the peso plummeted down in the years following the said privatization.





President Corazon Aquino also launched in 1986 the Philippine Privatization Program (Proclamation No. 50), which provided among others, the policy basis and procedural framework for the “divestment, disposition and liquidation of non-relevant and non-performing government assets and corporations”. By the time the privatization process of the MWSS was initiated by the Ramos administration, therefore, an enabling environment for various forms of privatization was already quite well in place.

Aquino's successor, Fidel V. Ramos, actively pursued the privatization thrust begun by Aquino. A staunch supporter of privatization, Ramos pioneered the large-scale privatization of the country's power sector as a solution to the massive brownouts and energy crisis that engulfed the entire archipelago in the early 1990s. Through Ramos' active engagement and promotion, the Philippine Infrastructure Privatization Program (Republic Act 6957) was passed by congress, thereby paving the way for independent power producers to do risk-free business in the Philippines. It was also with Ramos' support that the Amended Build-Operate-Transfer Law was passed, thereby opening other sectors like water and transport to private big business.

With the privatization of the energy sector well within the bag, Ramos mustered support from Congress in June 1995 to begin the task of privatizing Metro Manila's water supply system. Through RA 8041 or the National Water Crisis Act of 1995, Ramos was granted emergency powers by Congress to enter into contracts with the private sector for the purpose of improving the service operations and management of the MWSS. With nothing less than a certification of urgency from the president himself, Republic Act 8041 or the National Water Crisis Act sailed smoothly through both houses of Congress.

Box 1. TIMELINE

- 1878: The first water system was constructed during this year with a 15 Million Liters per Day (MLD) capacity.
- 1919: Metropolitan Water Districts (MWD) was created through Act. No. 2832.
- 1920s: Initial development of Angat Dam was done.
- 1939: Population of MWSS service area stood at 913,000
- 1955: The National Waterworks and Sewerage Authority (NWSA), which took over the functions of not only the MWD but also all other water systems throughout the country, was created.
- 1960: Population of MWSS service area stood at 2.5 million
- 1964: The International Bank for Reconstruction and Development (World Bank) funded the US\$20.2 million foreign costs of the Interim Program, otherwise known as the Manila Water Supply Project 1 to increase its system capacity.
- 1970: The Interim Program was substantially completed.
- 1971: Republic Act NO. 6234 dissolved NWSA and created the present Metropolitan Waterworks and Sewerage System (MWSS).
- 1986: President Aquino adopts policy of automatic appropriation for debt servicing.
- 1991: The Umiray-Angat Transbasin Project, which was conceptualized to increase the supply capacity of MWSS by 25 percent, started.
- 1995: Congress passes RA 8041, authorizing President Ramos to reorganize MWSS and enter into contracts with private sector
- 1997: The government privatized MWSS by awarding two private concession contracts.

Source: MWSS

At first glance, the said law seemed a prompt response to the severe drought and water shortages caused by the El Nino phenomenon at the time, emphasizing as it did the need to conserve water resources and water supply. Within the law's numerous platitudes, however, a dangerous provision was contained, awarding Ramos unprecedented authority to “adopt urgent and effective measures”, including the reorganization of the MWSS and the Local Water Utilities Administration,⁶ and “...the privatization 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”⁷.

Table 3. MWCI and MWSI's
Shareholding Structure (1997)
MWCI's Shareholding Structure

Shareholders	Ownership
Ayala Corp.	51.1%
United Utilities B.V.	19.9%
BPI Capital	11.4%
Mitsubishi Corp.	11.4%
Employees	6.3%
Total	100%

MWSI's Shareholding Structure

Shareholders	Ownership
Benpres Holdings Corp.	60%
Suez Lyonnaise: Ondeo (20%) Lyonnaise Asia Water (20%)	40%

With the passing of RA 8041, all obstacles to private sector involvement in Metro Manila's water supply system were systematically brushed aside. Within November of that same year, government contracted the services of the International Finance Corporation (IFC), the World Bank's private sector investment arm, to draft a privatization plan for the MWSS. Using the 1992 Aguas Argentinas model in Buenos Aires, the IFC began preparing the 126-year old MWSS for privatization, and also laid out the design for an operations and investment agreement.

The IFC turned in its strategy report six months later and began the bidding procedure. Two corporate bidders were selected and in January of 1997, Metro Manila's water consumers were introduced to the winning bidders of two⁸ separate 25-year water concessions: the Maynilad Water Services Inc.⁹ (Maynilad/MWSI) and the Manila Water Company Inc.¹⁰ (Manila Water/MWCI- owned).

The turnover of MWSS' service operations to these two corporations was hailed by the World Bank as the first large-scale water supply privatization in Asia, in terms of the 11-million service population and the required investment of US\$7.5 billion. ADB, in turn, also singled it out in its 1996 Annual Report as a “role model for future large-scale projects in the Asia- Pacific Region”.

⁶ The government's lead agency for the promotion, development and financing of potable water supply systems in areas outside of Metro Manila.

⁷ Section 7 of Republic Act 8041 or the National Water Crisis Act of 1995.

⁸ Significantly, the MWSS deal only allowed two winning bidders despite being operationally divided into eight service areas.

⁹ Maynilad was, at that time, a partnership between global giant Suez and local elite Benpres Holdings of the Lopez clan

¹⁰ Manila Water was a newly-registered corporation formed by a group of investors led by transnational United Utilities and leading local firm Ayala Corporation



Box 2. World Bank, ADB in Local Water (from Taking Stock of Water Privatization in the Phils.)

Over the past 10 years, the World Bank provided loans of up to \$171 million in support of private sector participation in LGU water districts outside Metro Manila. This includes the \$32 million funding support extended to the Subic Bay Freeport for privatizing the delivery of its water services. (See Box 3) In 1997, the World Bank approved a \$55 million loan to finance the sewerage, sanitation and drainage investments of the water districts of four cities; however, because of the possibility of higher tariffs, they opted out of the project. The Bank instead restructured the loan into a line of credit as a demand-based financing mechanism for the Local Government Units (LGUs).

In 1998, the World Bank used its “Adaptable Program Loan” (APL) instrument for the first time in the water sector to introduce private sector participation. Project documents state: “...there has been active interest shown by the private sector in various types of outsourcing arrangements, ranging from [Build-Operate-Transfer] contracts to service contracts. A significant challenge for the Government is how best to plan and implement investments that lead to sustainable water supply and sanitation services in approximately 1,000 small towns....” Four APLs for the Philippines are lined up for successive releases over a period of 12 years. The Bank's Public-Private Investment Assistance Facility (PPIAF) provides technical assistance to draft legislation for streamlining the economic regulation of water utilities.

For its part, the ADB provided a \$43 million loan for the expansion programs of eight water districts, following the devolution of government functions to the LGUs in 1991. That same year, the ADB provided \$50 million to enhance the capacity of several water districts in cost-recovery operations.

Schedule of Philippine Adaptable Program Loans (APL)

APL 1 (\$23 million, November 1998-2002): In the first APL, water services were extended to about 9 municipalities (rather than 35, as scheduled) at an investment cost of \$28 million. Many towns are using affermage or lease contracts between the municipal governments and private sector operators. Another 100 towns are at different stages of project preparation.

APL 2 (September 2001-2006 at \$30 million) scales the project up to an additional 40 cities and municipalities.

APL 3 (scheduled for 2004-2008 at \$100 million from World Bank + \$33 million from others) would change the role of government finance institutions and the Land Bank of the Philippines from retailers to wholesalers of loans, inducing private sector banks to invest in LGU-based water supply and sewerage systems.

APL 4 (scheduled for 2006-2010 at \$130 million from the World Bank + \$100 million from others) would finance water supply and sanitation services in about 130 Philippine water utilities, with the World Bank financing used by the Development Bank and Land Bank of the Philippines to leverage private financing in the sector. The role of the two Banks will change from being retail lending institutions to being (a) wholesalers to private financing institutions, (b) underwriters, facilitators of syndication, securitization and insurance for private providers of safer supply and sanitation in secondary cities and towns.

Sources:

- Violeta Perez-Corral, “WB-IMF/ADB at Work on the Philippine Privatization Program,” Freedom from Debt Coalition, 2000.
- Long-Term Loans to Roll Out Massive Water Privatization: The Cases of Ghana and the Philippines (http://www.challengeglobalization.org/html/tools/Ghana_Philippines.shtml).

The Privatization “Deal”

As designed by the IFC, the MWSS privatization took the form of a concession contract between MWSS, as one party, and a private corporation, as the other party to the contract. The use of MWSS' existing water supply and wastewater facilities as well as the authority provided under MWSS' franchise as a public water utility was delegated to each concessionaire of a well-defined area. MWSS would provide the private companies all the water and wastewater facilities needed for treatment, distribution, sewerage and other services. For their part of the contract, the concessionaires would take on the management and overall operations of water service in their respective concession areas, as well as provide or source investment capital for the maintenance and expansion of MWSS' assets. In return for these obligations and the fulfillment of specific service targets, the private concessionaires would exchange for revenues projected to be gained by collecting water service fees from users. Under the concession agreement, the concessionaires committed to achieve the following specific targets:

- Lowering of water rates
- Uninterrupted water supply at a pressure level of 16 psi by year 2000
- Compliance with WHO water and effluents standards by year 2000
- 100 percent water service coverage within 10 years
- Reduction of non-revenue water (NRW)¹¹ levels from 56 percent to 32 percent in the first 10 years
- US\$7.5 billion in investments for new infrastructure
- US\$4 billion in corporate and income tax revenues over 25 years
- Sewer coverage - 60 percent in 15 years and 80 percent in 25 years

Unlike divestiture schemes typical in cases of privatization, there was no sale of assets involved. Through the Concession Agreement, MWSS transferred to the two concessionaires “...the tenancy to land and operational fixed assets and an exclusive right to: produce and treat raw water; transport, distribute and market potable water; and collect transport, treat, dispose and eventually reutilize wastewater, including industrial effluent discharged into the sewerage system”.¹² Government, through the MWSS, maintains to this day ownership of the water supply/sewerage system, in compliance with the constitutional provision mandating public utilities such as power and water to remain under government control.¹³

¹¹ The Non-Revenue Water percentage is equal to water lost to spillage and pilfering over water produced.

¹² “The Privatization of MWSS”. See the MWSS website at www.mwss.gov.ph.

¹³ 1987 Philippine Constitution, Article XII National Economy and Patrimony, Section 2. All lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State...The exploration, development and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens...In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

One adjustment made was patterned after the Paris concession model – the division of the Metro Manila concession into East and West Zones. The East zone area, noticeably smaller than the West zone, covers the territories of Mandaluyong, Marikina, Pasig, Pateros, San Juan, Taguig and the province of Rizal, as well as portions of Makati and Quezon City. The west zone, where most of MWSS' existing reticulation network was located at the time of bidding, covers the cities of Manila, Caloocan, Malabon, Navotas, Valenzuela, Las Pinas, Muntinlupa, Paranaque, Pasay, the province of Cavite, and portions of Makati and Quezon City.

Theoretically, the division of MWSS' service area into two concession zones would promote yardstick competition and protect consumers should a single concessionaire later decide to withdraw from the concession agreement. The presence of two separate concessionaires with their own exclusive areas was also perceived to function as a safety net to mitigate total service breakdown in the event of one concessionaire's possible failure or withdrawal.



One other element of the concession agreement between the concessionaires and the MWSS distinguishes it from many other privatization schemes. With the concession agreement, the concessionaires committed to take on responsibility for the payment of MWSS debts existing at the time of privatization, thereby removing a large debt burden from the state's shoulders. Between the two concessionaires, it was the West zone concessionaire that committed to a larger bulk of the debt payment, having committed to pay 90% of MWSS' existing debts while the other concessionaire took only 10%. Specifically, the concession fees to be paid annually by the two concessionaires to MWSS consisted of payments for the following:¹⁴

- (a) payments due under any MWSS loan that was disbursed prior to the Commencement Date, with Manila Water and Maynilad shouldering 10% and 90%, respectively.
- (b) payments due under any MWSS loan designated for the Umiray-Angat Transbasin Project¹⁵ ("UATP") that was not disbursed prior to the Commencement Date, with Manila Water and Maynilad shouldering 10% and 90% respectively.

¹⁴ Manila Water 2007 Audited Financial Report

¹⁵ The Umiray-Angat Transbasin Project was an ADB-financed project approved a year prior to MWSS' privatization for the diversion of water supply from the Umiray river to the Angat Dam

- (c) local component costs and cost overruns related to the UATP, with Manila Water and Maynilad shouldering 10% and 90% respectively.
- (d) 100.0% of the payments due under any MWSS designated loans for existing projects in the concessionaire's service zone that were not disbursed prior to the Commencement Date and were awarded to third party bidders or elected by the Company for continuation.
- (e) 100.0% of the local component costs and cost overruns related to existing projects in the concessionaire's service zone.
- (f) Annual budget for the MWSS' corporate and regulatory offices, to be split equally between the two concessionaires.

According to Palattao and Buenaventura,¹⁶ it was understood that whoever won the bids to manage and run the MWSS concession would have to spend on improving the assets (whether from its own resources or through loans), and later exercise the authority granted by the Concession Agreement to reimburse these investments from water tariffs charged to users. Proponents of the privatization scheme assumed that the winning companies would exert effort and diligence to reduce costs while improving infrastructure. The expansion of service coverage areas and the reduction of NRW levels was perceived to be logically expected from the private concessionaires' management of the water service as this would have been the only way for them to profit and recoup their investments.



¹⁶ Buenaventura and Palattao. Taking Stock of Water Privatization in the Philippines. PAID!, December 2004

Ten Years Later



A plethora of controversies and problems have been spawned in the course of ten years since the concession agreement was sealed. Even the concession contract itself has not been spared from damage. This has not come as a surprise for those who have been wary of the privatization deal at the very onset.

For one, many of the important details surrounding the MWSS privatization became public knowledge only long after the ink had already dried on the concession contracts. It has been said that critical documents such as the Concession Agreement itself and the IFC Consultant's Report were not readily available to the public even after the concession agreement was implemented.¹⁷ Fueled by blind faith in the market's capacity to correct and regulate itself, the entire privatization process had been fast-tracked, thereby allowing no time for public consultations to be conducted with various sectors.

The outcomes of Ramos' much-paraded "win-win solution" belie a precariously calculated deal borne out of flawed assumptions and a faulty framework. Similar to many cases of water privatization all over the globe, water rates have skyrocketed. Expansion of water service coverage has been slow, particularly with regards to the West Zone, and has been undertaken only in return for exploitative rates and compromises. In less than five years since the commencement of the concession agreement, government has undertaken new debts from bridge financiers to bail out one of the private concessionaires from corporate bankruptcy. With the privatization scheme firmly in place, consumers are also blind-sided into automatically paying balance and interest payments for MWSS loans without benefit of review or the option to refuse.

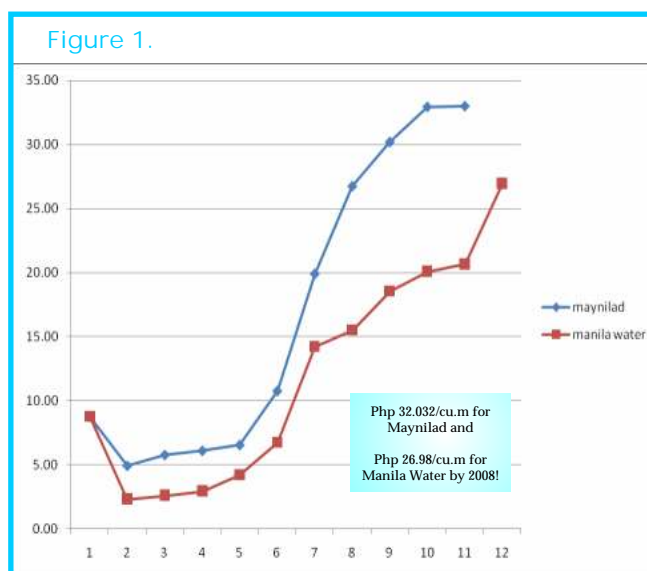
¹⁷ Buenaventura and Palattao. Taking Stock of Water Privatization in the Philippines. PAID! December 2004

Skyrocketing Rates

Upon commencement of the concession agreement between MWSS and its two concessionaires, a drastic reduction in water tariff was immediately implemented in Metro Manila. In the West zone, Maynilad's winning bid of Php 4.96/m³ resulted in a 43.5% reduction from MWSS' previous 1996 rate. In the East zone, Manila Water's dive bid of Php2.61/m³ redounded in a reduction of 73.6%. Within two years, however, the two concessionaires applied for an Extraordinary Price Adjustment (EPA),¹⁸ citing losses from *force majeure* -- the 1997 Asian financial crisis that caused the devaluation of the peso from PHP26:US\$1 to P50:US\$1. The devaluation of the peso was shown to double the actual concession fee requirements of the two concessionaires resulting from the numerous dollar-denominated loans to be shouldered through the concession fees.

This would only be the first of many water rates increases in the ten years since the MWSS was privatized. As of January 2008, water rates in Metro Manila have already risen by at least 665 percent for West Zone consumers and 891 percent for East Zone consumers from the original bid rates submitted by the two concessionaires.

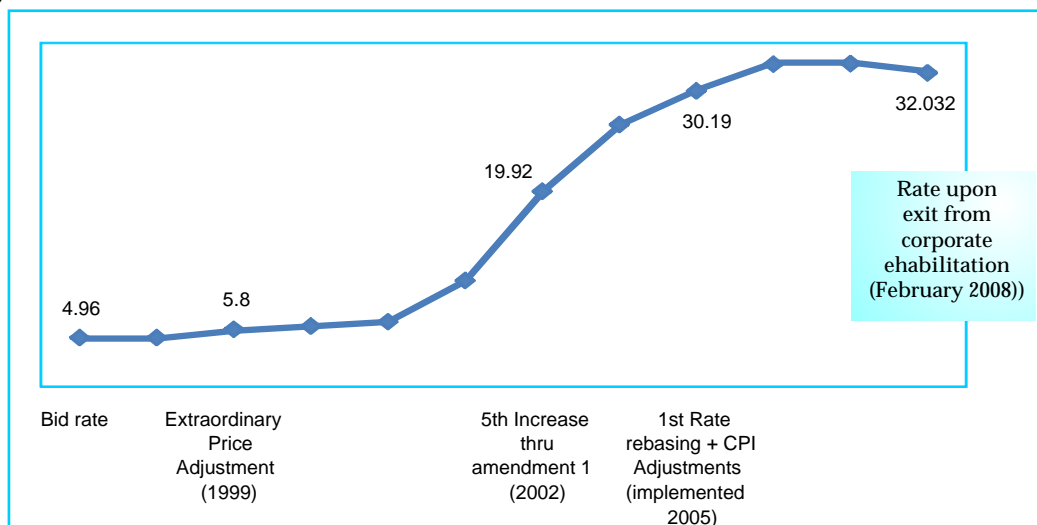
By the beginning of 2008, ten full years after the commencement of the concession agreement between MWSS and the two concessionaires, Manila Water and Maynilad's all-in-tariffs had risen to Php 26.98 and Php 32.032, respectively. These rates are a very far cry from the original rate bids submitted by the two concessionaires of Php 4.96 (Maynilad) and Php 2.32 (Manila Water). The justifications behind the numerous increases amounting to the large water tariffs today vary only in minimal degrees as between the two concessionaires.



¹⁸ The Concession Agreement provides three mechanisms for rates adjustment:

- Automatic increases to the standard rates annually, based on changes in the Consumer Price Index.
- Extraordinary Price Adjustment (EPA). Downward or upward adjustments that may be initiated once a year, based on the financial impacts of unforeseen events beyond the control of the contracting parties. the concessionaires can seek relief against *force majeure* through an EPA application, the basis of which would be validated by the MWSS-RO.
- Rate rebasing. A process for reviewing tariffs at the start of every five-year period to allow for adjustments, giving the contracting parties the chance to find out if the companies are earning what the Concession Agreement defines as fair returns. It is assumed that if the company was efficient enough, it will then have benefited from higher profits collected during the five-year period. But as these profits are reviewed and adjusted at the end of five year-periods, there should also be a lowering of tariffs and consumers end up benefiting as well from the concessionaires' efficiency.

Maynilad and Amendment 1



Despite the EPA price adjustment allowed by MWSS in 1999, Maynilad was financially bleeding by the year 2000.¹⁹ As a way out of its predicament, Maynilad proposed several amendments to the concession agreement. Specifically, it proposed the institution of an Automatic Currency Exchange Rate Adjustment (Auto-CERA) – a new mechanism not contained in the concession agreement which would provide for automatic price adjustments based on foreign exchange losses to be implemented without having to seek approval from the MWSS Board. By October of 2001, Maynilad and the MWSS came up with an amendment package to the Concession Agreement, composed of the following rate adjustment mechanisms:

- Accelerated Extraordinary Price Adjustment (AEPA) – for the recovery of foreign exchange losses incurred between August 1, 1997 to December 31, 2000. Collection period for the AEPA was set from October 15, 2001 to December 31, 2002;
- Foreign Currency Differential Adjustment (FCDA) - for the recovery of current and future foreign exchange losses arising from debt-servicing of dollar-denominated loans from the period January 1, 2002 until the expiration date of the concession agreement; and,
- Special Transitory Mechanism - for the recovery of other foreign exchange losses not recovered through the AEPA and the FCDA for the period January 1, 2001 up to December 31, 2001.

All in all, Amendment 1 enabled both concessionaires to immediately²⁰ recover foreign exchange losses incurred during the Asian Financial Crisis through the STM and the AEPA, and to recover post-crisis and future foreign exchange losses through automatic implementation of the FCDA. As a result, the water rates of both Maynilad and Manila Water have drastically and consistently hiked up since then.

¹⁹ Maynilad's foreign exchange losses by 2000 was estimated to run a total of Php 3 Billion.

²⁰ In contrast to the AEPA, The original concession agreement provided for long-term recovery of foreign exchange losses that would be undertaken throughout the life of the concession agreement.

Table 4. Maynilad Water Services Inc.	
Period	Average All-in Tariff/m ³
Pre-Privatization	PhP8.78
1997-1998 (Bid-rate)	4.96
1999 (1st increase)	5.80
2000 (2nd increase)	6.13
January-October 2001 (3rd increase)	6.58
October 2001 (4th increase after Contract Amendment 1)	10.79
January 2002 (5th increase)	19.92
2002 (6th increase after Rate Rebasing. Approved by MWSS-RO but not applied)	26.75
January 2005 (rebased rate + Consumer Price Index adjustments)	30.19
February 2006 (Implementation of 12% VAT, P.99 increase in basic charge)	32.93
January 2007(+P1.35 in basic charge, FCDA at -.623%, STM at around 15.5% of basic charge)	32.99
January 2008 (FCDA at -1.85%, STM at 8.99% of basic charge)	32.032*

Source: MWSS Regulatory Office *FDC estimate, based on the average basic tariffs of all consumer groups

Amendment 1 also included changes in the schedule of Rate Rebasing Exercises, a rate determination process provided in the concession contract through which bid parameters and water tariffs can be reviewed and revised.²¹ The MWSS RO originally had the option of postponing the rate rebasing exercise to the tenth year of the concession contract. This was the basis for the Ramos administration's earlier promise that no significant rate increase would be implemented within the first 10 years of privatization. Amendment 1 reneged on this promise.

Included also in the amendment package known as Amendment 1 was a provision mandating the conduct of the first rate-rebasing exercise in 2002, or at the end of the concession's fifth year. The first rate rebasing exercise thus transpired in June 2002, less than a year since the last round of rate increases resulting from Amendment 1.

Despite the compromises and concessions gained by Maynilad and Manila Water through the aforementioned Amendment 1, Maynilad was said to continue experiencing heavy financial losses due in particular to its 90% share in the payment of dollar-denominated loans incurred by the MWSS prior to privatization, as well as its own inability to mobilize capital for infrastructure investment. Maynilad thereby unilaterally ceased all payments of its concession fees to the MWSS and in December 2002, filed a notice of early contract termination which translated into a series of negotiations and arbitration proceedings with the national government. As would be discussed later on, the said stand-off resulted into Maynilad's entry into corporate rehabilitation as well as the transfer and rebidding of Maynilad's ownership shares.

²¹ Bid parameters that include past accounts and future costs, can be reevaluated through rate rebasing where such factors as inflation, foreign exchange rates, population growth, etc., over the preceding period are considered in determining rate adjustments.

While under corporate rehabilitation, Maynilad was restricted from undergoing its second scheduled rate-rebasing exercise in 2007, for which reason Manila Water alone undertook the said exercise and implemented a newly recomputed base rate in January of 2008. Only rate increases resulting from fluctuations in the consumer price index and foreign currency exchange, as implemented through the FCDA and EPA mechanisms, were permitted for Maynilad while under corporate rehabilitation. Eager to rid itself of its restricted predicament, Maynilad prepaid its loans and exited out of corporate rehabilitation in February 2008, thereby paving the way for its second rate-rebasing exercise. By the end of 2008, Maynilad's second rate-rebasing exercise had been conducted by the MWSS and Maynilad, and another monumental increase of Php 10.96 in Maynilad's all-in-tariff was presented to the public.

Table 5. MWSI Profits/Losses as of 2002

Year	Financial Model Amount (in million dollars)	Actual (Based on audited financial statements)
1997	(467)	(208)
1998	(54)	(781)
1999	373	(698)
2000	604	(2441)
2001	477	(1037)

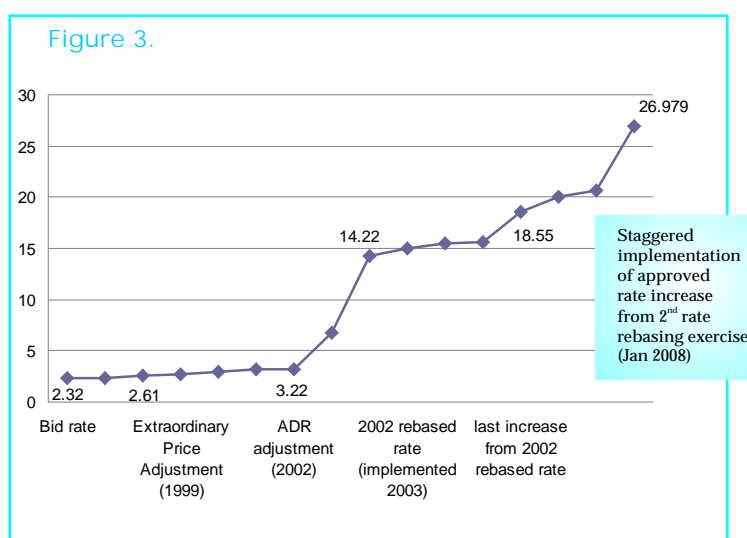
Source: MWSS Regulatory Office



Manila Water and the ADR Battle

Although Manila Water's contractual commitment for the payment of MWSS' dollar-denominated loans was significantly 9 times less than that of Maynilad, Manila Water wasted no time in also implementing the amendments Maynilad had brokered for the recovery of its foreign exchange losses. Water rates for the east zone also rose in accordance with the Extraordinary Price Adjustment of 1999 and the implementation of Amendment 1. And while the “better concessionaire” has maintained its rates well below the corresponding tariffs of the West concessionaire, it is significant to note that the exponential rate of tariff increases in the East zone has been markedly higher than that of the West zone.

Furthermore, Manila Water has not steered free from trouble with the MWSS. In 1998, Manila Water and the MWSS-RO became embroiled in a dispute concerning the so-called market-based Appropriate Discount Rate (ADR) – or “the real (i.e., not inflation adjusted) weighted average cost of capital (after taxes payable by the concession business).”²² Based on the concessionaires' financial model assumptions and its dive bid of Php2.32, Manila Water's ADR at the time came to 5.2 percent



(Maynilad's was 10.4 percent). Manila Water demanded an upward adjustment in its ADR and thereby proposed a $\text{Php}2.26/\text{m}^3$ increase in its tariff for a four-year period starting in 1999 and thereafter a yearly increase of $\text{Php}0.97/\text{m}^3$ beginning 2003. The MWSS-RO refused Manila Water's proposed ADR adjustment, as this would have translated into an improvement of Manila Water's original bid, more than a year after the winning bidders had been announced. Manila Water thereby sought relief through the International Arbitration Panel (IAP), and consequently, was granted a higher ADR of 9.3 percent.²³ Although the IAP's award was thereafter questioned by the MWSS Board and the MWSS-RO through a certiorari petition filed with the Court of Appeals, the petition was later unilaterally withdrawn by the MWSS Board.

²² Concession Agreement with Manila Water Company, Article 1. Definitions.

²³ Metropolitan Waterworks and Sewerage System. Statement of Defense submitted to the International Arbitration Panel. May 31 1999.



The decision to retroactively reset Manila Water's ADR shattered the integrity of the whole bidding process conducted in 1997 wherein Manila Water won its concession agreement with an ADR bid of 5.2 percent. If Manila Water's newly-granted ADR of 9.3 percent was applied to its original bid, this would effectively render its bid price at PhP5.55/m³, higher than those of other bidding firms.²⁴ In effect, with the retroactive application of a new ADR level, Manila Water would have lost in its 1997 bid for the East zone concession.

Table 6. Manila Water Company Inc. Rate History

Period	Average All-in Tariff/m ³
Pre-Privatization	PhP8.78
1997-1998 (Bid-rate)	2.32
1999 (1 st increase)	2.61
2002 (2 nd increase)	2.76
January – March 2001 (3 rd Increase)	2.95
April – November 2001 (4 th increase after ADR adjustment)	3.22
November 2001 (5 th increase after Contract Amendment 1)	4.22
2002 (6 th increase; application of FCDA)	6.75
2002 (7 th increase after Rate Rebasing)	14.22
August 2003 (8 th increase from FCDA increase)	14.96
October 2003 (9 th increase from FCDA increase)	15.53
January 2004 (10 th increase from FCDA increase)	15.65
January 2005 (P3.55 as last installment of 2002 rebased rate + P.38 FCDA)	18.55
February 2006 (Implementation of 12% VAT)	20.09
January 2007 (P.96 increase in Basic tariff)	20.68
January 2008 (P5 increase in Basic tariff, 0% FCDA)	26.979*

Source: MWSS Regulatory Office, *FDC Estimate, based on average of basic tariff for all consumer groups

²⁴ Esguerra, Jude. The Corporate Muddle of Manila's Water Concessions: How the world's biggest and most successful privatization turned into a failure. A study commissioned by WaterAid posted at <http://www.ucl.ac.uk>.

By 2007, Manila Water geared for another round of significant increases in its basic water tariffs with the onset of its second rate-rebasing exercise. A new business plan was turned in with the MWSS presenting recalculations of the projected expenditures Manila Water had laid down when it first submitted its 1997 bid. The contested ADR of 9.3 was once again applied to Manila Water's projected expenditures, contributing to an average all-in-tariff increase of Php 14.00/cu.m. Civil society groups including FDC registered their opposition to the proposed increase, citing the impropriety of applying an ADR of 9.3 in Manila Water's submitted business plan, the absence of transparency in the rate-rebasing exercise, and the absence of due diligence in the implementation of infrastructure projects on which the projected expenditures were based.²⁵ Despite these anomalies, MWSS approved Manila Water's rate-rebasing increase, which was later lowered to around Php 12.00 /cu.m and implemented in a staggered manner. The new rebased rate became effective in January of 2008 with an initial installment of Php 5/cu.m increase staggered across the first quarter of the year.



Continuing Inefficiencies

The lowering of water rates through the MWSS privatization was heavily premised on the private concessionaires' capacity, efficiency, and dedication in bringing down Non-Revenue Water levels in order to maximize revenues with the same production and operational cost. This, however, did not happen as predicted in 1997.

²⁵ Freedom from Debt Coalition. Position paper on Manila Water's second rate-rebasing. December 4 2007.

Manila Water, for instance, could have achieved higher revenues at the onset if it had effectively addressed rising NRW percentages. The necessity of bringing down the NRW rate in order to maximize revenue collected, was in fact well-acknowledged in Manila Water's own bid where it promised to undertake drastic reductions in the volume of unbilled or non-revenue water. Manila Water's target was to bring down NRW in the East Zone to 16 percent by 2001 from 45.2 percent in 1997, but this only rose to 45.40% in 1997 and again climbed to 52.66% in 2002.

These NRW values lagged far behind the set NRW projections laid out in Manila Water's winning bid. Contrary to Manila Water's bright projections in 1997, the 31% NRW level it had set out to achieve in a year's time was achieved only in 2005. Such inefficiencies and miscalculations in the lowering of NRW levels resulted in further rate adjustments as the company came to terms with the its own ineptness in achieving the voluntarily submitted targets at the time of bidding.

The same degree of inefficiency is also attributable to the West Zone where NRW levels rose to volumes higher than that in pre-privatization. While it can be argued that the 1997 financial crisis did cost Maynilad large foreign exchange losses and affected its ability to repair leaking pipes, this does not totally explain why its NRW percentages rose to 67 percent in 2000, from 57.4 percent in 1997. Had Maynilad seriously addressed the factors that were largely causing its high NRW— pilferage and billing problems – it would have significantly reduced business losses from 1997-2000. Maynilad, like Manila Water, was well aware that a reduction in NRW levels was required in order for it to gain higher revenues.

Table 7. Non-Revenue Water of MWCI

Year	Financial Model	Actual NRW
1997	44%	45.40%
1998	31%	39.20%
1999	22%	39.80%
2000	17%	42.80%
2001	16%	48.30%
2002*	52%	52.66%
2003	47%	52.09%
2004	45%	43.40%
2005	47%	35.50%
2006	46%	30.30%
2007	44%	23.90%

Source: Manila Water Rate Rebasing Submission 2003, MWSS-RO Annual Reports, MWCI Audited Financial Statements

*NRW targets were revised in 2002 to adhere more closely to MWCI's actual service performance.

Table 8. Non-Revenue Water of MWSI

Year	Financial Model	Actual NRW
1997	57.40%	64.10%
1998	47.90%	60.80%
1999	42%	67.20%
2000	35.60%	65.40%
2001	30.80%	66.30%
2002	29.80%	68.68%
2003*	69.00%	69.50%
2004	68.50%	69.00%
2005	67.20%	68.00%
2006	64.50%	68.00%
2007	60.20%	68.00%

Sources: Maynilad Revised Rehabilitation Plan, MWSS-RO Annual Reports, Audited Financial Statements

*NRW targets beginning 2003 follow the projections presented in the rehabilitation plan.



Revenues gained from lowering its NRW levels would in turn lead to service expansion in yet un-served areas. While recent business projections and goals of Maynilad are now said to provide greater focus on the reduction of NRW levels, the degree by which such plans are to be implemented at least cost to the consumer remains to be seen.

Sadly, the impact of concessionaire inefficiency has not been limited to tariff and expansion issues but has also endangered the health and lives of Metro Manila consumers. While minimum standards provided in the concession agreement clearly state that the quality of water should conform to the Philippine National Drinking Water Standards, this has not been realized. In October 2003, for example, around 600 residents of poor communities in the West zone fell ill from gastro-intestinal diseases; eight eventually died. A laboratory examination performed at FDC's request by the University of the Philippines Natural Sciences Research Institute showed Maynilad's water as contaminated with *E. coli* bacteria, at 16 per 100 ml of water or more than 700 percent the national standard of 2.2 per 100 ml of water.

Maynilad eventually dodged accountability for the incident by blaming residents for their illegal connections and unsanitary lifestyle. It has been well noted, however, that the fecal contamination in the service pipes would not have been possible had Maynilad been able to maintain sufficient pressure in the service pipes. Due to doubts that have been further validated by cholera incidences such as that which occurred in 2003, consumers with already limited incomes are forced to buy bottled water or spend more on fuel costs from constantly boiling supposedly safe piped water.

Meanwhile, connection charges remain prohibitive for large numbers of poor households in Metro Manila, thereby limiting the actual service coverage of the two concessionaires. The connection charge for residential connection or reconnection to a water main or public sewer located within 25 meters from the connection point, for instance, was pegged at PhP4,246.67 in 2003, up from PhP3,722.07 in 2000.²⁶ By 2008, this had risen to more than PhP7,186.60²⁷ in the East zone. Although the concession agreement provides for 12-month installment schemes in the payment of connection fees for underprivileged households, the said fees are still far from the reach of many poor families and the minimum-wage²⁸ earner.

Financially unable to connect to the piped water system, poor communities still continue to access water in ways that turn out to be more expensive in terms of actual payments made, as well as increased health and sanitation risks caused by low quality water. In slum communities, people lining up for hours at a public tap or buying water from mobile water truckers or mobile suppliers using carts, pedicabs or small tankers is a common occurrence. One study of communities in the West Zone, for instance, found out that households paid

²⁶ Automatically increased by the percentage change in the Consumer Price Index of the preceding year.

²⁷ Inclusive of a guarantee deposit of PhP 600 and a meter deposit of PhP 1,020.

²⁸ Minimum daily wage in the National Capital Region was pegged at PhP 345-382 as of June 2008.

as much as PhP160 for a 2-cubic meter tank and PhP25 for a .2-cubic meter drum in 2004. These rates greatly vary though, and could even be higher depending on the water source of the bulk water provider. An earlier study has also reported that resold utility water in the West Zone fetched as high as PhP264/m³ while water from deep wells averaged PhP132/m³ in 2003.²⁹

Increasing threats to the sustainability of freshwater resources – among them, the increasingly alarming and escalating depletion of groundwater due to widespread and unregulated abstraction – numbered among the very reasons for the MWSS privatization. Yet, not only does the Concession Agreement fail to address this; it further adds to the pressure on precarious water resources by freeing the concessionaires from the need to supply MWSS water to the many households and commercial/industrial users dependent on groundwater for their needs.



Meanwhile, the two concessionaires have also been exploiting another profit-generating window by charging homeowners' associations and community groups the highest residential block rate for bulk water provision, which is about three times the lowest block rate. Communities and associations that have undertaken their own initiative to ensure water access for themselves are further disenfranchised by contractual agreements that force them to take on volume payments for non-revenue water, much to the capitalist advantage of the two concessionaires.

²⁹ Rivera Jr., Virgilio C. Water Services and the Urban Poor: Strategies and Institutional Responsibilities. A PowerPoint presentation prepared by Manila Water Company Inc. and discussed at the workshop on "Water Services and the Urban Poor: The Power of Policies and Regulation," Sept. 25-26, 2003, ADB Headquarters, Manila, Philippines.

Table 9. Maynilad's concession fee payments

YEAR	AMOUNT PAID
1997	824,786,303.92
1998	2,088,005.349.30
1999	1,862,926,475.95
2000	1,787,435,904.48
2001	342,709,173.83
2002	30,000,000.00
2003	—
2004	—
GRAND TOTAL	6,935,863,207.48

Source: MWSS- Regulatory Office.

*Does not include late payments submitted in compliance with Maynilad's rehabilitation plan.

While the two concessionaires have both instituted community programs for bringing water access to slum communities, the viability, success, and equitability of such schemes remains to be validated by independent groups.

New Debt Burdens

At the onset of the MWSS privatization, the Ramos administration boasted of the scheme's projected impact of relieving government of MWSS' accumulated foreign debts. With the concessionaire's commitment to service these debts through their concession fee payments, government and the tax-paying public was said to be freed from the heavy burden of supporting the debt-ridden MWSS. In less than five years since the commencement of the concession agreement, however, both the government and the MWSS found itself incurring new debts for the sole purpose of preserving the concession scheme.

In 2001, Maynilad responded to government's initial rejection of its Auto-CERA proposal by unilaterally stopping payment of its concession fees. And although the concessionaire eventually got what it wanted through Contract Amendment 1, it continued to refuse the resumption of concession fee payments. Maynilad's unilateral cessation of

concession fees translated into the sudden absence of funds with which to pay off 90% of MWSS' accumulated debts.

2003 standoff and arbitration. In December 2002, Maynilad filed a Notice of Early Contract Termination, charging that it was no longer financially viable to run the West Zone. It also tried to put the blame on government so that it could be reimbursed of at least US\$303 million that it claimed to have invested in the concession area.³⁰ Government subsequently filed a Countermotion in February 2003, citing the company's failure to comply with provisions of the Concession Agreement, particularly the non-payment of concession fees, which at the time, stood at PhP5 billion.

³⁰ Freedom from Debt Coalition. "The height of Maynilad's duplicity". A position paper on Maynilad's early contract termination and overcharging. March 16, 2003.



Maynilad's petition for corporate rehabilitation. After only one week, Maynilad practically subverted the IAP decision by filing a petition for Corporate Rehabilitation with the Quezon City Regional Trial Court (Branch 90). This legal maneuver was clearly intended to allow the firm to delay payment of its debts, including concession fees that already amounted to PhP7 billion. True enough, a stay order issued by the court prevailed upon creditors from collecting further from Maynilad.

At this point, with Maynilad seeking corporate rehabilitation and placing itself under receivership,³¹ it would have been well within the rights of the MWSS to declare a “Concessionaire Event of Termination”.³² But it did not do so.

³¹ Receivership – a situation where a debtor in bankruptcy (in this case, Maynilad) places itself under an agent/s so designated by a bankruptcy court. The receiver/s is authorized to help reorganize the company, or to liquidate it to satisfy obligations to creditors.

³² Section 10.2 of the Concession Agreement: (i) The Concessionaire shall make an assignment for the benefit of creditors, petition or apply to any tribunal for a receiver or a trustee for itself or of any judicial or other proceedings by reason of its financial difficulties under any reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or there shall be commenced against such party any such proceeding which shall remain undismissed for a period of 60 days, or such party shall by any act indicate its consent to, approval of, or acquiescence in, any such proceeding or the appointment of any receiver of, or trustee for, it or any substantial part of its property, or shall suffer any such receivership or trusteeship to continue undischarged for a period of 60 days; or there shall be any reorganization, arrangement, readjustment of debt, dissolution, or liquidation with respect to such party which does not involve a judicial proceeding.”

Without the concession fees from which to source debt payments, there have been close calls to defaulting on maturing old loans of MWSS, which remain in government's name. The obvious course would have been for government (as party to the contract) to draw on the performance bond -- monetary payments to be made to MWSS if the concessionaires failed to conform to the contract.³³ Maynilad had posted US\$120 million because of its larger share both of the concession area and MWSS' old debts (Manila Water posted US\$80 million). Instead, it opted to add damage to the country's sorry fiscal position by incurring new loans to pay for MWSS' loans that had fallen due.

All told, Maynilad's non-payment of its long overdue concession fees that already amounted to more than PhP10 billion in 2004, forced MWSS to incur more debts from bridge financiers to finance maturing obligations in its attempt to avoid default;

- US\$21 million in 2001 (Philippine National Bank, Banco de Oro)
- US\$260 million in 2003 (Keppel, Deutsche, First Metro Investment Corp., Rizal Commercial and Banking Corp., etc.)
- US\$150 million in 2004 (BNP Paribas)
- P780 million in 2004 (MWSS bonds)³⁴

Saving Maynilad from Itself: A Continuing Tradition of Subsidizing Business Risks

Maynilad's revised corporate rehabilitation plan further provided greater doubt of MWSS ever recovering the unpaid concession fee payments owed by Maynilad. The revised rehabilitation plan, which contained a Debt and Capital Restructuring Agreement (DCRA), provided for a debt-to-equity swap to be undertaken as a partial resolution to the fiasco surrounding Maynilad's unpaid concession fees. Under this scheme, about US\$ 22.67 million worth of concession fees were converted into 84 percent equity of Maynilad, to be transferred to government through the MWSS. Rather than learning its lesson and holding on to its regained ownership and control of the West zone, however, government's newly-acquired controlling share in Maynilad was bidded out, resulting in a new and still privatized ownership structure for Maynilad.

³³ In other words, in the event of either concessionaire's failings, the MWSS could draw on the bond to deliver the unfulfilled commitment/s. The bond is in the form of a Standby Letter of Credit held by Citicorp International Limited, which represents the obligation of said bank on the beneficiary or MWSS. This is contingent on the failure of the bank's customer (the concessionaires) to perform under the terms of the Concession Agreement.

³⁴ MWSS sold some P780 million in bonds to pay for its maturing obligations. The debt papers enjoy full government guarantee, meaning that the public will pay in case MWSS fails to pay for these IOUs that will mature after one year. The bond issue was resorted to because of MWSS' failure to borrow in dollars, which the state agency needs to cover for Maynilad's unpaid concession fees. (Tenorio, Arnold S. "MWSS borrows P780 million to finance maturing obligations". Manila Times, Nov. 13, 2003)

Table 10. New Maynilad's shareholding structure (as of December 2007)

Shareholder	Ownership
DMCI-MPIC Water Corp. Inc.	83.9%
Lyonnaise Asia Water	16%

Source: Maynilad GIS 2007

Apart from the debt-to-equity conversion, Maynilad's revised rehabilitation plan also provided for late payment of Maynilad's outstanding and future concession fees in scheduled installments. Rather than receiving Maynilad's future concession fees in full, MWSS had to settle for partial payment of due fees and thereby sourced out new funds to finance maturing obligations that should have been shouldered through full payment of these concession fees.

It should be recalled that in 2001, government simply accepted Maynilad's only argument for its heavy foreign exchange losses: the Asian financial crisis. The firm was never put to task for overestimating revenues, underestimating costs and failing to cushion itself for some fall in the dollar-peso exchange rate, considering the events brewing in the region. Maynilad instead got a quick and ill-deserved breather from the AEPA, skirting contract provisions that unexpected foreign exchange losses be collected (with interest) from consumers on a staggered basis, over the life of the contract.

Table 11. Manila Water's Profits/Losses 97-07

Year	Net Revenue	Net Income
1997	731,832	-227,423
1998	1,662,197	-559,612
1999	1,379,165	-698,522
2000	2,627,461	-2,440,961
2001	3,053,514	-1,116,729
2002	5,402,407	-1,434,373
2003	5,173,962	-1,647,713
2004	3,905,177	-2,298,157
2005	7,228,006	1,837,554
2006	7,585,259	1,004,406
2007	7,377,042	1,254,626
Total	46,126,022	-6,326,904

Source: Audited Financial Statements

Expenditures soared beyond what had been projected in its financial model. Actual operating expenses came to PhP2.88 million more than what was projected while actual operating revenues fell short of the target by PhP4.89 million. Maynilad should have been gaining profits starting 1999, but it was actually losing, and losing heavily. The following year it should have earned US\$604 million but lost US\$2.4 billion.

Its credit-worthiness also came into question by prospective lenders (a group of banks led by the ADB) who withheld approval of a US\$350-million loan needed for capital investments targeted in the first five years of the agreement. This was made contingent on MWSS' setting of a new rate increase.

³⁵ Figures of the MWSS-RO.

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One explanation surfaces in the high costs of production and operations from the dollar-denominated expenses for foreign consultants and management contracts. A consultancy report from Thames Water, for instance, revealed that Maynilad allocated 60 percent of its capital expenditures to paying for consultancy fees of its affiliate companies such as First Philippine Balfour Beatty and Meralco Industrial Engineering Services Corp.³⁶

More basic errors have emerged. Maynilad has admitted that it miscalculated the length of water pipes in the West Zone by 1,200 kilometers; this turned out to be 3,700 kilometers instead of the MWSS estimate of 2,500 kilometers. This could have been avoided had Maynilad done its homework before making its bid and winning the concession.

Having won the bid, FDC argued, why should Maynilad be extended the privilege to recover what had been either deliberately or neglectfully understated? "Besides, the Concession Agreement clearly states that any mistake in the financial model are for the account of the concessionaire concerned....Granting that Maynilad could not have fully anticipated the peso devaluation and therefore could not be made to fully account for this, it still cannot be denied that many of Maynilad's problems were created by its own management and business decisions."³⁷

The consistent accommodation of the concessionaires' demands (including those intended to make up for revenues lost because of their own bad business decisions) defines the kind of operations Maynilad and Manila Water enjoy – practically risk-free business. The two concessionaires exploit a situation where, due to the crucial health and social issues at stake, government is likely to subsidize the costs arising from their decisions. Eventually, this leads to more inefficiencies because what should have been the incentives for avoiding them in the first place – reduction of costs and increase of revenues – hardly exists anymore. By government or the MWSS Board's actions, the concessionaires were eventually absolved of bearing the consequences of their action (or inaction).



³⁶ Baring Maynilad's Corporate Mismanagement. Position paper of the Freedom from Debt Coalition, May 6, 2004.

³⁷ PAID! Official publication of the Freedom from Debt Coalition, November 2001.

Regulatory Capture and the “Public Utility” issue

Created pursuant to provisions of the Concession Agreement and placed under the control and jurisdiction of presidential appointees comprising the MWSS Board, one wonders whether the MWSS Regulatory Office even warrants to maintain its official designation or name. Former MWSS Administrator Dr. Angel L. Lazaro himself is of the opinion that the RO enjoys independence only insofar as the MWSS Board would allow it, as “Interim regulatory bodies [are] under control and supervision of [the] government entity, which is also the contracting party,” noted.³⁸

For one, the MWSS-RO's regulatory tasks are said to be confined to monitoring the implementation of the contract and drafting recommendations when it comes to water tariff setting. Only the MWSS Board, however, can decisively approve proposed water tariffs and rates. Incidentally, even its own budget is subject to MWSS Board approval and is sourced from the concessionaires themselves.³⁹

Table 12. Manila Water's
Profits/Losses 97-07

Year	Net Revenue	Net Income
1997	421,412	-38,008
1998	989,935	-67,000
1999	1,309,533	101,000
2000	1,499,628	122,687
2001	1,658,627	176,081
2002	2,682,694	553,380
2003	3,777,900	1,150,510
2004	4,205,605	1,335,540
2005	5,763,102	2,011,521
2006	6,784,725	2,394,170
2007	7,825,376	2,419,035
Total	36,918,537	10,158,916

However limited and restricted its functions are, the tasks mandated to be undertaken by the regulatory office, particularly in regards to the monitoring and review of capital expenditures are necessary in protecting consumers from unwarranted tariff increases and imprudent business practices. The MWSS-RO, however, has in many instances shown that it cannot even keep faith with this simple mandate and is equally vulnerable to both political and concessionaire meddling. The events leading to the approval of Amendment 1, for instance, could very well portray regulatory capture, where no less than the Chief Regulator unashamedly played a significant role in changing the rules while the game was already in progress. In the course of the ADR dispute with

Manila Water, it eventually became known as well that the Chief Regulator was party to the inexplicable withdrawal of the certiorari petition filed earlier by the MWSS Board and the MWSS-RO.

³⁸ Water Sector Regulation in the Philippines. A PowerPoint presentation by former MWSS administrator Angel L. Lazaro, (Ph.D.).

³⁹ As discussed earlier, annual concession fee payments paid by the concessionaires provide for the annual budget of both the MWSS Corporate Office and the MWSS Regulatory Office.



In another instance, the MWSS-RO has been said to be complicit in brokering a Memorandum of Cooperation that replicated Maynilad's original auto-CERA proposal. One of the two regulators opposing the MoC, MWSS Deputy Affairs Administrator and Legal Affairs Division Chief Atty. Virgilio Ocaya, would later write in reference to the Chief Regulator's blatant support for Maynilad's auto-CERA proposal: *"A few millions in grease money for a corrupt director could be considered a justified expense by a Concessionaire and its stakeholders..."* In the same statement, Ocaya also reported that his own office's *"capability..to effect a healthy check and balance environment at the RO was severely curtailed, if not eliminated..."* through the issuance by the Chief Regulator of orders transferring personnel from Ocaya's own office as well as that of the Financial Regulation Division.⁴⁰

In prioritizing the interests of the concessionaires over that of consumers, the MWSS and its regulatory office has also shown that it is well capable of circumventing not only the provisions of the concession agreement but national laws as well. This has been clearly shown in the manner by which the concessionaires have been permitted to continue passing on their corporate income taxes to consumers despite legal decisions prohibiting such practices in the operation of public utilities.

A Supreme Court decision in early 2004 against public utilities charging their income tax payments⁴¹ to consumers would have provided relief to Metro Manila's water consumers but this was not to be the case. Instead government and the concessionaires became embroiled in the various ways of interpreting what "public utility" means, with the concessionaires eventually emerging triumphant from the debate.

Upon receipt of the Supreme Court decision declaring the illegality of passing on a public utility's corporate tax to its consumers, the MWSS-RO called the attention of both Maynilad and Manila Water of a possible rate reduction as a consequence of this court decision. Both Maynilad and Manila Water, however, disagreed with the MWSS-RO that a Ground for Extraordinary Price Adjustment (GEA) had occurred, even as any change in law or government policy constituted one of 11 grounds for the adjustment of tariffs, whether upwards or downwards. Maynilad averred that the Supreme Court (SC) decision on the Meralco case does not apply to the concessionaires. It insisted, among others, that the SC ruling to treat income tax payments as non-deductible expenses referred to "a mere 'change' from the previous rulings of the defunct Energy Regulatory Board (now the Energy Regulatory Commission) which has no bearing upon the regulation of water rates of the concessionaires..." and that this "cannot operate to automatically undo the agreed method of computing the rate of return under the Concession Agreement."⁴² In short, Maynilad was contesting that the Supreme Court decision restricting public utilities from passing on their corporate taxes to consumers had no bearing in so far as Manila's water concessionaires were concerned.

⁴⁰ Statement circulated by Atty. Virgilio Ocaya on July 21, 2001 in response to his detractors.

⁴¹ In April 2003, the Supreme Court denied with finality the Manila Electric Company's (Meralco) motion for reconsideration of the Nov. 15, 2002 refund decision, in favor of the firm's three million customers. It ordered Meralco to refund more than P28 billion in overcharges to its customers since 1994. Meralco is another Lopez-controlled firm.

⁴² Under Sec 9.3.4 of the Concession agreement, business taxes are among those considered as recoverable expenses of the concessionaires which are factored in for the computation of water rates. This provision has been consistently applied by the MWSS to include the concessionaires' corporate taxes.

In the SC decision, the high court also stressed an existing law setting a maximum of 12 percent rate of return of the book value of public utilities' assets. This limit is similarly stated in Section 12 of the MWSS Charter: “the rates and fees fixed by the Board of Trustees for the System and by the local governments for the local systems shall be of such magnitude that the System's rate of net return shall not exceed twelve per centum (12 percent) on a rate base composed of the sum of its assets in operation as revalued from time to time plus two months' operating capital.”

This held significant implications for Manila Water. A report of the Commission on Audit (COA) regarding Manila Water's 1999 operations revealed that the concessionaire's actual rate of return for said year reached 40.92 percent, or 28.92 percent higher than the allowable 12 percent. This translates to profits amounting to about PhP281 million. Manila Water subsequently challenged the COA report, saying that it is not a public utility but merely an “agent and contractor” of the MWSS.

Asked for clarification, the Office of the Government Corporate Counsel (OGCC) had the opinion that: “while it is true that no public funds are involved, the business of the concessionaires is imbued with public interest and it is for this reason why the COA intervention is mandated by law.” It also emphasized: “That water supply and distribution is classified as a public utility cannot be more apparent.”⁴⁴



⁴⁴ OGCC Opinion No. 125, June 22, 2000—letter of the OGCC to RO Chief Regulator Fernando Z. Vicente, re: Interpretation of the Rate Audit Provisions of the concession Agreement between MWSS and its two (2) Concessionaires.



A Technical Working Group (TWG) composed of representatives from the MWSS-RO, Maynilad and Manila Water was thereafter formed to avoid costly arbitration resulting from the stand-off between MWSS and the concessionaires concerning the “public utility” issue. In a complete reversal of the MWSS' earlier stance, however, the TWG concluded that the framers never considered the concessionaires to be treated as public utilities. The MWSS Board and the MWSS-RO later adopted the TWG's proffered opinion, thereby upholding the concessionaires' view that their corporate tax payments are part of business taxes and could thus be recovered from the water consumers of Metro Manila.

The implications of the resolutions passed by the MWSS Board are far-reaching. With public utility restrictions held as inapplicable to the two concessionaires, they are effectively free to exceed the 12 percent ceiling imposed on the return on rate base of public utilities. Such an implication is of particular significance in light of the Commission on Audit (COA) Report indicating that Manila Water enjoyed a rate of return as high as 40.92 percent in 1999.⁴⁵ With the passing of the said MWSS resolution declaring the concessionaires as “mere agents and contractors” of the MWSS, the controversy arising from the said COA Report was quietly swept under the rug through “clarifications” from both the MWSS and Manila Water that the COA supposedly employed the wrong auditing mechanisms since the only public utility it should be editing was said to be the MWSS and not the two concessionaires in and by themselves. Since then, the COA has not undertaken rate audits of either Manila Water or Maynilad, having been restricted to conduct audits only of MWSS, with Maynilad and Manila Water absorbed into the MWSS system. Determining Manila Water's rate of return using the new mechanism becomes problematic in view of the fact that MWSS itself registers only minimal profits (if at all) while Maynilad's net income for the past ten years has paled in comparison with Manila Water's. If one is to analyze the mathematical implications of this resulting procedure, Manila Water's actual rate of return is thereby diluted and pulled down by MWSS and Maynilad's low rate of return for the past ten years.

Furthermore, treating the concessionaires as mere “contractors” of MWSS indicates that contractual obligations are the only obligations recognized and acknowledged by the two concessionaires, and that such obligations may be enforced only by the other contracting party, the MWSS. Beyond the obligations and procedures contained in the concession contract, therefore, the concessionaires are under no legal obligation to the public nor is their performance of service obligations to be placed under the scrutiny of anyone but the MWSS.

⁴⁵ Freedom from Debt Coalition, et al vs MWSS and the MWSS-RO, G.R. No.173044, Supreme Court

This interpretation of the concessionaire's obligations and limitations with respect to water provision in Metro Manila has been contested in the past few years. In 2006, FDC brought the assailed MWSS resolution to the Supreme Court,⁴⁶ contesting the validity and constitutionality of the declarations contained in the said resolution. In the same year, a group of civil society organizations filed another case against Maynilad in the National Water Resources Board (NWRB), contesting the validity of the large tariff increase implemented by Maynilad in January of 2005.⁴⁷

True to form, the concessionaires and MWSS have all stuck by their earlier declaration and refused to have the concessionaires treated legally as public utilities. In regards to the rates contest filed with the NWRB, Maynilad filed a motion to dismiss the complaint, declaring that the NWRB, for all its mandate as the national regulator for water utilities, holds no judicial authority over Maynilad as the concessionaire is legally a mere contractor of MWSS and not a public water utility in and of itself.

Maynilad's assertion, however, has already been summarily thrown out by both the NWRB and the Court of Appeals. The question of whether or not Maynilad is in fact beyond the jurisdiction of NWRB has now been forwarded by appeal to the Supreme Court. Should the Supreme Court affirm the decisions of both the NWRB and the Court of Appeals, Maynilad and Manila Water can no longer assail that they answer only to the MWSS, they shall find themselves legally obliged to answer to the public, as well they should be.



⁴⁶ Freedom from Debt Coalition, et al. vs. MWSS and the MWSS-RO, G.R. No.173044, Supreme Court

⁴⁷ CPE, et al vs Maynilad, NWRB Case No. 05-02c

The Need for a Thorough Assessment



Beyond the issues and anomalies produced by the privatization scheme, extremely troubling also is government's continued espousal of the MWSS privatization scheme as a successful endeavor despite the unmistakable trail of broken promises lining the concessionaires' paths. An overview of the outcomes from the past ten years lead to the conclusion that the results of the said scheme has in fact run counter to common good and in turn, defeats the people's right to water.⁴⁸ Yet in many instances wherein a review has been called for in Congress or in media, both the MWSS and the concessionaires have adamantly stood by the conviction that the privatization of MWSS has been successful in fulfilling its aims. In many instances, the triumvirate composed of the MWSS, Maynilad, and Manila Water have pointed at general service improvements in Metro Manila's water supply system as evidence of the privatization scheme's success.

In the course of defending the MWSS privatization scheme, supporters have often resorted to a simple enumeration of the changes that have taken place in the area of potable water provision in Metro Manila. With simplified logic, it has been asserted that the scheme is successful because an additional number of new connections have been undertaken or because potable water is now available for 24 hours in more localities than before. This form of simplified logic employed in assessing the impact of the privatization scheme must give way to an honest assessment of what has been compromised in the course of forcing the privatization scheme to “work”. Rather than a simple enumeration of token improvements achieved in the course of ten years, such so-called improvements must be weighed with their corresponding social, economic, and environmental costs.

⁴⁸ Freedom from Debt Coalition, Position Paper on the Ten-Year Privatization Scheme of MWSS, August 2008



The conduct of a comprehensive and in-depth assessment of the MWSS privatization by both civil society and the state will be vital in many policy decisions to be undertaken. At present, the absence of an honestly pursued comprehensive assessment of the privatization scheme's outcomes and costs places the people at a severe disadvantage in the face of immediate concerns emanating from a continued espousal of privatization as a policy thrust.

Immediate Concerns

With government's continued espousal of privatization and its faulty assessment of the MWSS privatization as a successful and effective scheme, the welfare of water consumers within and outside the National Capital Region are placed at risk of being compromised in the name of corporate privatization.

Although the concession agreements between MWSS and its two concessionaires provide for a 25-year concession period, various attempts at extending the concession for a longer period have already been undertaken. In the course of Manila Water's second rate-rebasing exercise conducted in 2007, for instance, Manila Water already submitted business and financial projections containing "alternative scenarios" that outlined expenditures and tariff rates to be implemented if a ten-year period extension was to be integrated into the concession agreement to "*ensure the reliability and expansion of water and wastewater services in the East Concession at more affordable rates to our customers*".⁴⁹ In various congressional hearings undertaken by the Lower House's Committee on Oversight and Committee on Environment and Natural Resources, contract extensions for the two concessionaires have also been advocated by several Lower House Representatives in return for an escalation in sewer and wastewater treatment targets.

In December of 2008, immediately following Maynilad's second rate-rebasing exercise and an escalation of consumer protests against Maynilad's proposed rate hike of Php 10.96, several news reports already revealed that the Office of the President "approved in principle" proposals to extend the concession periods as a method to redistribute and mitigate expected tariff increases.

Other legislative bills now pending in both the Lower House and the Senate also threaten to replicate the MWSS privatization scheme in other urban areas in the Philippines. House Bill 3464 and Senate Bill 518, identical both in form and substance, forward the establishment of Water Regulatory Commission for the purpose of providing centralized regulation of all potable water providers. With a declaration of policy that provides for "*the attainment of complete coverage over the entire country of piped-water supply and sewerage services at reasonable rates and, in this connection, encourage the participation and investment of the private sector, both domestic and foreign,*" the dangers posed by the pending bills cannot be underestimated.

⁴⁹ News reports released in early 2008 reported that Malacanang ordered the MWSS-RO to study the proposed extension agreement. By December 2008, news reports were also published reporting that Malacanang had tentatively approved "in principle" the proposed contract extensions.

FDC's Advocacy Against the Water Privatization

When FDC took on campaigning against water privatization in 1997, the Coalition has since then counter-argued the government's relentless drive to further privatize water services and all other utilities, and campaigned for the human right to water. The Coalition braved the propaganda of the two concessionaires—Manila Water Company Inc. (MWCI) and Maynilad Water Services Inc. (MWSI), in justifying and sugarcoating the impact of water privatization, despite their inefficiency. Mismanaged MWSI suffered from bankruptcy but was bailed-out by the government in 2002, letting them undergo into a corporate rehabilitation instead of booting them out from the concession. MWCI, tagged as “the better concessionaire,” was also exposed from a controversy on earning more than what is allowed by the law, earning a 40.93-percent return on rate base (RORB), way higher than the allowable 12 percent.

Furthermore, private companies alike expressed more and more interest to water privatization in local water districts, which the government adamantly welcomed. With this, FDC chapters initiated studies about their area's water district and mode of supply, thus exposing more of the private companies' business interests in water. In Cebu alone, big companies like Aboitiz are aiming to manage the bulk-water supply in which FDC and the local water district in Cebu have engaged and challenged. Such is also the case in Ronda, Cebu, where prepaid water meters were installed and in FDC's critique, and further treating water not as a right but a commodity. The same privatization schemes were seen in other regions of the country.

FDC has exhausted different means to challenge water privatization and its impact towards people's lives, from street mobilizations to filing cases in judicial courts. The Coalition's research in the anomalies brought about by water privatization led to two court cases filed, one questioning the rates implemented by Maynilad and the other, pushing for the invalidation of a decision of the Metropolitan Waterworks and Sewerage Services (MWSS) Board of Trustees, stating that concessionaires MWSI and MWCI are not considered as public utilities but mere agents and contractors of MWSS, thus, shielding them of their accountability to the public. As of today, the first case was decided on by the Supreme Court stating that all petitions questioning rates should be addressed to the National Water Resources Board (NWRB).





While FDC members and networks are enraged over basic consumer issues like rates increases and access to water, there is still a standing challenge to reverberate FDC's call on claiming people's human right to water, and to deepen their understanding on the government's privatization policy. The Coalition has engaged the Congress and several legislators to push for the issue on Human Rights to Water. Last November 2007, with the aid of FDC, Congresswoman Hontiveros-Baraquel delivered a speech calling for the review of the privatization policy of the government on water.

For 2008 to 2010, FDC is expected to develop its proposed alternatives to water privatization and introduce its concepts to the public to make them aware that privatization is not a viable solution to address problems of water service provision in the Philippines. While on the process of building such alternatives, further building consumer consciousness on water-related issues needs to be sustained.

FDC is faced by numerous challenges such as the national elections in 2010, which will be an battleground of the elites to pursue their interest and divert the attention of the public from the government's anomalies and scandals on their electioneering and political stand-off. Thus, it is expected that Mrs. Arroyo will tap new resources to propel her machinery to destroy any chances of changing the status quo, thus further advancing her unsustainable means to gather resources, such as continuing to acquire debts and further pushing privatization among essential services.



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APPENDIX 1. RA 6234

REPUBLIC ACT NO. 6234

AN ACT CREATING THE METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM
AND DISSOLVING THE NATIONAL WATERWORKS AND SEWERAGE AUTHORITY;
AND FOR OTHER PURPOSES

SECTION 1. *Declaration of Policy.* — The proper operation and maintenance of waterworks system to insure an uninterrupted and adequate supply and distribution of potable water for domestic and other purposes and the proper operation and maintenance of sewerage systems are essential public services because they are vital to public health and safety. It is therefore declared a policy of the state that the establishment, operation and maintenance of such systems must be supervised and controlled by the state.

SECTION 2. *Creation, Name, Domicile and Jurisdiction.* —

- (a) There is hereby created a government corporation to be known as the Metropolitan Waterworks and Sewerage System, hereinafter referred to as the System, which shall be organized within thirty days after the approval of this Act.
- (b) The domicile and principal place of business of the System shall be in the City of Manila. The System shall have such branches and agencies as may be necessary for the proper conduct of its affairs.
- (c) The System shall own and/or have jurisdiction, supervision and control over all waterworks and sewerage system in the territory comprising the cities of Manila, Pasay, Quezon, Cavite and Caloocan, and the municipalities of Antipolo, Cainta, Las Piñas, Makati, Malabon, Mandaluyong, Marikina, Montalban, Navotas, Parañaque, Pasig, Pateros, San Juan, San Mateo, Taguig, Taytay, all of Rizal Province, the municipalities of Bacoor, Imus Kawit, Noveleta, Rosario, all of Cavite province and Valenzuela, Bulacan. All other waterworks and sewerage systems now under the supervision and control of National Waterworks and Sewerage Authority (NWSA), shall remain with the System unless the provinces, cities and municipalities concerned shall elect to separate from the System, in which case, they shall communicate their decision to the System and the separation shall take effect upon agreement of the System and the local government not later than thirty (30) days from the time the System receives the notice of the decision. The Wells and Springs Department of the National Waterworks and Sewerage Authority shall be ceded, transferred and conveyed to the Bureau of Public Works.
- (d) Any provision of law to the contrary notwithstanding, all existing waterworks systems or any system that may hereafter be established by cities and municipalities shall have exclusive control and supervision over all sources of water supply, such as rivers and streams for waterworks purposes in their respective jurisdictions, and any water right now enjoyed by the National Waterworks and Sewerage Authority in the different cities and municipalities concerned: Provided, however, That in case of provincial waterworks systems now existing, the said water rights shall be transferred to that provincial system.

SECTION 3. *Attributes, Powers and Functions.* — The System shall have the following attributes, powers and functions:

- (a) To exist and have continuous succession under its corporate name for a term of fifty (50) years from and after the date of the approval of this Act, notwithstanding any provision of law to the contrary: Provided, however, That at the end of the said period, the System shall automatically continue to exist for another fifty (50) years, unless otherwise provided by law;
- (b) To prescribe its by-law;
- (c) To adopt and use a seal and alter it at its pleasure;
- (d) To sue and be sued;
- (e) To establish the basic and broad policies and goals of the System;
- (f) To construct, maintain, and operate dams, reservoirs, conduits, aqueducts, tunnels, purification plants, water mains, pipes, fire hydrants, pumping stations, machineries and other waterworks for the purpose of supplying water to the inhabitants of its territory, for domestic and other purposes; and to purify, regulate and control the use, as well as prevent the wastage of water;
- (g) To construct, maintain, and operate such sanitary sewerages as may be necessary for the proper sanitation and other uses of the cities and towns comprising the System;
- (h) To fix periodically water rates and sewerage service fees as the System may deem just and equitable in accordance with the standards outlined in Section 12 of this Act;
- (i) To construct, develop, maintain and operate such artesian wells and springs as may be needed in its operation within its territory;
- (j) To acquire, purchase, hold, transfer, sell, lease, rent, mortgage, encumber, and otherwise dispose of real and personal property, including rights and franchises, consistent with the purpose for which the System is created and reasonably required for the transaction of the lawful business of the same;
- (k) To construct works across, over, through and/or alongside, any stream, water-course, canal, ditch, flume, street, avenue, highway or railway, whether public or private, as the location of said works may require: Provided, That, such works be constructed in such manner as to afford security to life and property and so as not to obstruct traffic: Provided, further, That the stream, water-course, canal, ditch, flume, street, avenue, highway or railway so crossed or intersected be restored without unnecessary delay to its former state. Any person or entity whose right may be prejudice by said works shall not obstruct the same; however, he shall be given reasonable notice before the construction and shall be paid just compensation. The System shall likewise have the right to locate, construct and maintain such works on, over and/or through any street, avenue, or highway and land and/or real rights of the Republic of the Philippines or any of its branches, agencies and political subdivisions upon due notice to the office, or entity concerned, subject solely to the condition that the street, avenue, or highway in which said works are constructed be restored without unnecessary delay to its former state unless otherwise agreed upon by the System and the office or entity concerned;

- (l) To exercise the right of eminent domain for the purpose for which the System is created;
- (m) To contract indebtedness in any currency and issue bonds to finance projects now authorized for the National Waterworks and Sewerage Authority under existing laws and as may hereafter be expressly authorized by law with the approval of the President of the Philippines upon the recommendation of the Secretary of the Finance;
- (n) To approve, regulate, and supervise the establishment, operation and maintenance of waterworks and deepwells within its jurisdiction operated for commercial, industrial and governmental purposes and to fix just and equitable rates or fees that may be charged to customers thereof;
- (o) To assist in the establishment, operation and maintenance of waterworks and sewerage systems within its jurisdiction under cooperative basis;
- (p) To approve and regulate the establishment and construction of waterworks and sewerage systems in privately owned subdivisions within its jurisdiction;
- (q) To have exclusive and sole right to test, mount, dismount and remount water meters within its jurisdiction;
- (r) To render annual reports to the President of the Philippines and the Presiding Officers of the two Houses of Congress not later than January thirty-first of every year.

SECTION 4. *The Board of Trustees, Composition; Qualification; Appointment; Tenure.* — The corporate powers and functions of the System shall be vested in and exercised by a Board of Trustees composed of a Chairman, the General Manager as ex-officio Vice-Chairman and three members, one of whom shall be nominated by the Labor Union representing the majority of the rank and file of the employees in the System. They shall possess any one or a combination of the following qualifications; duly licensed professional of recognized competence in civil engineering and/or sanitary engineering, business management and finance, and law, or recognized labor leader within the ranks with sufficient training, particularly in the field of labor-management relations or corporate practice, all of good moral character with at least five (5) years of actual and distinguished experience in their respective fields of expertise.

The Chairman and the three members of the Board shall be appointed by the President of the Philippines with the consent of the Commission on Appointments. The Chairman and the three members of the Board shall hold office for a period of three years, except that the members initially appointed shall serve, as designated in their appointments, one for one year, one for two years and one for three years: Provided, That, any person chosen to fill a vacancy shall serve only for the unexpired term of the member whom he succeeds: Provided, further, That the term of the member nominated by labor may be terminated sooner than as above provided if so requested by the nominating union in which case the President of the Philippines shall appoint a replacement who shall similarly be nominated by said union.

SECTION 5. *The Suspension and Removal of Trustees.* — Any member of the Board of Trustees may for cause be suspended or removed by the President of the Philippines upon the recommendation of the Secretary of Justice after due notice and hearing.

SECTION 6. *Meetings of the Board; Quorum, Required Votes; Per Diems.* — The Board of Trustees shall, immediately after its organization, adopt rules and procedures in the conduct of its meetings. A majority of the Board shall constitute a quorum for the transaction of business and the affirmative vote of three shall be required for the adoption of any action. For actual attendance at meetings, the Chairman and the three members, shall each receive a per diem of one hundred pesos but in no case shall any one receive more than four hundred pesos a month.

SECTION 7. *Other Officers and Employees; their appointment; qualifications; compensations and tenure.* — The management of the System shall be vested in the General Manager. He shall be assisted by four Assistant General Managers — one for Engineering, one for Operation, one for Finance and Administration, one for Commercial and Customers Service, and the heads of departments. Said officials shall perform managerial and/or confidential functions. The General Manager shall be appointed by the President of the Philippines with the consent of the Commission on Appointments. He shall receive an annual compensation of Thirty-six thousand pesos (P36,000.00) and hold office for a period of six years unless sooner terminated for incapacity or other causes. The President may for cause, suspend or remove the General Manager after due notice and hearing. In case of temporary disability or absence of the General Manager, the Chairman of the Board shall designate any Assistant General Manager to act as General Manager.

The Assistant General Managers shall be appointed by the Board with the approval of the President. Each shall receive an annual compensation of Twenty-eight thousand pesos (P28,000.00) and shall hold office until retirement age as determined by law, unless sooner terminated for incapacity or other causes.

The Assistant General Managers shall be persons of integrity, competence and experience in the technical and executive fields related to the purposes of this Act. Their other qualifications as well as powers and duties shall be determined by the Board. The Department Heads, Division and Section Chiefs, and other officers of equivalent rank shall be appointed or promoted by the General Manager upon recommendation of the Assistant General Manager concerned, with the approval of the Board. The powers, duties, qualifications and compensation of said officers and of the other personnel shall be determined by the Board.

All other personnel shall be appointed or promoted by the General Manager upon recommendation of the Assistant General Manager concerned. The General Manager shall submit to the Board a monthly report on such appointments and non-disciplinary transfer made in the month immediately preceding.

SECTION 8. *Other Powers and Duties of the General Manager.* —

- (a) To direct and manage the System in accordance with and to carry out the policies of the Board;
- (b) To control, direct and supervise all the officers and employees under him;
- (c) To remove, suspend or otherwise discipline for cause, or terminate by reason of incapacity the term of office of, Department Heads, Division and Section Chiefs, and other officers of equivalent rank, subject to the approval of the Board. The decision of the Board may be appealed within thirty days from receipt thereof to the proper Court of First Instance, but shall be immediately enforceable notwithstanding said appeal;



- (d) To remove, suspend or otherwise discipline for cause, or terminate by reason of incapacity the term of office of, all other personnel, without prejudice to an appeal within thirty days from receipt of the decision to the Board, the decision of which Board shall be immediately final and enforceable;
- (e) To detail any officer or employee when required by the exigencies of the service, for a period not exceeding six months, without reduction in salary, and his decision shall be final;
- (f) To submit to the Board an annual budget and plantilla of personnel not later than sixty days prior to the beginning of a fiscal year, and thereafter such supplemental budgets as may be necessary;
- (g) To submit to the Board, not later than the twentieth of every month, a financial and an operational report for the month preceding, and not later than ninety days after the close of each fiscal year an annual report, and from time to time such partial reports as he may see fit to render or as may be required by the Board; and
- (h) To perform such other powers and duties as may be assigned by the Board or prescribed either by law or by the By-laws of the System.

SECTION 9. *Appointment and Promotion; Terms and Conditions of Employment.*— Officers and employees of the Metropolitan and Local Systems shall not be subject to the Civil Service Law, rules and regulations. The System is hereby empowered to conduct such appropriate examination it deems necessary as additional bases for appointment and promotion.

The terms and conditions of employment in the System are governed by law, except that the WAPCO rules and regulations shall not apply, without prejudice to the right of collective bargaining.

SECTION 10. *Administrative Jurisdiction for Disciplining Other Officers and Employees.* — The General Manager may, for dishonesty, oppression, misconduct, neglect of duty, conviction of a crime involving moral turpitude, notoriously disgraceful or immoral conduct, improper or unauthorized solicitation of contributions from subordinate employees, lobbying for personal interest or gain in legislative halls and offices without authority from the Board, directly or indirectly obstructing, defeating or violating the civil rights and liberties of an individual, promoting the sale of tickets in behalf of private enterprises that are not intended for charitable or public welfare purposes and even in the latter cases if there is no prior authority willful violation of reasonable office regulations, or in the interest of the service, remove after due notice and hearing, any subordinate officer or employee from the service, demote him in rank, suspend him for not more than one year without pay or fine in an amount not exceeding six month's salary.

A transfer from one position to another without reduction in rank and salary shall not be considered disciplinary when made in the interest of public service and the action of the General Manager shall not be final until approved by the Board of Trustees.

SECTION 11. *Audit.* — The Auditor General shall appoint a representative known as the Auditor and the necessary personnel to assist said Auditor in the performance of his duties. The Auditor General shall also fix the salaries and the number of personnel to assist said Auditor. Once fixed by the Auditor General, such salaries and number of auditing personnel shall not be thereafter increased, diminished or altered unless initiated by him. The auditing personnel under this section shall be subject to the provisions of the civil service law. The budget and plantilla for salaries, maintenance and operating expenses of the auditing office as fixed by the Auditor General shall be subject to confirmation by the governing board of the corporation.

The financial transactions of the System shall be audited in accordance with law, administrative regulations, and the generally accepted principles of accounting and standards of auditing. The Auditor General shall submit to the President of the Philippines, the Presiding Officers of the two Houses of Congress and the Board of Trustees an Audit Report for each fiscal year, within ninety days after the close thereof.

SECTION 12. *Review of Rates by the Public Service Commission.* — The rates and fees fixed by the Board of Trustees for the System and by the local governments for the local systems shall be of such magnitude that the System's rate of net return shall not exceed twelve per centum (12%), on a rate base composed of the sum of its assets in operation as revalued from time to time plus two months' operating capital. Such rates and fees shall be effective and enforceable fifteen (15) days after publication in a newspaper of general circulation within the territory defined in Section 2 (c) of this Act.

The Public Service Commission shall have exclusive original jurisdiction over all cases contesting said rates or fees. Any complaint against such rates or fees shall be filed with the Public Service Commission within thirty (30) days after the effectivity of such rates, but the filing of such complaint or action shall not stay the effectivity of said rates or fees.

The Public Service Commission shall verify the rate base, and the rate of return computed therefrom, in accordance with the standards above outlined. The Public Service Commission shall finish, within sixty (60) calendar days, any and all proceedings necessary and/or incidental to the case, and shall render its findings or decisions thereon within thirty (30) calendar days after said case is submitted for decision. In cases where the decision is against the fixed rates or fees, excess payments shall be reimbursed and/or credited to future payments, in the discretion of the Commission.

SECTION 13. *Disposition of Income.* — The income of the System shall be disposed of according to the following priorities: First, to pay its contractual and statutory obligations and to meet its essential current operating expenses; Second, to serve at least fifty per cent (50%) of the balance exclusively for the expansion, development and improvement of the System; and Third, to allocate the residue enhancing the efficient operation and maintenance of the System which include increases of administrative expenses or increases or adjustment of salaries and other benefits of the employees.

SECTION 14. *Assistance to Local System.* — The System may provide technical and management assistance to the various local waterworks and sewerage system upon their request; and for this service the System may charge actual expenses incurred plus ten per cent (10%) thereof as overhead expenses.

SECTION 15. *Abolition of NWSA; Transfer of Assets, Liabilities, and Personnel.* — The Corporation known as the National Waterworks and Sewerage Authority shall be abolished upon the organization of the Metropolitan Waterworks and Sewerage System as provided for in Section 2 (a) of this Act. Its records, properties, equipment, assets, rights, choses in action, obligations and liabilities are hereby transferred to, vested in, and assumed by the System: Provided, That an inventory and valuation of the properties, equipment, assets, rights choses in action, obligations, liabilities of NWSA shall be made by the Auditor General, and the accountable officers of NWSA shall continue to be fully accountable therefor, until issued a certificate of clearance by the Auditor General.



Employees and laborers, including the personnel of the planning and coordinating office and the provincial, city and municipal departments in the places enumerated in Section 2(c) of this Act are hereby transferred to and absorbed by the System: Provided, That the Board of Trustees is hereby authorized to make personnel movement on the basis of merit and fitness in accordance with the comprehensive and progressive merit system to be established by the Metropolitan Waterworks and Sewerage System immediately upon its organization: Provided, further, That the salary of any employee shall in no case be reduced as a consequence of said personnel movement: Provided, finally, that in no case shall the expense in any fiscal year for salaries, wages, allowances, emoluments, and other fringe benefits exceed thirty five per cent (35%) of the gross income of the system in the immediately preceding fiscal year.

SECTION 16. *Gravity.* — Any personnel of the National Waterworks and Sewerage Authority not so appointed or who refuses such appointment shall be paid the money value of his accumulated vacation and sick leave, and such retirement gratuity as may be due him under existing retirement laws. Any of the employees and laborers who does not qualify under any existing retirement law shall be paid one month salary for every year of service, payable in lump sum. For this purpose, there is hereby appropriated out of any funds in the national treasury not otherwise appropriated the sum of fifteen million pesos to provide for their separation gratuities, accumulated vacation and sick leaves and/or retirement, when and if, payable and due to them, subject to reimbursement by the system to the national treasury out of its earnings within three fiscal years from the date of availment of the appropriated amount.

The personnel of the Wells and Springs Department whose salaries are paid from Congressional Appropriations and who cannot be absorbed by the Bureau of Public Works, shall be paid their terminal pay and retirement gratuity from Congressional Appropriations. However, in case an officer or employee is subsequently reinstated in the government, its branches and instrumentalities, including government corporation, he shall refund to the paying agency the value of the gratuity which he would not have received had he been paid in monthly installments.

SECTION 17. *Transfer of Local Systems.* — Whenever the local government exercises the right mentioned in Section 2(c) hereof, the local systems now under the control and supervision of the NWSA together with all the employees and laborers including the personnel of the district offices, records, properties, equipment, assets, choses in action, obligations and liabilities shall be ceded, transferred and conveyed to their respective provinces, cities and/or municipalities which owned and/or operated them before the NWSA operated the same: Provided, That in case of disagreement between the system and the local governments on liabilities or obligations being charged by the National Waterworks and Sewerage Authority to the local government, the same shall be passed upon and decided by an arbitration committee to be composed of a representative of the local government, a representative of the System, and a third member to be chosen by both. Any of the employees and laborers not so appointed in the local system or who refuses such appointment shall be paid from the amount of fifteen million pesos appropriated under this Act, the money value of his accumulated vacation and sick leaves and such retirement gratuities as may be due him under existing retirement laws: Provided, That any of the employees and laborers who does not qualify under any existing retirement laws, shall be paid one month salary for every year of service payable in lump sum.

Similarly, all employees and laborers, records, property and equipment of the Wells and Springs Department shall be ceded, transferred and conveyed to the Bureau of Public Works. The accounts and liabilities corresponding to said Department shall be adjusted accordingly by the Auditor General.



Those systems initially constructed and operated by the NWSA, shall be ceded, transferred and conveyed to the provinces, cities or municipalities which they serve: Provided, however, That where the System serves two or more municipalities, the same shall be ceded, transferred and conveyed to the provincial government: Provided, further,

That where the System serves a city, or a city and municipalities, the system shall be transferred, ceded or conveyed to the city: Provided, furthermore, That the outstanding obligations incurred by the NWSA, including interest, in the construction, operation and maintenance of such systems, shall be assumed by the local government concerned:

Provided, still further, That in the case of outstanding bond indebtedness in the construction, operation and maintenance of such systems, the national government shall continue to guarantee the obligation until the same shall have been fully paid: Provided, finally, That the Auditor General shall determine the accounts and liabilities of the respective local governments. In case the liabilities exceed the value of the assets transferred to the local governments, the excess shall be assumed by the national government.

Conflicts between local governments served by one system shall be decided by a board to be composed of their respective mayors, and treasurers as members, and the representative of the Auditor General as Chairman.

SECTION 18. *Tax Exemption.* — All articles imported by the Metropolitan Waterworks and Sewerage System or the local governments for the exclusive use of their waterworks and sewerage systems particularly machineries, equipment, pipes, fire hydrants, and those related to, or connected with, the construction, maintenance, and operation of dams, reservoirs, conduits, aqueducts, tunnels, purification plants, water mains, pumping stations; or of artesian wells and springs within their territorial jurisdictions, shall be exempt from the imposition of import duties and other taxes.

SECTION 19. *Repeal or Modification.* — All Acts, executive orders, administrative orders, and proclamation or parts thereof inconsistent with any of the provisions of this Act, are hereby repealed or modified accordingly.

SECTION 20. *Separability Clause.* — In the event that any provision of this Act or the application of such provisions to any person or circumstances is declared unconstitutional, the remainder of this Act or the application of said provision to other persons or circumstances shall not be affected thereby.

SECTION 21. *Effectivity.* — This Act shall take effect upon its approval.

Approved: June 19, 1971



Appendix 2. RA 8041

REPUBLIC ACT NO. 8041

AN ACT TO ADDRESS THE NATIONAL WATER CRISIS AND FOR OTHER PURPOSES

SECTION 1. *Short Title.* — This Act shall be known as the "National Water Crisis Act of 1995."

SECTION 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 affects 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.

SECTION 3. *Organization of Joint-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 representatives of the National Water Resources Board (NWRB), 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.

SECTION 4. *Purpose 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;
- © To recommend measures that will ensure continuous and effective monitoring of the entire water supply and distribution system of the country; and
- (a) 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.



SECTION 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 and production of reports, and the submission of recommendations or plans, as it may require;
- (b) To designate by resolution the watershed areas in which development 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.

SECTION 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.

SECTION 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 leadership and reorganize the MWSS and the LWUA, including the privatization 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 the said objectives. Moreover, in the implementation of this provision, the prescriptions of Republic Act No. 7430, otherwise known as the "Attrition Law," shall not apply. Nothing in this section shall result in the diminution of the present salaries and benefits of the personnel of 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.



SECTION 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, bulkhead, 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 the water or sewage flow of any waterworks and/or sewerage system, or the supply, conveyance, measurement, or regulation thereof, including the prevention of, or interference 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 to steal water or interfere with accurate registry or metering of water usage, or otherwise result in its diversion in a manner whereby water is stolen or wasted;
- (f) Use or receive the direct benefit of 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 the 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.

SECTION 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;
- (a) 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 shall not apply to tenants who have occupied the house or dwelling for ninety (90) days or less.

SECTION 10. Special Aggravating Circumstances. — The following shall be 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 be considered as principals;
or
- (c) When the violation is coupled with the sale from a source which is illegal, or unregistered, or unauthorized, or a source with a tampered meter.

SECTION 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 restored upon deposit, by the person 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 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 (2) 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.

SECTION 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.

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

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

SECTION 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.

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

SECTION 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.

Approved: June 7, 1995