

TABLE OF CONTENTS

SECTION 1	
Presidential Decree 198	3
SECTION 2	
Local Water Utilities Administration Law	16
SECTION 3	
Presidential Decree 768	24
SECTION 4	
Letter of Instructions No. 683	35
SECTION 5	
Letter of Instructions No. 700	37
SECTION 6	
Presidential Decree 1479	39
SECTION 7	
Letter of Instructions No. 744	42
SECTION 8	
Executive Order No. 68	44
SECTION 9	
Supreme Court Ruling on Water Districts as Government Owned and Controlled Corporations	45
SECTION 10	
Executive Order No. 286	57
SECTION 11	
Executive Order No. 279	63
Implementing Rules & Regulations of Executive Order No. 279	71
SECTION 12	
Republic Act No. 9286	79
SECTION 13	
Executive Order No. 387	81
SECTION 14	
Executive Order No. 421	83
SECTION 15	
Department of Justice Ruling on Water District Tax Exemption	89

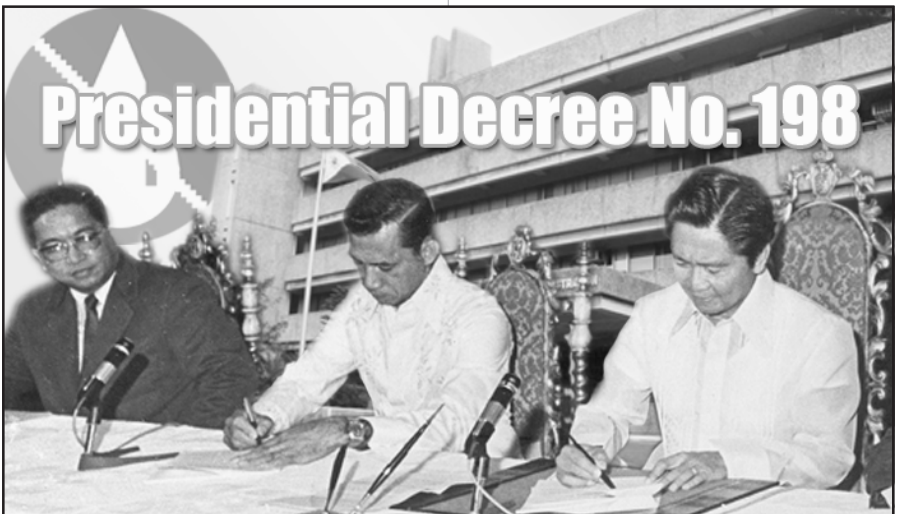
SECTION 1

MALACAÑANG
MANILA

PRESIDENTIAL DECREE 198

(As amended Presidential Decree Nos., 768 and 1479, R.A. 9286)

DECLARING A NATIONAL POLICY FAVORING LOCAL OPERATION AND CONTROL OF WATER SYSTEMS; AUTHORIZING THE FORMATION OF LOCAL WATER DISTRICTS AND PROVIDING FOR THE GOVERNMENT AND ADMINISTRATION OF SUCH DISTRICTS; CHARTERING A NATIONAL ADMINISTRATION TO FACILITATE IMPROVEMENT OF LOCAL WATER UTILITIES; GRANTING SAID ADMINISTRATION SUCH POWERS AS ARE NECESSARY TO OPTIMIZE PUBLIC SERVICE FROM WATER UTILITY OPERATIONS, AND FOR OTHER PURPOSES:



RATIONALE

- One of the prerequisites to the orderly and well-balanced growth of urban areas is an effective system of local utilities, the absence of which is recognized as a deterrent to economic growth, a hazard to public health and an irritant to the spirit and well being of the citizenry;
- Domestic water systems and sanitary sewers are two of the most basic and essential elements of local utility systems, which, with a few exceptions, do not exist in provincial areas in the Philippines;
- Existing domestic water utilities are not meeting the needs of the communities they serve; water quality is unsatisfactory; pressure is inadequate and reliability of service is poor, in fact many persons receive no piped water service whatsoever;
- Conditions of service continue to worsen for two apparent reasons, namely: (1) that key elements of existing system are deteriorating faster than they are being maintained or replaced, and (2) that they are not being expanded at a rate sufficient to match population growth; and
- Local water utilities should be locally-controlled and managed, as well as have support on the national level in the area of technical advisory service and financing.

By Proclamation No. 1081 dated September 21, 1972, and General Order No. 1 dated September 22, 1972, as amended, the

following measures have been decreed, ordered and made as part of the law of the land.

TITLE I

PRELIMINARY PROVISIONS

SEC. 1. **Title.** This Decree shall be known and referred to as the "Provincial Water Utilities Act of 1973."

SEC. 2. **Declaration of Policy.** The Creation, operation, maintenance and expansion of reliable and economically viable and sound water supply and wastewater disposal systems for population centers of the Philippines is hereby declared to be an objective of national policy of high priority. For purposes of achieving said objectives, the formulation and operation of independent, locally controlled public water district is found and declared to be the most feasible and favored institutional structure. To this end, it is hereby declared to be in the national interest that said district be formed and that water supply wastewater disposal system be operated by and through such district to the greatest extent practicable. To encourage the formulation of such local water districts and the transfer thereto of existing water supply and wastewater disposal facilities, this Decree provides by general act the authority for the formation thereof, on a local option basis. It is likewise declared appropriate, necessary and advisable that all funding requirements for such local revenues, should be channeled through and administered by an institution on the national level, which institution shall be responsible for and have authority to promulgate and enforce certain rules and

regulations to achieve national goals and the objective of providing public waterworks services integration or joint investments and operations whenever economically warranted and to assure the maintenance of uniform standards, training of personnel and the adoption of sound operating and accounting procedures.

SEC.3. Definitions. As used in this Decree, the following words and terms shall have the meanings herein set forth, unless a different meaning clearly appears from the context. The definition of a word or term applies to any its variants.

(a) *Act.* This Provincial Water Utilities Act of 1973.

(b) *Appointing Authority.* The person empowered to appoint the members of the Board of Directors of a local water district depending upon the geographic coverage and population makeup of the particular district. In the event more than seventy-five percent of the total active water service connections of a local water district are within the boundary of any city or municipality, the appointing authority shall be the mayor of the city or municipality, as the case may be; otherwise, the appointing authority shall be the governor of the province within which the district is located: Provided, That if the existing waterworks system in the city or municipality established as a water district under this Decree is operated and managed by the province, initial appointment shall be extended by the governor of the province. Subsequent appointments shall be as specified herein.

If portions of more than one province are included within the boundary of the district, and the appointing authority is to be the governor, then the power to appoint shall rotate between the governors involved with

the initial appointments made by the governor in whose province the greatest number of service connections exists. (As amended by Sec. 1, PD 768).

(c) *Administration.* The Local Water Utilities Administration chartered in Title III of this Decree.

(d) *NEDA.* The National Economic and Development Authority. (Note: This paragraph should properly have been deleted).

(e) *Board or Board of Directors.* The Board of Directors of a district.

(f) *Contracts.* All agreements, including leases, conveyances and obligations

(f) *District.* A local water district formed pursuant to Title II of this Act.

(h) *Local Water Utilities.* Any district, city, municipality, province, investor-owned public utility or cooperative corporation which owns or operates a water system serving an urban center in the Philippines, except that said term shall not include the Metropolitan Waterworks and Sewerage System (MWSS) or any system operated by the Bureau of Public Works as successor to the Walls and Springs Department of the National Waterworks and Sewerage Authority.

(i) *Person.* A natural person, corporation, cooperative, partnership, association, city, municipality or other juridical entity.

(j) *Property.* All real and personal property, including but not limited to: water, water rights, works, easements, rights of way.

(k) *Street.* Includes road, alley, avenue, and highway of other public way.

(l) *Trustees or Board of Trustees.* The Board of Trustees of the Administration.

TITLE II

LOCAL WATER DISTRICT LAW

Chapter 1 - Title

SEC. 4. **Title.** The provisions of this Title shall be known and referred to as the "Local Water District Law."

Chapter II - Purpose and Formation

SEC. 5. **Purpose.** Local water district may be formed pursuant to this Title for the purpose of (a) acquiring, installing, improving, maintaining and operating water supply and distribution systems for domestic, industrial, municipal and agricultural uses for residents and lands within the boundaries of such districts, (b) providing, maintaining and operating wastewater collection, treatment and disposal facilities, and (c) conducting such other functions and operations incidental to water resources development, utilization and disposal within such districts, as are necessary or incidental to said purpose.

SEC. 6. **Formation of District.** This Act is the source of authorization and power to form and maintain a district. Once formed, a district is subject to the provisions of this Act and not under the jurisdiction of any political subdivision. For purposes of this Act, a district shall be considered as a quasi-public corporation (*The Supreme Court, in an en banc decision dated Sept. 13, 1991 in the case of Davao City Water District et. al. vs. CSC et. al. {G.R. No. 95237-38} has declared Water Districts as government-owned and controlled corporations*) performing public service and supplying public wants. As such, a district shall exercise the powers, rights and privileges given to private corporation under existing laws, in addition to the powers granted in,

and subject to such restriction imposed under, this Act. To form a district, the legislative body of any city, municipality or province shall enact a resolution containing the following: (As amended by Sec.1, PD 1479)

(a) The name of the local water district, which shall include the name of the city, municipality, or province, or region thereof, served by system, followed by the words "Water District."

(b) A description of the boundary of the district. In the case of a city or municipality, such boundary may include all lands within the city or municipalities, cities or provinces, or portions thereof: Provided, That such municipalities, cities or provinces, or portions thereof, cover a contiguous area. (As amended by Sec. 2, PD 768)

(c) A statement completely transferring any and all waterworks and/or sewerage facilities managed, operated by or under the control of such city, municipality or province to such district upon the filing of resolution forming the district. (As amended by Sec. 2 PD 768: Sec. 1, PD 1479)

(d) A statement identifying the purpose for which the district is formed, which shall include those purposes outlined in Section 5 above.

(e) The names of the initial directors of the district with the date of expiration of the term of office for each which shall be on the 31st of December of first, second, or third even-numbered year after assuming office, as set forth in Section 11 hereof. (As amended by Sec. 2, PD 768)

(f) A statement that the district may only be dissolved on the grounds and under the conditions set forth in Section 45 of this Title.

(i) A statement acknowledging the powers, rights and obligations as set forth in

Section 25 of this Title.

Nothing in the resolution of formation shall state or infer that the local legislative body has the power to dissolve, alter or affect the district beyond that specifically provided for in this Act.

If two or more cities, municipalities or provinces, or any combination thereof, desire to form a single district, a similar resolution shall be adopted in each city, municipality and province; or the city, municipality or province in which 75% of the total active service connections are situated shall pass an initial resolution to be concurred in by the other cities, municipalities or provinces. (As amended by Sec. 2, PD 768)

SEC. 7. *Filing of Resolution.* A certified copy of the resolution or resolutions forming a district shall be forwarded to the office of the Secretary of the Administration. If found by the Administration to conform to the requirement of Section 6 and the policy objectives in Section 2 the resolution shall be duly filed. The district shall be deemed duly formed and existing upon the date of such filing. A certified copy of said resolution showing the stamp of the administration shall be maintained in the office of the district. Upon such filing, the local government or governments concerned shall lose ownership, supervision and control or any right whatsoever over the district except. As provided herein (As amended by Sec. 3, PD 768)

CHAPTER III - Directors

SEC. 8. *Number and Qualification.* The Board of Directors of a district shall be composed of five citizens of the Philippines who are of voting age and residents within the district. One member shall be representative

of civic-oriented service clubs, one member a representative of professional associations, one member a representative of business, commercial, or financial organizations, one member a representative of educational institutions, one member a representative of women's organizations. No public official shall serve as directors: Provided, however, that if the district has availed of the financial assistance of the Administration, the administration may appoint any of its personnel to sit in the board of directors with all the rights and privileges as pertaining to a regular member, for such period as the indebtedness remains unpaid, in which case the board shall be composed of six members. (As amended by Sec. 4, PD 768; Sec. 4, PD 1479)

SEC. 9. *Appointment.* The appointing authority shall appoint board members. Said appointments shall be made from a list of nominees, if any, submitted pursuant to Section 10. If no nominations are submitted, the appointing authority shall appoint any qualified person of the category to the vacant position.

SEC. 10. *Nominations.* On or before October 1 of each even-numbered year, the secretary of the district shall contact each known organization, association, or institution being represented by the director whose term will expire on December 31 and solicit nominations from these organizations to fill the position for the ensuing term. One nomination may be submitted in writing by each organizations to the secretary of the district on or before November 1 of such year. The list of nominees shall be transmitted by the secretary of the district to the office of the appointing authority on or before November 15, or such year and he shall make his

appointment from the list submitted on or before December 15. In the event the appointing authority fails to make his appointments on or before December 15, selection shall be made from said list of nominees by majority vote of the seated directors of the district constituting a quorum. Initial nominations for all five seats of the board shall be solicited by the legislative body or bodies at the time of adoption of the resolution forming the district. Thirty days thereafter. A list of nominees shall be submitted to the provincial governor in the event the resolution forming the district is by a provincial board, or the mayor of the city or municipality in the event the resolution forming the adoption of the district is by the city or municipal board of councilors, who shall select the initial directors there from within 15 days after receipt of such nominations.

SEC. 11. *Term of Office.* Of the five initial directors of each newly formed district, two shall be appointed for a maximum term of two years, two for a maximum term of four years, and one for a maximum term of six years. Term of office of all directors in a given district shall be such that the term of at least one director, but not more than two, shall expire on December 31 of each even-numbered year. Regular terms of office after the initial terms shall be for six years commencing on January 1 of odd-numbered years. Directors may be removed for a cause only, subject to review and approval of the Administration. (As amended by Sec. 5, PD 768)

SEC. 12. *Vacancies.* In the event of a vacancy in the Board of Directors occurring more than six months before expiration of any director's term, the remaining directors shall within 30 days, serve notice to or request the

secretary of the district for nominations and within 30 days thereafter a list of nominees shall be submitted to the appointing authority for his appointment of a replacement directors from the list of nominees. In the absence of such nominations, the appointing authority shall make such appointment. If within 30 days after submission to him of a list of nominees the appointing authority fails to make an appointment, the vacancy shall be filled from such list by a majority vote of the remaining members of the Board of Directors constituting a quorum. Vacancies occurring within the last six months of an unexpired term shall also be filled by the Board in the above manner. The director thus appointed shall serve the unexpired term only. (As amended by Sec. 12. PD 768)

SEC. 13. *Compensation.* Each director shall receive *per diem*, to be determined by the Board, for each meeting of the Board actually attended by him, but no director shall receive per diems in any given month in excess of the equivalent of the total per diem of four meetings in any given month. No director shall receive other compensation for service to the district.

Any per diem in excess of One Hundred Fifty pesos (P150.00) shall be subject to approval of the Administration. In addition thereto, each director shall receive allowances and benefits as the Board may prescribe subject to the approval of the Administration." (As amended by Sec. 7. PD 768; R.A. 9286)

SEC. 14. *Personal Liability.* No director may be held to be personally liable for any action of the district.

Chapter 1V - The Board

SEC. 15. *Organizational Meeting.* The Board shall hold its first meeting as soon as

practicable after appointment of the first directors, and not later than 45 days after formation of the district. At said first meeting of the district Board, and thereafter at the first meeting of each odd-numbered years, the Board shall elect a chairman, a vice-chairman, a secretary and a treasurer. Such secretary and treasurer may, but need not be members of the Board, and the offices of the secretary and treasurer may be held by the same person.

SEC. 16. **Quorum.** A majority of the Board present in person shall constitute a quorum for the transaction of business; Provided, however, That no resolution or motion shall be adopted or become effective without the affirmative vote of a majority of the authorized number of members of the Board.

Chapter V - Powers and Duties of the Board

SEC. 17. **Performance of District Powers.** All powers, privileges, and duties of the district shall be exercised and performed by and through the Board: Provided, however, That any executive, administrative or ministerial power shall be delegated and redelegated by the Board to officers or agents designated for such purpose by the Board.

SEC. 18. **Functions Limited to Policy-Making.** The function of the Board shall be to establish policy. The Board shall not engage in the detailed management of the district.

SEC. 19. **By Laws.** At its first meeting, the Board shall adopt, and may thereafter from time to time amend by-laws for the operation of business and affairs of the Board and the district. By-Laws may not be amended without 30 days public notice to that effect, and a public hearing held.

SEC. 20. **System of Business Administration.** The Board shall, as soon as

practicable, prescribe and define by resolution a system of business administration and accounting for the district, which shall be patterned upon and conform to the standards established by the Administration. Auditing shall be performed by a certified public accountant not in the government service. The Administration may, however, conduct annual audits of the fiscal operations of the district to be performed by an auditor retained by the Administration. Expenses incurred in connection therewith shall be borne equally by the district and the Administration. (As amended by Sec. 8, PD 768)

SEC. 21. **Depository.** The district's depository shall be the Philippine National Bank, unless use of such bank is impractical: Provided, however, That any and all reserves accumulated for capital improvement may be deposited with the Administration.

SEC. 22. **Contracts.** All contracts of the district shall be entered into by or pursuant to authority of the Board: Provided, however, That the Board may by resolution delegate and redelegate to officers or agents of the district under conditions and restrictions as shall be fixed by the Board, the power to bind the district by contract.

Chapter VI - Officers and Employees

SEC. 23. **The General Manager.** At the first meeting of the Board, or as soon thereafter as practicable, the Board shall appoint, by a majority vote, a general manager and shall define his duties and fix his compensation. Said officer shall not be removed from office, except for cause and after due process. (As amended by Sec. 9, PD 768. Also see amendment under R.A. 9286.)

SEC. 24. **Duties.** The duties of the General Manager and other officers shall be determined

and specified from time to time by the Board. The General Manager, who shall not be a director; shall have full supervision and control of the maintenance and operation of water district facilities, with power and authority to appoint all personnel of the district: Provided, That the appointment of personnel in the supervisory level shall be subject to approval by the Board. (As amended by Sec. 10, PD 768)

Chapter VII - Powers of Districts

SEC. 25. **Authorization.** The district may exercise all the powers which are expressly granted by this Title or which are necessary, implied from, or incidental to the powers and purposes herein stated. For the purpose of carrying out the objectives of this Act, a district is hereby granted the power of eminent domain, the exercise thereof shall, however, be subject to review by the Administration. (As amended by Sec. 4, PD 1479)

SEC. 26. **Acquisition of Waterworks.** A district may purchase, construct, or otherwise acquire works, water, water rights, land rights and privileges useful or necessary to convey, supply, store, collect, treat, dispose of or make other use of water for any purpose authorized by this Title. In the acquisition of water or water rights the district shall cooperate with existing agencies of the government of the Philippines. (As amended by Sec. 5, PD 1479)

SEC. 27. **Sale of Water.** The district shall have the power to sell water pursuant to generally applicable rules and regulations, to any person for use within the district. As a condition of such sale, the district may require the filing of a written application for service, payment of established charges or deposits and execution of a water service contract.

A district may provide service to public faucets or hydrants provided that it shall first have executed an application and service contract with the Government entity to establish or maintain such faucets or hydrants within the district. The district will be paid for such service in the same manner as regular domestic service and pursuant to the adopted rules and regulations of the district.

Any district holding a valid Certificate of Conformance or a Conditional Certificate of Conformance from the Administration shall be exempt from regulation by the Public Service Commission or its successors. (As amended by Sec. 5, PD 1479)

SEC. 28. **Sewerage.** A district may require, construct, operate and furnish facilities and services, within or without the district, for the collection, treatment and disposal of sewerage, waste, and storm water. The district may only furnish such service outside the district by means of facilities designed primarily to serve inside the district. Upon providing a sewer system in any area of the district, the district may acquire all buildings used by human beings to be connected to the sewer system within such reasonable times as may be prescribed by the district, provided that the property upon which such building to be connected stands is located within 35 meters of an existing main of the district's sewer system. The district may declare the further maintenance or use of cesspools, septic tanks, or other local means of sewerage disposal in such area to be a public nuisance and, after notice in writing of at least 10 days, deprive said property owner of any and all services provided by the district, which sanction may be co-extensive with the period during which the property owner persists in refusing to connect with the

district's sewer system. (As amended by Sec. 5, PD 1479)

SEC. 29. ***Rights of Way.*** The right of way is hereby granted to locate, construct and maintain works of the district on any land which is now, or hereafter may be, owned by the Government of the Philippines or by any of its political subdivisions, and/or instrumentalities. A district may construct any works along, under or across any street, watercourse, railway, or conduit in any manner, which will afford security for life and property. *Provided*, That in planning any such works, the environmental aspects shall also be considered. (As amended by Sec. 5, PD 1479)

Sec. 30. ***Contracts.*** A district shall have the power to enter into contracts with any person for the purpose of performing any function of the district: *Provided*, That the Board of Directors may not by contract delegate any of the discretionary powers vested in the Board by this Title. Specifically, but without limiting said general power, a district may enter into the following contracts:

(a) Cooperation. Agreement with the Government of the Philippines or any of its agencies or political subdivisions for the cooperative or joint performance of any function of the district.

(b) In-Lieu Share. As an incident to the acquisition of the existing water system of a city, municipality, or province, a district may enter into a contract to pay in-lieu share for such utility plant, an annual amount not exceeding three percent (3%) of the district's gross receipts from water sales in any year: *Provided, however*, That no contract of this nature shall be executed during the first five years of the existence of the district; and *Provided, further*, that the Board of Directors shall determine that such contract will not

adversely affect or impair the fiscal position and operations of the district as verified by the Administration. (As amended by Sec.11, PD 768: Sec. 5, PD 1479)

(c) MWSS Agreement. In the event the city, municipality or province has not reached agreement with the Metropolitan Waterworks and Sewerage System pursuant to Section 15 and 17 of R.A. 6234, a district, may, with the consent of the local government, act for and in behalf of the local interests in negotiating and executing such contract for final settlement of the consequences of MWSS involvement in the operation of the water system.

SEC. 31. ***Protection of Waters and Facilities of District.*** A district shall have the right to:

(a) Commence, maintain, intervene in, defend and compromise actions or proceedings to prevent interference with or deterioration of water quality or the natural flow of any surface, stream or ground water supply which may be used or useful for any purpose of the district or be a common benefit to the lands or its inhabitants. The ground water within a district is necessary to the performance of the district's powers and such district is hereby authorized to adopt rules and regulations subject to the approval of the National Water Resources Council governing the drilling, maintenance and operation of wells within its boundaries for purposes other than single family domestic use on overlaying land. Any well operated in violation of such regulations shall be deemed an interference with the water of the district.

(b) Require a developer or builder of any structure within the service areas of the district to extend or connect its pipeline facilities to the district facilities whenever such

development or structure is within one hundred meters of existing district facilities or whenever the district is willing to extend its facilities within one hundred meters of said development or structure. For the purpose of this section, development shall include the subdivision of land for any purpose other than agricultural purpose, and structure shall mean any building of facility to be used for residential, commercial or industrial purpose.

(c) Prohibit any person, firm or corporation from vending, selling, or otherwise disposing of water for public purposes within the service area of the district where district facilities are available to provide such service, or fix terms and conditions by permit for such sale or disposition of water.

(d) Safeguard and protect the use of its waters. For this purpose, any person who installs any water connection without the previous authority from the water district established under this Decree; tampers water meters or uses jumpers or other devices whereby water is stolen; steals or pilfers water or water meters; knowingly possesses stolen or pilfered water or water meters shall upon conviction, be punished by *prision correccional* in its minimum period or a fine ranging from two thousand pesos to six thousand pesos, or both. If the violation is committed with the connivance or permission of an employee or officer of the water district, an employee or officer shall, upon conviction, be punished by a penalty one degree lower than *prision correccional* in its minimum period and forthwith be dismissed and perpetually disqualified from employment in any utility or service company owned or controlled by the government. (As amended by Sec. 12, PD 768)

(e) Take over the management,

administration, operation, and maintenance of all watersheds within its territorial boundaries. (As amended by Sec. 6, PD 1479)

SEC. 32. ***Fire Protection Capacity.*** The district may install and maintain pipeline capacity and additional hydrants for fire protection purposes: Provided, That prior agreement has been executed with the public entity having principal fire protection responsibility within the district whereby the district will be reimbursed over the reasonable life of said facilities for the cost of installation and operation of such fire protection capacity and facilities. (As amended by Sec. 7, PD 1479)

Chapter VIII - Financial Provisions

SEC. 33. ***Receipt, Deposit and Payment of District Funds.*** The treasurer shall receive, to the credit of the district and in trust for its use and benefit, all monies belonging to the district. All monies belonging to the District shall, where practicable, be deposited by the treasurer in the Philippine National Bank. (As amended by Sec. 13, PD 768; Sec. 7, PD 1479)

SEC. 34. ***Bonds or Other Evidence of Indebtedness.*** A district may borrow money to raise funds to pay all cost of any public improvement authorized by this Title and may issue negotiable or non-negotiable bonds, promissory notes or other evidence of indebtedness to support such borrowings. These obligations may be secured by a mortgage, pledge, deed or trust or any other encumbrance upon any of its then owned or afteracquired real or personal property, assets or revenues and the same shall constitute a lien as to the principal and interest thereon, on all such property, assets or revenues. The interests on such bonds or notes are exempt from all taxes, duties, fees, imposts or other charges of the national or local governments.

(As amended by Sec. 14, and 15, PD 768, Sec. 7, PD 1479).

SEC. 35. *Authority for Subsequent Borrowings.* Where a water district has borrowed money from the Administration, the district shall not borrow money or incur further obligations from other sources without the prior written consent of the Administration. (Sec. 16, PD 768; Sec 7 PD 1479)

Sec. 36. *Default* - In the event of the default by the district in the payment of principal or interest on its outstanding bonds or other obligations, any bondholder or creditor shall have the right to bring an action before the appropriate court to compel the payment of such obligations. If the bondholder or creditor concerned is the Administration, it may, without the necessity of judicial process, take over and operate the entire facilities, systems or properties of the district. For this purpose, the Administration may designate its employees or any person or organization to assume all powers or policy-decision and the powers of management and administration, including but not limited to the establishment of water rates and charges, the dismissal and hiring of personnel, the purchase of supplies, equipments, and materials and such other actions as may necessary to operate the utility efficiently. (Sec. 16, PD 768; As amended by Sec. 7, PD 1479)

Chapter IX - Revenues

Sec. 37 - *Rates and Charges- Water* - A district may sell water under its control, under schedules of rates and charges as may be determined by the Board, to any and all water users within the district. Said schedule may provide for differential rates for different categories of use and different quantity blocks.

The district, as far as practicable, shall fix such rates and charges for water as will result in revenue which will;

(a) Provide for reimbursement from all new water customers for the cost of installation of new services and meters;

(b) Provide for revenue from all water deliveries and services performed by the district;

(c) Pay the operating expenses of the district;

(d) Provide for the maintenance and repairs of the works;

(e) Provide a reasonable surplus for replacement, extension and improvements; and

(f) Pay the interest and principal and provide a sinking fund for the payment of debts of the district as they become due and establish a fund for reasonable reserves. (As amended by Sec. 17, PD 768; Sec. 7, PD 1479)

Sec. 38. *Service and Stand-by Charges.- Sewer* - A district may prescribe and collect rates and other charges for sewer services furnished. A district may also fix, levy and collect a sewerage and wastewater service stand-by or availability charge in the event the sewer service is available and no connections is made. Such rates and charges may be collected with the water charges of the district. In the event of failure to pay the whole or any part thereof, district may discontinue any and all services for which such bill is rendered, including water, shall not be construed to prohibit the district from collecting rates and other charges in any other lawful manner. (As amended by Sec. 18, PD 768; Sec. 7, PD 1479)

SEC. 39. *Production Assessment.* In the event the Board of the district finds, after notice and hearing, that production of groundwater by other entities within the

district for commercial or industrial uses is injuring or reducing the district's financial condition, the Board may adopt and levy a groundwater production assessment to compensate for such loss. In connection in there-with, the district may require necessary reports by the operator of any commercial or industrial well. Failure to pay said assessment shall constitute an invasion of the waters of the district and shall entitle this district to an injunction and damages pursuant to Section 31 of this Title. (As amended by Sec. 18, PD 768; Sec. 7, PD 1479)

SEC. 40. *Assessment and Stand-by Charges.* - In order to obtain capital to finance installation of sanitary sewerage, a district shall have the power to establish by resolution of the Board of Directors the area to be benefited from such facilities. After a hearing and upon notice to all parties affected, the district may levy and collect assessment, or stand-by charges based upon available capacities or upon selected characteristics of property benefited by said improvements, as determined by the Board. Said characteristics may include, but not limited to, the effective length of property counting upon the proposed improvement or, in terms of the area contained within the boundary of said property. Said assessment, if unpaid, shall be and constitute a lien on the land assessed. (As amended by Sec. 18, PD 768; Sec. 7, PD 1479)

SEC. 41. *Disposition of Income.* - The income of the district 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 allocate at least fifty percent (50%) of the balance exclusively as a reserve for debt service and operating and

maintenance, to be used for such purposes only during periods of calamities, force majeure or unforeseen events.

Third, to allocate the residue as a reserve exclusively for expansion and improvement of its physical facilities. (Sec. 8, PD 1479)

Chapter X - Changes in Organization

SEC. 42. *Exclusion of a Territory.* Any territory within the boundary of district may be excluded by resolution of the Board of Directors after notice to landowners within the territory proposed to be excluded, and upon a finding that said lands do not and will not benefit by reason of their inclusion within the district. A certified copy of said resolution of exclusion shall be filed in the same manner and become effective in accordance with the provision applicable to the resolution forming the district. (As amended by Sec. 18, PD 768)

SEC. 43. *Annexation and Deannexation.* The Administration may, after notice to property owners within the territory proposed for annexation or deannexation, and following a hearing, make finding of benefit or potential benefit, and thereafter, require filing of an appropriate resolution in the same manner as the filing of the resolution forming a district or of exclusion, as the case may be. (As amended by Sec. 18, PD 768)

SEC. 44. *Consolidation and Joint Operation.* The Administration may require the merger or consolidation of the facilities or operation of two or more district formed pursuant to the levy, in the event that the Administration shall have determined, following a hearing, that such merger or consolidation is in the best interest of the residents in the districts involved. (As amended by Sec. 18, PD 768)

SEC. 45. *Dissolution.* A district may be

dissolved by resolution of its Board of Directors filed in the manner of filing the resolution forming the district: *Provided, however,* That prior to the adoption of any such resolution: (1) another public entity has acquired the assets of the district and has assumed all obligations and liabilities attached thereto; (2) all bondholders and other creditors have been notified and they consent to said transfer and dissolution; and (3) a court of competent jurisdiction has found that said transfer and dissolution are in the best interest of the public. (As amended by the Sec. 19, PD 768)

Subject to Philippine Supreme Court en banc decision of September 13, 1991 declaring water districts as "government owned or controlled corporations with original charter." (Davao City Water District et.al. vs. Civil Service Commission et.al.)

Chapter XI - Protection to Districts

SEC.46. Exemption from Taxes. - A district shall (1) be exempt from paying income taxes, and (2) shall be exempt from payment of (a) all National Government, local government and municipal taxes and fees, including any franchise, filing, recordation, license or permit fees or taxes and any fees, charges or costs involved in any court or administrative proceeding in which it may be a party and (b) all duties or imposts on imported machinery, equipment and materials required for its operations. (As amended by Sec. 20, PD 768)

SEC. 47. Exclusive Franchise. - No franchise shall be granted to any other person or agency for domestic, industrial or commercial water service within the district or any portion thereof unless and except to the extent that the Board of Directors of said district consents thereto by resolution duly adopted, such resolution, however, shall be subject to review by the Administration. (As amended by Sec. 20, PD 768; Sec. 9, PD 1479)

SECTION 2

TITLE III

LOCAL WATER UTILITIES ADMINISTRATION LAW

Chapter I - Title

SEC. 48. **Title.** - This Title of the Provincial Water Utilities Act of 1973 shall be known and referred to as the "Local Water Utilities Administration Law". (As amended by Sec. 20, PD 768)

Chapter II - Purpose and Formation

SEC. 49. **Charter.** - There is hereby chartered, created and formed a government corporation to be known as the "Local Water Utilities Administration" which is hereby attached to the Office of the President. The provisions of this Title shall be and constitute the charter of the Administration. (As amended by Sec. 21, PD 768)

SEC. 50. **Purposes.** - The Administration shall primarily be a specialized lending institution for the promotion, development and financing of local water utilities. In the implementation of its functions, the Administration shall, among others: (1) prescribe minimum standards and regulations in order to assure acceptable standards of construction materials and supplies, maintenance, operation, personnel training, accounting and fiscal practices for local water utilities ; (2) furnish technical assistance and personnel training programs for local water utilities; (3) monitor and evaluate local water

standards; and (4) effect systems integration, joint investment and operations, district annexation and deannexation whenever economically warranted. (As amended by Sec. 22, PD 768)

Chapter III - Board of Trustees

SEC. 51. **Composition.** - The Board of Trustees of the Administration shall be composed of a chairman and four other members, all of whom shall be citizens of the Philippines.

One trustee at any time shall have at least ten years experience in banking, finance or business. One trustee at any time shall possess sufficient background in the field of economics; one trustee at any time shall have experience in management or systems operations. Two trustees at any time shall be civil or sanitary engineers with experience related to water supply or wastewater operations. Not more than one trustee may represent a private investor-owned utility. No elected official shall be entitled to act as a trustee. At least three of the trustees must be employees of the National Government.

The General Manager shall be *ex-officio* member of the Board. (As amended by Sec. 23, PD 768)

SEC. 52. **Appointment and Term of Office.** - The trustees, with the exception of the ex-officio member, shall be appointed by the President of the Philippines. They shall serve a term of five years each: Provided, That of the first four initially appointed, one shall serve a term of five years, another for four years, the third for three years, and the fourth for two years. Trustees may be removed for cause only.

The incumbent trustees holding office as such upon the effectivity of this amendment

shall continue to hold such office until the expiration of their original terms as defined in their appointments. (As amended by the Sec. 24, PD 768)

SEC. 53. **Vacancies.** - Vacancies in the Board of Trustees for any reason whatsoever shall be filled by the President of the Philippines in like manner as in the case of new appointments but the trustees so appointed shall serve only the unexpired portion of the term of the trustees substituted for. (As amended by Sec. 25, PD 768)

SEC. 54. **Powers.** - All of the business and affairs of the Administration shall be carried on and its powers shall be exercised by and through the Board of Trustees. The function of the trustees, however, shall be to establish policy, not to engage in the detailed management of the Administration. (As amended by the Sec. 25, PD 768)

SEC. 55. **Compensation.** - The Trustees shall each receive a per diem as may be fixed by the Board for each meeting actually attended by them: *Provided*, That the total of such *per diem* in any one month for each Trustee, shall not exceed the equivalent of the per diems for four meetings: *Provided, further*, That per diems in excess of three hundred pesos per meeting shall be subject to the approval of the Office of the President; and *Provided, Finally*, That, in addition, each Trustee shall be reimbursed his expenses incurred in connection with the performance of his functions in such amounts as may determined by the Board of Trustees. (As amended by Sec. 26, PD 768)

Chapter IV - By Laws

SEC. 56. **By-Laws.** - The Board of Trustees shall adopt a code of by-laws for the conduct of the affairs of the Administration

which may be amended from time to time by the affirmative vote of four Trustees.

Except as otherwise provided herein, the organizational structure and staffing pattern of the Administration, the qualification of the appointive officers and employees, the powers and responsibilities of the officers, the internal procedure of the Administration, and such other matters relative to the organization, management and conduct of the affairs of the Administration shall be as provided in by the by-laws; *Provided*, That the appointment of and disciplinary action against officers and employees of the Administration shall be done and effected pursuant to guidelines established by the Board of Trustees. (As amended by Sec. 27, PD 768)

Chapter V - Officers and Employees

SEC. 57. **Officers.** - The Board shall elect a Chairman from among its members. In addition, the Board shall select a secretary and a corporate legal counsel, each of whom shall not be a trustee (As amended by Sec. 28, PD 768).

SEC. 58. **The General Manager and Other Employees.** - The Trustees shall select a general manager who shall not come from the appointed trustees. The general manager shall receive compensation in an amount as may be fixed by the Board, subject to the approval of the President of the Philippines, but in no case less than fifty-four thousand pesos *per annum*. The general manager shall employ and appoint all additional personnel; *Provided*, That the appointment of personnel in the supervisory level shall be subject to confirmation by the Board.

The incumbent manager holding office as such upon the effectivity of this amendment shall continue to hold such office unless sooner

terminated by competent authority. (As amended by Sec. 29, PD 768)

The regular professional and technical personnel of the Administration shall be exempt from WAPCO and Civil Service rules and regulations; *Provided*, that the personnel shall be entitled to the benefits and privileges normally accorded to government employees, such as retirement, GSIS insurance, leave and similar matters.

Chapter VI - Powers

SEC. 59. ***General Corporate Powers.*** - The Administration shall have all the powers which are expressly granted to it under this Title, or which are necessary, implied from, or incidental to the power and purposes herein stated.

SEC. 60. ***Borrowing and Security Therefor.*** - The Administration may borrow funds as authorized in Section 72 of this Title, and issue as security therefor debentures or other evidence of indebtedness constituting lien on any and all securities, covenants and obligations of local water utilities held by the Administration as security for loans made to such local water utilities. (As amended by Sec. 30, PD 768)

SEC.61. ***Loans.*** - Administration may make loans from its Revolving Loan Funds to qualified local water utilities, upon the following condition and pursuant to the following procedures:

(a) ***Qualification of Borrower.*** - Before any loan may be granted, the local water utility shall (1) hold a valid certificate of conformance or a conditional certificate of conformance from the Administration, and (2) meet such other and further loan qualification requirements as the trustees may establish;

(b) ***Feasibility Study.*** - A feasibility study

which may be required by the Administration for any proposed project for which loan funds are sought may be undertaken by the water district, the Administration or by a consultant pre-qualified by the Administration; (As amended by Sec. 31, PD 768)

(c) ***Security.*** - The Administration may take as security for such loans the authorized bonds or other evidence of debt by the water district and a mortgage on its properties; (As amended by Sec. 31, PD 768)

(d) ***Loan Documents and Procedures.*** - The Board of Trustees shall adopt rules, loan documents and procedures to be used in the granting of loans. Such rules shall include provisions for security, payment and default. (As amended by Sec. 31, PD 768)

(e) ***Default.*** - In the event of default by the local water district in the payment of principle or interest on its outstanding bonds or other obligations to the Administration, the latter may, without the necessity of judicial process, take over and operate the facilities or properties of the district. For this purpose, the Administration may designate its employees or any person or organization to assume both the policy-making authority and the powers of management, including but not limited to, the establishment of water rates and service charges, the dismissal and hiring of personnel, the purchase of equipment, supplies or materials and such other actions as may be necessary to operate the water district efficiently. Such policy-making and management prerogatives may be returned to the Board of Directors and the General Manager of the water district, respectively, when all of its overdue accounts have been paid, all its reserve requirements have been satisfied and all the causes of default have been met. (As amended by Sec. 31, PD 768)

(f) *Funding of Loan.* - When a loan is made to local water utility, the necessary amount of such loan shall be programmed to assure completion of the project for which such loan was granted. (As amended by Sec.10, PD 1479)

SEC. 62. ***Regulations.*** - Administration shall have the power and duty to establish standards for local water utilities and adopt rules and regulations for the enforcement thereof. The Administration shall vigorously consult and coordinate its actions with all government agencies active in the areas of public works and all other concerned agencies in the promulgation of these standards. Said standards and regulations shall include the following:

(a) *Water Quality.* - Minimum drinking water standards including a uniform testing and reporting system. Said standards shall include bacteriological, chemical and physical parameters;

(b) *Design and Construction.* - Minimum criteria for the design and construction of new or additional facilities for water supply, treatment, transmission and distribution, and for wastewater collection, treatment and disposal;

(c) *Equipment, Materials and Supplies.* - Standards for the optimum selection and effective utilization of equipment, materials and supplies by local water and sewer utilities;

(d) *Operations and Maintenance.* - Standardized procedures for operating and maintaining equipment and facilities;

(e) *Personnel.* - The training of personnel who operate or manage local water utilities. For this purpose, at least a majority of the personnel of a local water district must have satisfactorily completed appropriate training courses, programs or seminars conducted by the Administration, and must be holders of a

certificate of completion or competence, as the case may be, before a certificate of conformance is issued to the water district.

For certain positions which the Administration may specify, only those persons possessing, or in the case of subsequent appointments, only persons who will undergo training and shall have obtained within six months, a certificate of completion or competence, as the case may be, shall be appointed; (As amended by Sec. 31, PD 768)

(f) *Organization.* - Organizational and institutional criteria to assure independent operation and funding of local water utilities;

(g) *Accounting.* - A uniform accounting system with uniform chart of accounts. Said standards and regulations shall also include stipulated levels of internal reporting to local water utility management.

SEC. 63. ***Rate Review.*** - Any publicly-owned local utility holding a Certificate of Conformance or Conditional Certificate of Conformance from the Administration is hereby declared exempt from the jurisdiction of the Public Service Commission or its successor. Any rates or charges established by such local water utility shall be adequate to provide for:

(a) Reimbursement from all new water customers for the cost of installing new services and meters;

(b) Revenue from all water deliveries and services performed by the district;

(c) Annual operating expense of the district;

(d) The maintenance and the repair of the works;

(e) A reasonable surplus for replacement, extension and improvement; and

(f) Payment of the interest and principal and provide a sinking fund for payment of

debts of the district as they become due and establish fund for reasonable resources.

The rates or charges established by such local district, after hearing shall have been conducted for the purpose, shall be subject to review by the Administration to establish compliance with the above-stated provisions. Said review of rates or charges shall be executory and enforceable after the lapse of seven calendar days from posting thereof in a public place in the locality of the water district, without prejudice to an appeal being taken therefrom by a water concessionaire to the National Water Resources Council whose decision thereon shall be appealable to the Office of the President. An appeal to the Council shall be perfected within thirty days after the expiration of the seven-day period of posting. The council shall decide an appeal within thirty days from perfection. (As amended by Sec. 11, PD 1479)

SEC. 64. *Technical Assistance.* - Administration shall provide technical assistance to local water utilities their boards, management, and operating personnel, to aid in meeting the standards and criteria established by the Administration, and to encourage the upgrading of the operations and management of such local water utilities. Said technical assistance should consist of those matters which are practical to finance or develop on a national basis but are beyond the capability of the individual local water utility, as such.

SEC. 65. *Training Programs.* - Administration shall establish training programs and seminars for personnel of local water utility. Programs shall include the areas of utility management, operation, maintenance and customer service. Administration shall have the power to issue

Certificate of Completion for the satisfactory completion of a specified course of instruction. In the case of operational personnel, Administration may conduct appropriate examinations and issue corresponding Certificate of Competence to assist local water utilities to meet the personnel standards set pursuant to Section 62 (e) of this Title.

SEC. 66. *Certificate of Conformance.* - Administration may require report from all water utilities, conduct field investigations and review all available information to determine whether there has been conformance to its standards and procedures established pursuant to Section 62 of the Title. Upon finding that said standards are met, the Administration shall issue a Certificate of Conformance to any such water utility. Said Certificate may be revoked after due notice and hearing as to any local water utility which thereafter fails to continue conformance with such standards. A Conditional Certificate of Conformance may be issued where procedures and practices have been adopted to assure conformances and reasonable time schedule has been adopted. Failure, to reach conformance as contemplated shall be cause for revocation of such conditional certificate, without hearing or other cause.

Chapter VII - Financial Provision

SEC. 67. *Capital Stock.* - The authorized capital of the Local Water Utilities Administration is Two Billion Five Hundred Million Pesos divided into Twelve Million Five Hundred Thousand shares of stock with a par value of Two Hundred Pesos per share which shall be subscribed by the National Government and opened to subscription by private investors or government financial institutions. (Sec. 34, PD 768; as amended by

Sec. 12, PD 1479)

SEC. 68. *Payment for National Government Shares.* - All amounts previously released by the National Government to the Revolving Fund of the Administration shall be credited as payment for subscriptions to shares of stock at par value. Whatever balance remaining of said subscription shall be paid from a continuing appropriation which is hereby made out of any funds in the National Treasury not otherwise appropriated, such annual appropriation to be programmed and released in accordance with pertinent budget laws *Provided*, That this continuing appropriation shall remain in force until the balance of the unpaid subscription of the government to the capital stock of the Administration have been paid in full. (Sec. 34, PD 768; as amended by Sec. 13, PD 1479)

SEC. 69. *Operational Expenses.* - The Board of Trustees is hereby authorized to appropriate out of any funds of the Administration, such amounts as it may deem necessary for the operational and other expenses of the Administration including purchase of necessary equipment. (Sec. 34, PD 768)

SEC. 70. *Charges.* - To the extent that the Administration performs services for the benefit and at the request of a local water district or utility or a number of water districts, utilities or organizations, it may levy fees or charges for such service rendered.

Charges may include an assessment against water districts or utilities to finance those functions of the Administration which are of general benefit to water district or utilities including, but not limited to, general administration and supervision. (Sec.34, PD 768)

SEC. 71. *Receipt and Investment of*

Funds. - Whenever the Administration receives money whether as payment for subscriptions to shares of stock, principal repayments, interest income, payment for services rendered or for any purpose whatsoever, it shall issue its own receipts and provide for their safekeeping and investments under policy guidelines as may be established by the Board of Trustees in accordance with Department of Finance regulations. (Sec. 34, PD 768)

SEC. 72. *Domestic Borrowing Authority.* - The Administration shall have the authority to borrow money from all domestic loan sources whether government or private *Provided*, That its loans outstanding from domestic sources at any one time shall not exceed One Billion Pesos. (As amended by Sec. 36, PD 768)

SEC. 73. *Authority to Contract Foreign Loan.* - The Administration is hereby authorized to contract loans, credits, in any convertible foreign currency or capital goods, and to incur indebtedness from time to time with foreign governments, or any international financial institutions or fund sources, including supplier's credits or deferred payment arrangements, the total outstanding amount of which, excluding interests, shall not exceed five hundred million US\$ or the equivalent thereof in other currencies, on terms and conditions promulgated by the Secretary of Finance and the Monetary Board for the accomplishment of its objectives; and to enter into and execute contracts and other documents specifying such terms and conditions.

The President of the Philippines, by himself or through his duly authorized representative, is hereby authorized to negotiate and contract with foreign governments or any international financial

institution or fund sources in the name and on behalf to the administration, one or several loans, for the purpose of implementing the Administration's program for the promotion and development of local water utilities through the Administration's financing or lending operations.

The President of the Philippines, by himself or through his duly authorized representative, is hereby further authorized to guarantee, absolutely and unconditionally, as primary obligor and not as mere surety, in the name and on behalf of the Republic of the Philippines, the payments of the loans, credits and indebtedness up to the amount herein authorized, over and above the amounts which the President of the Philippines pursuant to loan agreements entered into with foreign governments or any international financing institution or fund sources.

The loan credits and indebtedness contracted under this section shall be in accord with the provisions of the Foreign Borrowing Act as amended. (As amended by Sec. 36, PD 768)

SEC. 74. *Depository for Reserves.* - Any local water utility which is accumulating reserves for capital improvement may make specified time deposits of the same to the Administration in the manner authorized for banks in handling trust funds. Such funds shall not be used for operating purposes by the Administration. (As amended by Sec. 37, PD 768)

SEC. 75. *Control and Supervision over all Releases of Appropriations for Waterworks and Sewerage Systems.* - Since the Administration is charged with the development of local water utilities, funds from prior and future appropriations of the National Government for waterworks and

sewerage systems in cities, municipalities, and provinces that are covered by duly formed water districts shall be released directly to the Administration for the account of the water district concerned. The Administration may, however, draw from such account fees and charges for services rendered to the water district concerned as specified in Section 70 of this Title. (Sec. 38, PD 768)

SEC. 76. *Government Assistance to Non-Viable Water Districts.* - There shall be included in the General Appropriations Act an outlay in the form of National Government aid or subsidy to meet the financial requirements in the development of water supply systems of water districts which are determined by the Administration to be financially nonviable in such amount as the Administration may recommend, but not exceeding the cost of source development and main transmission line. Releases of such funds shall be made directly to the Administration. In the development of such water supply systems, the Administration shall exert all efforts to bring the levels of service within the cost repayment capacity of the beneficiaries. (Sec. 14, PD 1479)

SEC. 77. *Special Projects.* - Whenever required by the National Government to provide funding requirements for the development of waterworks and sewerage systems in municipalities, cities or provinces or portions thereof not yet covered by a duly formed water district, an outlay shall be provided in the General Appropriations Act, upon the request of the Administration, separate from its capitalization, for the purpose of meeting the financial requirements of the project; *Provided, however,* That in the event that funds for the project have already been appropriated by the National Government,

such funds shall be released directly to the Administration. Expenses incurred by the Administration for the service rendered may drawn from such account as provided in Section 70 of this Title.

SEC. 78. *Exemption from All Taxes, Duties, Fees, Imposts and Other Charges by the Government.* - To enable the Administration to pay its indebtedness and obligations, and in furtherance and effective implementation of the policies and objectives of this Decree, the Administration is hereby declared exempt:

(a) From the payment of all taxes, fees, imposts, charges, costs and restriction by the Government of the Republic of the Philippines, its provinces, cities, municipalities, and other government agencies and instrumentalities, and filing and service fees and other charges or costs in any court or administrative proceedings in which it may be a party;

(b) From all income taxes, franchise taxes and realty taxes to be paid to the National Government, its provinces, cities, municipalities and other government agencies and instrumentalities; and

(c) From all import duties, compensating taxes, wharfage fees on import of foreign goods and equipment required for its operations and projects. (Sec. 38, PD 768; as amended by Sec. 15, PD 1479)

GENERAL PROVISIONS

SEC. 79. *Separability of Provisions.* - If any provision of this Decree, or the application of such provision to any person or circumstances, is declared invalid, the remainder of the Decree or the application of such provision to other persons or circumstances shall not be affected by such declaration. (As amended by Sec. 39, PD; Sec. 15, PD 1479)

SEC. 80. *Effect on Other Acts.* - All acts or parts of acts, decrees, general orders, executive orders, proclamations, or rules and regulations inconsistent herewith are repealed or modified accordingly. (As amended by Sec. 39, PD 768; Sec. 15, PD 1479)

SEC. 81. *Effectivity.* - This Decree shall take effect immediately. (As amended by Sec. 15, PD 1479)

Done in the City of Manila, this 25th day of May in the year of our Lord, nineteen hundred and seventy three.

(SGD) FERDINAND E MARCOS
President of the Philippines

By the President:

(SGD) ALEJANDRO MELCHOR
Executive Secretary

Presidential Decree No. 768 was promulgated on August 15, 1975.

Presidential Decree No. 1479 was promulgated on June 11, 1978.

SECTION 3

MALACANANG
MANILA

Presidential Decree No. 768

AMENDING PRESIDENTIAL DECREE NO.198 ENTITLED "DECLARING A NATIONAL POLICY FAVORING LOCAL OPERATION AND CONTROL OF WATER SYSTEMS; AUTHORIZING THE FORMATION OF LOCAL WATER DISTRICTS AND PROVIDING FOR THE GOVERNMENT AND ADMINISTRATION OF SUCH DISTRICT; CHARTERING A NATIONAL ADMINISTRATION TO FACILITATE IMPROVEMENT OF LOCAL WATER FACILITIES; GRANTING SAID ADMINISTRATION SUCH POWERS AS ARE NECESSARY TO OPTIMIZE PUBLIC SERVICE FROM WATER UTILITY OPERATIONS, AND FOR OTHER PURPOSES."

WHEREAS, it is the primary concern of the government to develop an orderly and effective system of local water utilities, particularly in the area of water supply and sewerage services;

WHEREAS, under Presidential Decree No. 198, the Government declared as a national policy the local operation and control of water systems; authorized the formation of local water districts provided for the administration of such districts, and chartered a national administration to facilitate improvement of local water utilities;

WHEREAS, there is need to amend certain provisions of Presidential Decree No.

198 in order to hasten and make more effective the implementation and administration of the program of total development and expansion of domestic water systems;

NOW, THEREFORE, I, FERDINAND E MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree the amendment of Presidential Decree No. 198, as follows:

SECTION 1. Section 3, paragraph (b) of Presidential Decree No. 198, is hereby amended to read as follows:

"(b) Appointing Authority. The person empowered to appoint the members of the Board of Directors of a local water district depending upon the geographic coverage and population make-up of the particular district. In the event that more than seventy-five percent of the total active water service connections of a local water district are within the boundary of any city or municipality, the appointing authority shall be the mayor of the city or municipality, as the case may be; otherwise, the appointing authority shall be the governor of the province within which the district is located: Provided, That if the existing waterworks system in the city or municipality established as a water district under this Decree is operated and managed by the province, initial appointment shall be extended by the governor of the province. Subsequent appointments shall be as specified herein.

"If portions of more than one province are included within the boundary of the district, and the appointing authority is to be the governor, then the power to appoint shall rotate between the governors involved with the initial appointments made by the governor in whose province the greatest number of service connections exists."

SEC. 2. Paragraph (b), (c), (e) and last paragraph of Section 6 of the same decree, are hereby amended to read as follows:

"x x x"

"(b) A description of the boundary of the district. In the case of a city or municipality, such boundary may include all lands within the city or municipality. A district may include one or more municipalities, cities or provinces, or portions thereof: Provided, That such municipalities, cities or provinces, or portions thereof, cover a contiguous area.

"(c) A statement transferring any and all waterworks and/or sewerage facilities managed, operated by or under the control of such city, municipality or province to such district pursuant to a contract authorized by this Title.

"x x x"

"(e) The names of the initial directors of the district with the date of expiration of the term of office for each which shall be on the 31st of December of first, second, or third even-numbered year after assuming office, as set forth in Section 11 hereof.

"x x x"

"If two or more cities, municipalities or provinces, or any combination thereof, desire to form a single district, a similar resolution shall be adopted in each city, municipality and province; or the city, municipality or province in which 75% of the total active service connections are situated shall pass an initial resolution to be concurred in by the other cities, municipalities or provinces."

SEC. 3. Section 7 of the same decree is hereby amended to read as follows:

"SEC. 7. Filing of Resolution. - A certified copy of the resolution or resolutions forming a district shall be forwarded to the office of the Secretary of the Administration. If found

by the Administration to conform to the requirements of Section 6 and the policy objectives in Section 22, the resolution shall be duly filed. The district shall be deemed duly formed and existing upon the date of such filing. A certified copy of said resolution showing the filing stamp of the Administration shall be maintained in the office of the district. Upon such filing, the local government or governments concerned shall lose ownership, supervision and control or any right whatsoever over the district except as provided herein."

SEC. 4. Section 8 of the same decree is hereby amended to read as follows:

"SEC. 8. Number and Qualifications. - The Board or Directors of a district shall be composed of five citizens of the Philippines who are of voting age and residents within the district. One member shall be a representative of civic-oriented service clubs, one member a representative of professional associations, one member a representative of business, commercial, or financial organizations, one member a representative of educational institutions and one member a representative of women's organizations. No public officials shall serve as director."

"SEC. 5. Section 11 of the same decree is hereby amended to read as follows:

"SEC. 11. Term of Office. - Of the five initial directors of each newly-formed district, two shall be appointed for a maximum term of two years, two for a maximum term of four years, and one for a maximum term of six years. Terms of office of all directors in a given district shall be such that the term of at least one director, but not more than two, shall expire on December 31 of each even-numbered year. Regular terms of office after the initial terms shall be for six years commencing on

January 1 of odd-numbered years. Directors may be removed for cause only, subject to review and approval of the Administration."

"SEC. 6. Section 12 of the same decree is hereby amended to read as follows:

"SEC. 12. Vacancies. - In the event of a vacancy in the board of directors occurring more than six months before expiration of any director's term, the remaining directors shall within 30 days, serve notice to or request the secretary of the district for nominations and within 30 days there-after a list of nominees shall be submitted to the appointing authority for his appointment of a replacement director from the list of nominees. In the absence of such nominations, the appointing authority shall make such appointment. If within 30 days after submission to him of a list of nominees the appointing authority fails to make an appointment, the vacancy shall be filled from such list by a majority vote of the remaining members of the Board of Directors constituting a quorum. Vacancies occurring within the last six months of an unexpired term shall also be filled by the Board in the above manner. The director thus appointed shall serve the unexpired term only." "If as practicable, the board shall appoint, by a majority vote, a general manager and shall define his duties and fix his compensation. Said officer shall serve at the pleasure of the board."

"SEC. 7. Section 13 of the same decree is hereby amended to read as follows:

"SEC. 13. Compensation. - Each director shall receive a per diem, to be determined by the board, for each meeting of the board actually attended by him, but no director shall receive per diems in any given month in excess of the equivalent of the total per diem of four meetings in any given month. No director shall

receive other compensation for services to the district.

"Any per diem in excess of P50 shall be subject to approval of the Administration."

SEC. 8. Section 20 of the same decree is hereby amended to read as follows:

"SEC. 20. System of Business Administration. - The Board shall, as soon as practicable, prescribe and define by resolution a system of business administration and accounting for the district, which shall be patterned upon and conform to the standards established by the Administration. Auditing shall be performed by a certified public accountant not in the government service. The Administration may, however, conduct annual audits of the fiscal operations of the district to be performed by an auditor retained by the Administration. Expenses incurred in connection therewith shall be borne equally by the water district concerned and the Administration."

SEC. 9. Section 23 of the same decree is hereby amended to read as follows:

"SEC. 23. The General Manager. - At the first meeting of the board, or as soon thereafter as practicable, the board shall appoint, by a majority vote, a general manager and shall define his duties and fix his compensation. Said officer shall serve at the pleasure of the board."

"SEC. 10. Section 24 of the same decree is hereby amended to read as follows:

"SEC. 24. Duties. - The duties of the General Manager and other officers shall be determined and specified from time to time by the board. The general manager, who shall not be a director, shall have full supervision and control of the maintenance and operation of water district facilities, with power and authority to appoint all personnel of the

district: Provided, That the appointment of personnel in the supervisory level shall be subject to approval by the board."

SEC. 11. Paragraph (b) of Section 31 of the same decree is hereby amended to read as follows:

"(b) In-Lieu Share. - As an incident to the acquisition of the existing water system of a city, municipality, or province, a district may enter into a contract to pay in-lieu share for such utility plant, an annual amount not exceeding three percent (3%) of the district's gross receipts from water sales in any year: Provided, however, That no contract of this nature shall be executed during the first five years of the existence of the district; and Provided, further, That the Board of Directors shall determine that such contract will not adversely affect or impair the fiscal position and operations of the district as verified by the Administration."

SEC. 12. Section 32 of the same decree is hereby amended by adding four new subsections therein, which shall read as follows:

"SEC. 32. Protection of Waters and, Facilities of District. - A district shall have the right to:

"(a) Commence, maintain, intervene in, defend and compromise actions or proceedings to prevent interference with or deterioration of water quality or the natural flow of any surface, stream or ground water supply which may be used or useful for any purpose of the district or be a common benefit to the lands or its inhabitants. The ground water within a district is necessary to the performance of the district's powers and such district is hereby authorized to adopt rules and regulations subject to the approval of the National Water Resources Council governing the drilling,

maintenance and operation of wells within its boundaries for purposes other than a single family domestic use on overlying land. Any well operated in violation of such regulations shall be deemed in interference with the waters of the district.

"(b) Require a developer or builder of any structure within the service areas of the district to extend or connect its pipeline facilities to the district facilities whenever such development or structure is within one hundred meters of existing district facilities or whenever the district is willing to extend its facilities within one hundred meters of said development or structure. For the purpose of this section, development shall include the subdivision of land for any purpose other than agricultural purpose, and structure shall mean any building or facility to be used for residential, commercial or industrial purposes.

"(c) Prohibit any person, firm or corporation from vending, selling, or otherwise disposing of water for public purposes within the service area of the district where district facilities are available to provide such service, or fix terms and conditions by permit for such sale or disposition of water.

"(d) Safeguard and protect the use of its waters. For this purpose, any person who installs any water connection without the previous authority from the water district established under this Decree; tampers water meters or uses jumpers or other devices whereby water is stolen; steals or pilfers water or water meters; knowingly possesses stolen or pilfered water or water meters shall, upon conviction, be punished by prision correccional in its minimum period or a fine ranging from two thousand pesos to six thousand pesos, or both. If the violation is committed with the connivance or permission of an employee or

officer of the water district, an employee or officer shall, upon conviction, be punished by a penalty one degree lower than prison correccional in its minimum period and forthwith be dismissed and perpetually disqualified from employment in any utility or service company owned or controlled by the government."

Sec. 13. Section 34 of the same decree is hereby amended to read as follows:

"SEC. 34. Receipt, Deposit and Payment of District Funds. - The treasurer shall receive, to the credit of the district and in trust for its use and benefit, all monies belonging to the district. All monies belonging to the District shall, where practicable, be deposited by the treasurer in the Philippine National Bank."

SEC. 14. Section 35 of the same decree is hereby repealed.

SEC. 15. Section 36 of the same decree is hereby amended to be known as Section 35 to read as follows:

"SEC. 35. Bonds or Other Evidence of Indebtedness. - A district may borrow money to raise funds to pay all cost of any public improvements authorized by this Title and may issue negotiable or non-negotiable bonds, promissory notes or other evidence of indebtedness to support such borrowings. These obligations may be secured by a mortgage, pledge, deed of trust of or any other encumbrance upon any of its then owned or after-acquired real or personal property, assets or revenues and the same shall constitute a lien as to the principal and interest thereon, on all such properly, assets or revenues. The interests on such bonds or notes are exempt from all taxes, duties, fees, imposts, or other charges of the national or local governments."

SEC. 16. Two new sections are hereby inserted to be known as Section 36 and

Section 37, respectively, which shall read as follows:

"SEC. 36. Authority for Subsequent Borrowings. - Where a water district has borrowed money from the Administration, the district shall not borrow money or incur further obligations from other sources without the prior written consent of the Administration.

"SEC. 37. Default. - In the event of the default by the district in the payment of principal or interest on its outstanding bonds or other obligations, any bondholder or creditor shall have the right to bring an action before the appropriate court to compel the payment of such obligation. If the bondholder or creditor concerned is the Administration, it may, without the necessity of judicial process, take over and operate the entire facilities, systems or properties of the district. For the purpose, the Administration may designate its employees or any person or organization to assume all powers of policy-decision and the powers of management and administration, including but not limited to the establishment of water rates and charges, the dismissal and hiring of personnel, the purchase of supplies, equipment and materials and such other actions as may be necessary to operate the utility efficiently."

SEC. 17. Section 37 of the same decree is hereby amended to read as Section 38 as follows:

"SEC. 38. Rates and Charges - Water. - A district may sell water under its control, under schedules of rates and charges as may be determined by the Board, to any and all water users within the district. Said schedule may provide for differential rates for different categories of use and different quantity blocks. The district, as far as practicable, shall fix

such rates and charges for water as will result in revenues which will:

"(a) Provide for reimbursement from all new water customers for the cost of installation of new services and meters;

"(b) Provide for revenue from all water deliveries and services performed by the district;

"(c) Pay the operating expenses of the district;

"(d) Provide for the maintenance and repairs and of the works;

"(e) Provide a reasonable surplus for replacement, extension and improvement; and

"(f) Pay the interest and principal and provide a sinking fund for the payment of debts of the district as they become due and establish a fund for reasonable reserves."

SEC. 18. Sections 38, 39, 40, 41, 42 and 43 of the same decree are hereby amended to read as Sections 39, 40, 41, 42, 43 and 44, respectively.

SEC. 19. Section 44 of the same decree is hereby amended to read as Section 45 as follows:

"SEC. 45. Dissolution. - A district may be dissolved by resolution of its board of directors filed in the manner of filing the resolution forming the district: Provided, however, That prior to the adoption of any such resolution: (1) another public entity has acquired the assets of the district and has assumed all obligations and liabilities attached thereto; (2) all bondholders and other creditors have been notified and they consent to said transfer and dissolution, and (3) a court of competent jurisdiction has found that said transfer and dissolution are in the best interest of the public."

SEC. 20. Sections 45, 46 and 47 of the same decree are hereby amended to read as

Sections 46, 47 and 48, respectively.

SEC. 21. Section 48 of the same decree is hereby amended to read as Section 49 as follows:

"SEC. 49. Charter. - There is hereby chartered, created and formed a government corporation to be known as the 'Local Water Utilities Administration' which is hereby attached to the Office of the President. The provisions of this Title shall be and constitute the charter of the Administration."

SEC. 22. Section 49 of the same decree is hereby amended to read as Section 50 as follows:

"SEC. 50. Purposes. - The Administration shall primarily be a specialized lending institution for the promotion, development and financing of local water utilities. In the implementation of its functions, the Administration shall, among others: (1) prescribe minimum standards and regulations in order to assure acceptable standards of construction materials and supplies, maintenance, operation, personnel training, accounting and fiscal practices for local water utilities; (2) furnish technical assistance and personnel training programs for local water utilities; (3) monitor and evaluate local water standards; and (4) effect system integration, joint investment and operation, district annexation and deannexation whenever economically warranted."

SEC. 23. Section 50 of the same decree is hereby amended to read as Section 51 as follows:

"SEC. 51. Composition. - The Board of Trustees of the Administration shall be composed of a chairman and four other members, all of whom shall be citizens of the Philippines.

"One trustee at any time shall have at

least ten years experience in banking, finance or business. One trustee at any time shall possess sufficient background in the field or economics; one trustee at any time shall have experience in management or systems operations. Two trustees at any time shall be civil or sanitary engineers with experience related to water supply or wastewater operations. Not more than one trustee may represent a private investor-owned utility. No elected official shall be entitled to act as a trustee. At least three of the trustees must be employees of the National Government.

"The General Manager shall be ex-officio member of the Board."

SEC.24. Section 51 of the same decree is hereby amended to read as Section 52 as follows:

"SEC. 52. Appointment and Term of Office. - The trustees, with exception of the ex-officio member, shall be appointed by the President of the Philippines. They shall serve a term of five years each: Provided, That of the first four initially appointed, one shall serve a term of five years, another for four years, the third for three years, and the fourth for two years. Trustees may be removed for cause only.

"The incumbent trustees holding office as such upon the effectivity of this amendment shall continue to hold such office until the expiration of their original terms as defined in their appointments."

SEC. 25. Sections 52 and 53 of the same decree are hereby amended to read as Sections 53 and 54, respectively.

SEC. 26. Section 54 of the same decree is hereby amended to read as Section 55 as follows:

"SEC. 55. Compensation. - The Trustees shall each receive a per diem as may be fixed

by the Board for each meeting actually attended by them: Provided, That the total of such per diem in any one month for each Trustees, shall not exceed the equivalent of the of the per diems for four meetings; Provide, further, That per diems in excess of three hundred pesos per meeting shall be subject to approval of the Office of the President; and Provided, finally, That, in addition, each Trustee shall be reimbursed his expenses incurred in connection with the performance of his functions in such amount as may be determined by the Board of Trustees."

SEC. 27. Sections 55 and 56 of the same decree are hereby amended to read a Section 56 as follows:

"SEC. 56. By-Laws. - The Board of Trustees shall adopt a code of by-laws for the conduct of the affairs of the Administration which may be amended from time to time by the affirmative vote of four Trustees.

"Except as otherwise provided herein, the organizational structure and staffing pattern of the Administration, the qualification of the appointive officers and employees, the power and responsibilities of the officers, the internal procedure of the Administration, and such other matters relative to the organization, management and conduct of the affairs of the Administration shall be as provided in the by-laws; Provided, That, the appointment of and disciplinary action against officers and employees of the Administration shall be done and effected pursuant to guidelines established by the Board of Trustees."

SEC. 28. Section 57 of the same decree is hereby amended to read as follows:

"SEC. 57. Officers. - The Board shall elect a chairman from among its members. In addition, the Board shall select a secretary and a corporate legal counsel, each of whom

shall not be a trustee."

SEC. 29. The first paragraph of Section 58 of the same decree is hereby amended to read as follows:

"SEC. 58. The General Manager and Other Employees. - The Trustees shall select a general manager who shall not come from the appointed trustees. The general manager shall receive compensation in an amount as may be fixed by the Board, subject to the approval of the President of the Philippines, but in no case less than fifty-four thousand pesos per annum. The general manager shall employ and appoint all additional personnel; Provided, That the appointment of personnel in the supervisory level shall be subject to confirmation by the Board.

"The incumbent manager holding office as such upon the effectivity of this amendment shall continue to hold such office unless sooner terminated by competent authority.

SEC. 30. Section 60 of the same decree is hereby amended to read as follows:

"SEC. 60. Borrowing and Security Therefor. - The Administration may borrow funds as authorized in Section 72 of this Title, and issue as security therefore debentures or other evidence of indebtedness constituting a lien on any and all securities, covenants and obligations of local water utilities held by the Administration as security for loans made to such local water utilities.

SEC. 31. Paragraph (b), (c), and (d) of Section 61 of the same decree are hereby amended to read, and a new paragraph is hereby inserted which shall read, as follows:

"SEC. 61. Loans - x x x x

"(a) x x x x

"(b) Feasibility Study. - A feasibility study which may be required by the Administration

for any proposed project for which loan funds are sought may be undertaken by the water district, the Administration or by a consultant prequalified by the Administration.

"(c) Security. - The Administration may take as security for such loans the authorized bonds or other evidence of debt by the water district and a mortgage on its properties;

"(d) Loan Documents and Procedure. - The Board of Trustees shall adopt rules, loan documents and procedures to be used in the granting of loans. Such rules shall include provisions for security, payment and default.

"(e) Default. - In the event of default by the local water district in the payment of principal or interest on its outstanding bonds or other obligation to the Administration, the latter any, without the necessity of judicial process, take over and operate the facilities or properties of the district. For this purpose, the Administration may designate its employees or any person or organization to assume both the policy-making authority and the powers of management, including but not limited to, the establishment of water rates and service charges, the dismissal and hiring of personnel, the purchase of equipment, supplies or materials and such other actions may be necessary to operate the water district efficiently. Such policy-making and management prerogatives may be returned to the Board of Directors and the general manager of the water district, respectively, when all of its overdue accounts have been paid, all its reserve requirements have been satisfied and all the causes of default have been met."

SEC. 32. Paragraph (e) Section 62 of the same decree is hereby amended to read as follows:

"SEC. 62. Regulations. - x x x x

"(e) Personnel. - The training of personnel or operate or manage local water utilities. For this purpose, at least a majority of the personnel of a local water district must have satisfactorily completed appropriate training courses, programs or seminars conducted by the Administration, and must be holders of a certificate of completion or competence, as the case may be, before a certificate of conformance is issued to the water district.

"For certain positions which the Administration may specify, only those persons possessing, or in the case of subsequent appointment, only persons who will undergo training and shall have obtained within six months, a certificate of completion or competence, as the case may be, shall be appointed."

SEC. 33. Paragraph (f) of Section 83 of the same decree is hereby to read as follows:

"SEC. 63. Rate Review. - x x x x

"(f) Payment of the interest and principal and provide a signing fund for payment if debts of the district as they become due and establish a fund reasonable reserves.

"The rates or charges established by such local water district shall be subject to review by the Administration to establish compliance with the above-stated provisions. Said review of rates or any charges therein shall be by the Board of Trustees, and in writing."

SEC. 34. Sections 67, 68 and 69 of the same decree are hereby repealed, and five new sections are hereby substitute therefore to be known as Sections 67, 68, 69, 70 and 71, which shall be read as follows:

"SEC. 67. Capital Stock. - The authorized capital of the Local Water Utilities Administration is Five Million shares of stock with a par value of One Hundred Pesos per share, which shall be subscribed by the

National Government and opened to subscription by private investors or government financial institutions.

"SEC. 68. Payment for National Government Shares. - All amounts previously released the National Government to the Revolving Fund of the Administration shall be credited as payment for subscriptions to shares of stock at par value. Thereafter, the National Government shall for each year beginning with fiscal year 1975-76 subscription and pay for the necessary capitalization as programmed during the year; Provided, That the amount programmed for each year shall not be less than Fifty Million Pesos.

"SEC. 69. Operational Expenses. - The Board of Trustees is hereby authorized to appropriate out of any funds of the Administration, such amounts as it may deem necessary for the operational and other expenses of the Administration including the purchase of necessary equipment.

"SEC. 70. Charges. - To the extent that the Administration perform services for the benefit and at the request of a local water district or utility or a number of water districts, utilities or organizations, it may levy fees or charges for such services rendered.

"Charges may include as assessment against water districts or utilities to finance those functions of the Administration which are of general benefit to water districts or utilities including, but not limited to, general administrations and supervision.

"SEC. 71. Receipt and Investment of Funds. - Whenever the Administration receives money whether as payment for subscriptions, interest to shares of stock, principal repayments, interest income, payment for services rendered or for any purpose

whatsoever, it shall issue its own receipts and provide for their safekeeping and investment under policy guidelines as may be established by the Board of Trustees in accordance with Department of Finance regulations."

SEC. 35. Section 70 of the same decree is hereby repealed.

SEC. 36. Section 71 of the same decree is hereby amended to read as Sections 71 and 73 as follows:

"SEC. 72. Domestic Borrowing Authority.

- The Administration shall have the authority to borrow money from all domestic loan sources whether government or private; Provided, That its loans outstanding from domestic sources at any one time shall not exceed One Billion Pesos."

"SEC. 73. Authority to Contract Foreign Loan. - The Administration is hereby authorized to contract loans, credits, in any convertible foreign currency or capital goods, and to incur indebtedness from time to time with foreign governments, or any international financial institutions or fund sources, including suppliers credits or deferred payment arrangements, the total outstanding amount of which, excluding interests, shall not exceed five hundred million United States dollars or the equivalent therefore in other currencies, on terms and conditions promulgated by the Secretary of Finance and the Monetary Board for the accomplishment of its objectives; and to enter into and execute contract and other conditions.

"The President of the Philippines, by himself, or through his duly authorized representative, is hereby authorized to negotiate and contract with foreign governments or any international financial institution of fund sources in the name and on behalf of the Administration, one or several

loans, for the purpose of implementing the Administration's program for the promotion and development of local water utilities through the Administration's financing or lending operations.

"The President of the Philippines, by himself or through his duly authorized representative, is hereby further authorized to guarantee, absolutely and unconditionally, a primary obligor and not as mere surety, in the name and on behalf of the Republic of the Philippines, the payments of the amount herein authorized, over and above the amounts which the President of the Philippines pursuant to loan agreements entered into with foreign governments or any international financial institution or fund sources.

"The loans, credits and indebtedness contracted under this section shall be in accord with the provisions of the Foreign Borrowing Act as amended."

SEC. 37. Section 72 of the same decree is hereby amended to read as Section 74 as follows:

"SEC. 74. Depository for Reserves. - Any local water utilities which is accumulating reserves for capital improvement may make specified time deposits of the same to the Administration in the manner authorized for banks in handling trust fund. Such funds shall not be used for operating purposes by the Administration."

SEC. 38. Two new sections are hereby inserted to be known as Section 75 and Section 76, which shall read as follows:

"SEC. 75. Control and Supervision over All Release of Appropriations for Waterworks and Sewerage System. - Since the Administration is charge with the development of local water utilities, funds from prior and future appropriations of the National

Governments for waterworks and sewerage system in cities, municipalities, and provinces that are covered by duly formed water districts shall be released directly to the Administration for the account of the water districts concerned. The Administration may, however, draw from such account fees and charges for services rendered to the water district concerned as specified in Section 70 of this Title.

“SEC. 76. Exemption from All Taxes, Duties, Fees, Imposts and Other Charges by the Government. - To enable the Administration to pay its indebtedness and obligations, and in furtherance and effective implementation of the policies and objectives of this Decree, the Administration is hereby declared exempt:

“(a) From the payment of all taxes, fees, impost, charges, costs and restrictions by the Government of the Republic of the Philippines, its provinces, cities, municipalities, and other government agencies and instrumentalities, and filing and service fees and other charges of courts in any court or administrative proceedings in which it may be a party;

“(b) From all income taxes, franchise taxes and really taxes to be paid to the National Government, its provinces, cities, municipalities and other government agencies and instrumentalities; and

“(c) From all import duties, compensating taxes, wharfage fees on import of foreign goods and equipment require for its operations and projects.”

SEC. 39. Sections 73 and 74 of the same decree are hereby amended to read as Section 77 and 78, respectively.

SEC. 40. This Decree shall take effect immediately.

Done in the City of Manila, this 15th day

of August in the year of Our Lord, nineteen hundred and seventy-five.

By the President:

(SGD) ALEJANDRO MELCHOR

Executive Secretary

SECTION 4

Office of the President of the Philippines
Malacañang

Letter of Instructions No. 683

ESTABLISHING BASIC POLICIES FOR THE WATER SUPPLY SECTOR

WHEREAS, drinking water is a basic requirement to sustain life;

WHEREAS, only about 40 percent of the population of the Philippines is presently served with public water supply systems;

WHEREAS, it is primary concern of the Government in promoting the welfare of the people to hasten the availability of water supply in the whole country, with special attention to the rural areas;

WHEREAS, the approved Philippine Development Plan for 1978-1987, therefore aims to increase the public water supply coverage to about 85 percent of the total Philippine population within ten years;

WHEREAS, there is a need to restructure the water supply sector so that gaps and overlaps in responsibility will be eliminated; and

WHEREAS, it is necessary to establish certain basic policies to attain these objectives in the most efficient manner;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order the implementation of the following basic policies for the water supply sector;

(1) The attainment of complete coverage

of water supply services for the whole country is a declared policy of the State and shall be effected primarily through;

(a) The rationalization of the organizational structure for the water supply sector; (b) The formation of water districts, associations, cooperatives or corporations for the construction, operation and maintenance of water supply systems in preference to systems directly operated and managed by local governments; and (c) The encouragement of self-help and self-reliant water supply projects.

(2) Agencies involved in water supply shall strive to attain financial independence, thereby minimizing Government subsidy, by increasing their own internal revenue generation capabilities and by providing services within the cost repayment capabilities of the beneficiaries.

(3) The levels of water supply service to be developed shall vary according to technical economic, organizational and financial consideration. These levels of service are as follows:

Level I - Point sources (such as rain collector, wells and springs); generally for rural areas where houses are scattered too thinly to justify a distribution system.

Level II - Communal faucet systems; generally for rural areas where houses are clustered densely enough to justify a piped distribution system with a faucet provided for a number of households.

Level III - Individual house connections; generally for urban areas.

(4) The rationalization of the water supply sector structure shall be pursued in accordance with the following strategies:

(a) The Metropolitan Waterworks and Sewerage System shall concentrate its

operations in Metropolitan Manila and other contiguous areas that may later be included in its service coverage.

(b) The Local Water Utilities Administration shall promote water districts in cities and municipalities with population of at least 20,000 each. It will support these water districts through institutional, technical and financial assistance.

(c) The Bureau of Public Works shall be mainly responsible for the construction of wells and development of springs in rural areas.

(d) The Department of Local Governments and Community Development shall be responsible for the formations of water associations and cooperatives that will operate and maintain water supply systems for communities in the provinces covered by the Provincial Development Assistance Program (PDAP). It shall provide institutional, technical and financial support to these associations and cooperatives.

(e) A Task Force on Rural Water Supply under the National Water Resources Council shall, until such time that a permanent institution of the Government to handle the rural water supply sector is evolved, be responsible for the formation of water associations and cooperatives that will construct, operate, and maintain water supply systems in the rural areas of non-PDAP provinces. This Task Force shall provide technical, institutional, and financial assistance to these associations and cooperatives. It shall also make studies and recommendations on the appropriate institution that will eventually be responsible for the rural water supply sector on a permanent basis. The Task Force is hereby authorized to call upon any agency of the

Government for assistance in accomplishing its tasks.

(5) The National Water Resources Council shall be responsible for coordinating the implementation of the above policies. It shall submit to the President of the Philippines, periodic reports on the status on the entire water supply sector and the performance of each of the above agencies in relation to the overall policy framework for water supply.

Done in the City of Manila, this 30th day of March in the year of Our Lord, nineteen hundred and seventy eight.

(SGD) FERDINAND E. MARCOS
President of the Philippines

SECTION 5

Office of the President of the Philippines
Malacañang

Letter of Instructions No. 700

PROVIDING MEASURES TO CONTROL AND REGULATE INCREASES IN WATER RATES

WHEREAS, there is a need to help depressed or newly formed water districts develop their financial viability, but at the same time avoid too abrupt increases in their water rates;

WHEREAS, there is a need to prescribe certain measures whereby increases of rates imposed by water districts are controlled or regulated;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order the implementation of the following measures in the operation and development of water districts;

(1) The Local Water Utilities Administration (LWUA) shall:

(a) Implement a socialized pricing scheme for water districts in setting up water rates whereby the more affluent, heavy users pay more per unit than the low income, minimal users of water, LWUA shall prescribe guidelines for this purpose;

(b) Provide institutional development services to water districts free of charge;

(c) Grant capital improvement loans to water districts on concessionary terms;

(d) On a case-to-case basis, defer loan amortization payments until improvements are completed and actually in operation;

(e) Assist water districts improve their operational efficiency through skills/managerial training and systems development;

(f) Ensure that the water rates are not abruptly increased beyond the water users ability to pay, seeing to it that each increase if warranted, does not exceed 60% of the current rate;

(g) Limit charges for feasibility and engineering studies to not more than 15% of the actual construction cost of the project implemented;

(h) Require 100% metering to insure correct charging of water actually consumed and to discourage its wasteful use;

(i) Where indicated, consider the adoption of lower standards of service, especially for the marginally feasible areas, to reduce project cost; and;

(j) Reduce required reserves accumulation for meeting emergency and contingency needs as will be appropriate.

(2) The National Electrification Administration and the National Power Corporation shall study ways and means to grant special reduce electric power rates to the water districts concerned. Where feasible, the National Power Corporation shall also determine ways by which the water districts can directly tap the power lines.

(3) The Budget Commission shall provide in the national government annual operating budget starting with CY 1979 such amount as shall be requested by LWUA and recommended by the National Economic and Development Authority for the conduct of feasibility studies for the development of waterworks systems in established water districts. Such national

government contribution shall not constitute part of LWUA's equity nor shall it be charged against the water districts.

(4) The local government concerned shall provide subsidy for the operation of depressed or newly created water districts. The subsidy shall initially be up to the level provided by the local government for the operation of the system immediately prior to the formation of the water district. The subsidy, however, shall be reduced as the water services and revenues improve as determined by LWUA.

(5) The water district concerned shall conduct public hearings prior to any proposed increase in water rates.

Done in the City of Manila, this 1st day of June in the year of Our Lord, nineteen hundred and seventy eight.

(SGD) FERDINAND E. MARCOS
President of the Philippines

SECTION 6

MALACAÑANG

Manila

PRESIDENTIAL DECREE NO. 1479

FURTHER AMENDING PRESIDENTIAL DECREE NO. 198 OTHERWISE KNOWN AS THE "PROVINCIAL WATER UTILITIES ACT OF 1973", AS AMENDED BY PRESIDENTIAL DECREE NO. 768

WHEREAS, Presidential Decree NO. 198, as amended by Presidential Decree No. 768, declares as a national policy the local operation and control of water systems; authorizes the formation of local water districts; provides for the administration of such districts and charters a national administration to facilitate improvement of local water utilities;

WHEREAS, in order to accelerate the development and expansion of domestic water systems, there is a need to further amend certain provisions of Presidential Decree No. 198, as amended.

NOW, THEREFORE, I FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree the further amendment of Presidential Decree No. 198, as follows:

SECTION 1. The first paragraph of Section 6 of Presidential Decree No. 198, as amended, is hereby amended to read as follows:

"SEC. 6. Formation of District. - This Act is the source of authorization and power to

form and maintain a district. For purposes of this Act, a district shall be considered as a quasi-public corporation performing public service and supplying public wants. As such, a district shall exercise the powers, rights and privileges given to private corporations under existing laws, in addition to the powers granted in, and subject to such restrictions imposed, under this Act.

x x x

(c) A statement completely transferring any and all waterworks and/or sewerage facilities managed, operated by or under the control of such city, municipality or province to such district upon the filing of resolution forming the district.

x x x

SEC. 2. A new sentence is hereby added to Section 8 of the same decree to read as follows:

"SEC. 8. Number and Qualifications. - xxx Provided, however, that if the district has availed of the financial assistance of the Administration, the Administration may appoint any of its personnel to sit in the board of directors with all the rights and privileges appertaining to a regular member, for such period as the indebtedness remains unpaid, in which case the board shall be composed of six members."

SEC. 3. Section 25 of the same decree is hereby amended.

SEC. 4. Section 26 of the same decree is hereby amended to read as Section 25 as follows:

"SEC. 25. Authorization. The district may exercise all the powers which are expressly granted by this Title or which are necessarily implied from, or incidental to the powers and purposes herein stated. For the purpose of carrying out the objectives of this Act, a district

is hereby granted the power of eminent domain, the exercise thereof shall, however, be subject to review by the Administration."

SEC. 5. Sections 27, 28, 29, 30 and 31 of the same decree are hereby amended to read as Section 26, 27, 28, 29 and 30, respectively.

SEC. 6. Section 32 of the same decree is hereby amended to read as Section 31.

"SEC. 31. Protection of Waters and Facilities of District. A district shall have the right to

x x x

(e) take over the management, administration, operation and maintenance of all watersheds within its territorial boundaries."

SEC. 7. Sections 33, 34, 35, 36, 37, 38, 39, 40 and 41 of the same decree are hereby amended to read as Sections 32, 33, 34, 35, 36, 37, 38, 39 and 40, respectively.

SEC. 8. A new section is hereby inserted to be known as Section 41 which shall read as follows:

"SEC. 41. Disposition of Income. The income of the district 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 allocate at least fifty percent (50%) of the balance exclusively as a reserve for debt service and operating and maintenance, to be used for such purposes only during periods of calamities, force majeure or unforeseen events.

"Third, to allocate the residue as a reserve exclusively for expansion and improvement of its physical facilities."

SEC. 9. Section 47 of the same decree is hereby amended to read as follows:

"SEC. 47. Exclusive Franchise. No

franchise shall be granted to any other person or agency for domestic, industrial or commercial water service within the district or any portion thereof unless and except to the extent that the board of directors of said district consents thereto by resolution duly adopted, such resolution, however, shall be subject to review by the Administration."

SEC. 10. Section 61 of the same decree is hereby amended to read as follows:

"SEC. 61. Loans.

x x x

Funding of Loan. When a loan is made to local water utility, the necessary amount of such loan shall be programmed to assure completion of the project for which such loan was granted."

SEC. 11. The last paragraph of Section 63 of the same decree is hereby amended to read as follows:

"SEC. 63. Rate Review.

x x x

The rates or charges established by such local district, after hearing shall have been conducted for the purpose, shall be subject to review by the Administration to establish compliance with the above-stated provisions. Said review of rates or charges shall be executory and enforceable after the lapse of seven calendar days from posting thereof in a public place in the locality of the water district, without prejudice to an appeal being taken therefrom by a water concessionaire to the National Water Resources Council whose decision thereon shall be appealable to the Office of the President. An appeal to the Council shall be perfected within thirty days after the expiration of the seven-day period of posting. The Council shall decide on appeal within thirty days from perfection.

SEC. 12. Section 67 of the same decree

is hereby amended to read as follows:

"SEC. 67. Capital Stock. The authorized capital of the Local Water Utilities Administration is Two Billion, Five Hundred Million Pesos divided into Twelve Million Five Hundred Thousand share of stock with a par value of Two Hundred Pesos per share which shall be subscribed by the National Government and opened to subscription by private investors or government financial institutions."

SEC. 13. Section 68 of the same decree is hereby amended to read as follows:

"SEC. 68. Payment for National Government Shares. All amounts x x x at par value. Whatever balance remaining of said subscription shall be paid from a continuing appropriation which is hereby made out of any funds in the National Treasury not otherwise appropriated, such annual appropriation to be programmed and released in accordance with the pertinent budget laws: Provided, That this continuing appropriation shall remain in force until the balance of the unpaid subscription of the government to the capital stock of the administration have been paid in full."

SEC. 14. New sections are hereby inserted to be known as Section 76 and 77, respectively, which shall read as follows:

"SEC. 76. Government Assistance to Non-Viable Districts. There shall be included in the General Appropriations Act an outlay in the form of National Government aid or subsidy to meet the financial requirements in the development of water supply systems of water districts which are determined by the Administration to be financially non-viable in such amount as the Administration may recommend, but not exceeding the cost of source development and main transmission

line. Releases of such funds shall be made directly to the Administration. In the development of such water supply systems, the Administration shall exert all efforts to bring the levels of service within the cost repayment capacity of the beneficiaries."

"SEC. 77. Special Projects. Whenever required by the National Government to provide funding requirements for the development of waterworks and sewerage systems in municipalities, cities or provinces, or portions thereof not yet covered by a duly formed water district, an outlay shall be provided in the General Appropriations Act, upon the request of the Administration, separate from its capitalization, for the purposes of meeting the financial requirements of the project: Provided, however, That in the event that funds for the project have already been appropriated by the National Government, such funds shall be released directly to the Administration. Expenses incurred by the Administration for the service rendered may be drawn from such account as provided in Section 70 of this Title."

SEC. 15. Sections 76, 77, 78 and 79 of the same decree are hereby amended to read as Section 78, 79, 80 and 81, respectively.

SEC. 16. This Decree shall take effect immediately.

Done in the City of Manila, this 11th day of June in the year of Our Lord, nineteen hundred and seventy-eight.

By the President:

(SGD) JUAN C. TUVERA
Presidential Assistant

SECTION 7

Office of the President of the Philippines
Malacañang

Letter of Instructions No. 744

RELATIVE TO RELIABLE WATER SUPPLY AT REASONABLE RATES IN THE COUNTRYSIDE

TO: The Minister of Public Works,
Transportation and Communications

The Chairman and Members, National
Water Resources Council

The General Manager, Local Water
Utilities Administration

The Chairman and General Managers of
Water Districts

All Others Concerned

WHEREAS, the provision of adequate water supply at reasonable rates is a primary objective of the New Society;

WHEREAS, the implementation of a national program for improved water supply is the responsibility of local organizations particularly Water Districts and local government units, assisted by the National Water Resources Council and the Local Water Utilities Administration;

WHEREAS, there is need to improve planning, monitoring and implementing activities at all levels, and to reduce water rates to minimum levels;

NOW, THEREFORE, I, FERDINAND E MARCOS, President of the Philippines, do hereby order and instruct:

1. The Local Water Utilities Administration and Water Districts shall immediately review the facilities design, implementation plan and rates and fees charged, with the objective of:

- a. Reducing water rates to minimum levels;
- b. Eliminating unnecessary fees and regulatory measure;
- c. Implementing expansion plans in phases so as to keep in step with growth in demand without resulting in excess capacity;
- d. Reducing cost of construction to a minimum

2. The National Water Resources Council shall eliminate all unnecessary regulatory measures and fees particularly on privately owned and dug wells.

3. The Local Water Utilities Administration and each Water Districts shall prepare a public education program which shall concentrate on the need and methods for water conservation, water rates, water facilities requirements and need for financing, and other related aspects of Water District operations. They shall, in addition, prepare a comprehensive program and system of public consultation, both formally in hearings and informally through an education program, when considering increases in water rates, particularly at the time when Water Districts initiate operation.

4. The Local Water Utilities Administration shall review the composition of the Board of each Water District to make sure that consumers are properly and fully represented. It shall initiate the necessary changes.

5. The Local Water Utilities

Administration shall assess the terms of loans extended to Water Districts, including maturity, amortization schedule, and interest rates, for the purpose of enabling Water Districts to meet their obligations without charging excessive water rates to consumers.

6. The Committee on National Aid to Local Government Units shall study and recommended to the President a program for communal water pumps to serve areas not covered by Water District or which do not otherwise have an adequate water supply. The program shall provide for a sharing of construction cost among national and local government units, whereby the national government shall provide counterpart-funding assistance, charged to the funds provided as Aid to Local Government Units under PD No. 144.

Done in the City of Manila, this 28th day of September, nineteen hundred and seventy-eight.

(SGD) FERDINAND E. MARCOS

President of the Philippines

SECTION 8

EXECUTIVE ORDER NO. 68

MODIFYING PRESIDENTIAL DECREE NO. 198, AS AMENDED

WHEREAS, the Local Water Utilities Administration (LWUA) was created by virtue of Presidential Decree No. 198, as amended;

WHEREAS, Section 58 of Presidential Decree No. 198, as amended, provides for a General Manager of the Local Water Utilities Administration (LWUA) while Section 23 of the said Decree likewise provides for a general manager for a local water district;

WHEREAS, there is a need to distinguish the General Manager of the Local Water Utilities Administration (LWUA) from the general managers of the various local water districts by changing the designation of the General Manager of the Local Water Utilities Administration (LWUA);

WHEREAS, as a consequence, the title of the next in rank of the General Manager of the Local Water Utilities Administration (LWUA) should be similarly changed;

NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines, do hereby order:

SECTION 1. Section 58 of Chapter 58, Title III of Presidential Decree No. 198, as amended, is hereby modified to the extent that the title of the head of the Local Water Utilities Administration (LWUA) is changed

from General Manager to Administrator and the officer(s) next in rank shall be designated as Deputy Administrator(s).

DONE in the City of Manila, this 21st day of November, in the year of Our Lord, Nine Hundred and Eighty-Six.

(SGD) **CORAZON C. AQUINO**
President of the Philippines

SECTION 9

SUPREME COURT RULING ON WATER DISTRICTS AS GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS

Republic of the Philippines
Supreme Court
Manila

EN BANC

DAVAO CITY WATER DISTRICT,
CAGAYAN DE ORO CITY WATER DISTRICT,
METRO CEBU WATER DISTRICT,
ZAMBOANGA CITY WATER DISTRICT,
IEYTE METRO WATER DISTRICT,
BUTUAN CITY WATER DISTRICT,
CAMARINES NORTE WATER DISTRICT,
LAGUNA WATER DISTRICT,
DUMAGUETE CITY WATER DISTRICT,
LA UNION WATER DISTRICT,
BAYBAY WATER DISTRICT,
METRO LINGAYEN WATER DISTRICT,
URDANETA WATER DISTRICT,
COTABATO CITY WATER DISTRICT,
MARAWI CITY WATER DISTRICT,
TAGUM WATER DISTRICT,
DIGOS WATER DISTRICT,
BISLIG WATER DISTRICT,
and MEYCAUAYAN WATER DISTRICT
Petitioners

versus

CIVIL SERVICE COMMISSION, and
COMMISSION ON AUDIT
Respondents

G. R. Nos. 95237-38

Present:
FERNAN, C. J.,
NARVASA,
MEIENCIO-HERRERA,
GUTIERREZ, JR.,
CRUZ,
PARAS,
FELICIANO,
PADILLA,
BIDIN,
SARMIENTO,
GRIÑO-AQUINO,
MEDIALDEA,
REGALADO &
DAVIDE, JR., JJ.

Promulgated: **September 13, 1991**

DECISION

MEDIALDEA, J.:

Whether or not the Local Water Districts formed and created pursuant to the provisions of Presidential Decree No. 198, as amended, are government-owned or controlled corporations with original charter falling under the Civil Service Law and/or covered by the visitorial power of the Commission on Audit is the issue which the petitioners entreat this Court, en banc to shed light on.

Petitioners are among the more than five hundred (500) water districts existing throughout the country formed pursuant to the provisions of Presidential Decree No. 198, as amended by Presidential Decrees Nos. 768 and 1479, otherwise known as the "Provincial Water Utilities Act of 1973."

Presidential Decree No. 198 was issued by the then President Ferdinand E. Marcos by

virtue of his legislative power under Proclamation No. 1981. It authorized the different local legislative bodies to form and create their respective water districts through a resolution they will pass subject to the guidelines, rules and regulations therein laid down. The decree further created and formed the "Local Water Utilities Administration" (LWUA), a national agency attached to the National Economic and Development Authority (NEDA), and granted with regulatory power necessary to optimize public service from water utilities operations.

The respondents, on the other hand, are the Civil Service Commission (CSC) and the Commission on Audit (COA), both government agencies and represented in this case by the Solicitor General.

On April 17, 1989, this Court ruled in the case of *Tanjay Water District v. Gabaton, et al.* (G.R. No. 63742, 172 SCRA 253):

Significantly, Article IX (B), Section 2(1) of the 1987 Constitution provides that the Civil Service embraces all branches, subdivisions, instrumentalities, and agencies of the government, including government-owned and controlled corporations with original charters. Inasmuch as PD No. 198, as amended, is the original charter of the petitioner, Tanjay Water District, and respondent Tarlac Water District and all water districts in the country, they come under the coverage of the Civil Service Law, rules and regulations. (Sec. 35, Art. VIII and Sec. 37, Art. IX of PD No. 807)."

As an offshoot of the immediately cited ruling, the CSC issued Resolution No. 90-575, the dispositive portion of which reads:

"NOW THEREFORE, in view of

all the foregoing, the Commission resolved, as it hereby resolves, to rule that Local Water Districts, being quasi-public corporations created by law to perform public services and supply public wants, the matter of hiring and firing of its officers and employees should be governed by the Civil Service Law, rules and regulations. Henceforth, all appointments of personnel of the different local water districts in the country shall be submitted to the Commission for appropriate action." (Rollo. p.22)

However, on May 16, 1990, in G.R. No. 85760, entitled "*Metro Iloilo Water District v. National Labor Relations Commission, et al.*," the Third Division of this Court ruled in a minute resolution:

"x x x

"Considering that PD 198 is a general legislation empowering and/or authorizing government agencies and entities to create water districts, said PD 198 cannot be considered as the charter itself creating the Water Districts. Public respondent NLRC did not commit any grave abuse of discretion in holding that the operative act, that created the Metro Iloilo Water District was the resolution of the Sangguniang Panglungsod of Iloilo City. Hence, the employees of Water Districts are not covered by Civil Service Laws as the latter do (sic) not have original charters.

In adherence to the just cited ruling, the CSC suspended the implementation of Resolution No. 90-575 by issuing Resolution

No. 90-770 which reads:

" x x x

"NOW, THEREFORE, in view of all the foregoing, the Commission resolved to rule, as it hereby rules, that the implementation of CSC Resolution No. 575 dated June 27, 1990 be deferred in the meantime pending clarification from the Supreme Court as regards its conflicting decisions in the cases of *Tanjay Water District v. Gabaton* and *Metro Iloilo Water District v. National Labor Relations Commission*." (p.26, *Rollo*)

In the meanwhile, there exists a divergence of opinions between COA on one hand, and the LWUA on the other hand, with respect to the authority of COA to audit the different water districts.

COA opined that the audit of the water districts is simply an act of discharging the visitatorial power vested in them by law (letter of COA to LWUA, dated August 13, 1985, pp. 29-30, *Rollo*).

On the other hand, LWUA maintained that only those water districts with subsidies from the government fall within the COA's jurisdiction and only to the extent of the amount of such subsidies, pursuant to the provision of the Government Auditing Code of the Phils.

It is observed that just like the question of whether the employees of the water districts falls under the coverage of the Civil Service Law, the conflict between the water districts and the COA is also dependent on the final determination of whether or not water districts are government-owned or controlled corporations with original charter. The reason behind this is Sec. 2(1), Article IX-D of the

1987 Constitution which reads:

"Sec. 2(1) The Commission on Audit shall have the power, authority and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to the Government, or any of its subdivisions, agencies or instrumentalities, including government-owned or controlled corporations with original charters, and on a post audit basis." (emphasis supplied).

Petitioners' main argument is that they are private corporations without original charter, hence they are outside the jurisdiction of respondents CSC and COA. Reliance is made on the Metro Iloilo case which declared petitioners as quasi-public corporations created by virtue of PD 198, a general legislation which cannot be considered as the charter itself creating the water districts. Holding on to this ruling, petitioners contend that they are private corporations which are only regarded as quasi-public or semi-public because they serve public interest and convenience and that since PD 198 is a general legislation, the operative act which created a water district is not the said decree but the resolution of the sanggunian concerned.

After a fair consideration of the parties' arguments coupled with a careful study of the applicable laws as well as the constitutional provisions involved. We rule against the petitioners and reiterate Our ruling in *Tanjay* case declaring water districts government-owned or controlled corporations with original charter.

As early as *Baguio Water District v.*

Trajano, et al., (G. R. No. 65428, February 20, 1984, 127 SCRA 730), We already ruled that a water district is a corporation created pursuant to a special law – P. D. No. 198, as amended, and as such its officers and employees are covered by the Civil Service Law.

In another case (Hagonoy Water District v. NLRC, G. R. No. 81490, August 31, 1988, 165 SCRA 272), W ruled once again that local water districts are quasi-public corporations whose employees belong to the Civil Service. The Court's pronouncement in this case, as extensively quoted in the *Tanjay case*, supra, partly reads:

"The only question here is whether or not local water districts are government-owned or controlled corporations whose employees are subject to the provisions of the Civil Service Law. The Labor Arbiter asserted jurisdiction over the alleged illegal dismissal of private respondent Villanueva by relying on Section 25 of Presidential Decree No. 198, known as the Provincial Water Utilities Act of 1973" which went onto effect in 25 May 1973, and which provides as follows:

Exemption from Civil

Service. - The district and its employees, being engaged in a proprietary function, are hereby exempt from the provision of the Civil Service Law. Collective Bargaining shall be available only to personnel below supervisory levels: Provided, however, That the total of all salaries, wages, emoluments, benefits or other compensation paid to all employees in any

month shall not exceed fifty percent (50%) of average net monthly revenue. Said net revenue representing income from water sales and sewerage service charges, les pro-rata share of debt service and expenses for fuel or energy for pumping during the preceding fiscal year.

The Labor Arbiter failed to take into account the provisions of Presidential Decree No. 1479, which went into effect on 11 June 1978. P. D. No. 1479 wiped away Section 25 of PD 198 quoted above, and Section 26 of PD 198 was renumbered as Section 25 in the following manner:

"Section 26 of the same decree PD 198 is hereby amended to read as Section 25 as follows:

Section 25. Authorization.

– The district may exercise all the powers which are expressly granted by this Title or which are necessarily implied from or incidental to the powers and purposes herein stated. For the purpose of carrying out the objectives of this Act, a district is hereby granted the power of eminent domain, the exercise thereof shall, however, be subject to review by the Administration.

Thus, Section 25 of PD 198 exempting the employees of water districts from the application of the Civil Service Law was removed from the statute books:

" x x x.

"We grant the petition for the following reasons:

"1. Section 25 of PD No. 198 was repealed by Section 3 of PD No. 1479; Section 26 of PD No. 198 was amended to read as Sec. 25 by Sec. 4 of PD No. 1479. The amendatory decree took effect on June 11, 1978.

"x x x

"3. The BWD is a corporation created pursuant to a special law – PD No. 198, as amended. As such its officers and employees are part of the Civil Service (Sec. 1, Art. XII-B, [1973] Constitution: PD No. 868)."

Ascertained from a consideration of the whole statute, PD 198 is a special law applicable only to the different water districts created pursuant thereto. In all its essential terms, it is obvious that it pertains to a special purpose which is intended to meet a particular set of conditions and circumstances. The fact that said decree generally applies to all water districts throughout the country does not change the fact that PD 198 is a special law. Accordingly, this Court's resolution in Metro Iloilo case declaring PD 198 as a general legislation is hereby abandoned.

By "government-owned or controlled corporation with original charter," We mean government owned or controlled corporation created by special law and not under the Corporation Code of the Philippines. Thus, in the case of *Lumanta v. NLRC* (G. R. No. 82819, February 8, 1989, 170 SCRA 79, 82), We held:

"The Court, in *National Service Corporation (NASECO) v. National Labor Relations Commission*, G. R.

No. 69870, promulgated on 29 November 1988, quoting extensively from the deliberations of the 1986 Constitutional Commission in respect of the intent and meaning of the new phrase 'with original charter' in effect held that government-owned and controlled corporations with original charter refer to corporations chartered by special law as distinguished from corporations organized under out general incorporation statute – the Corporation Code. In NASECO, the company involved had been organized under the general incorporation statute and was a subsidiary of the National Investment Development Corporation (NIDC) which in turn was a subsidiary of the Philippine National Bank, a bank chartered by a special statue. Thus, government-owned or controlled corporations like NASECO are effectively, excluded from the scope of the Civil Service." (emphasis supplied)

From the foregoing pronouncement, it is clear that what has been excluded from the coverage of the CSC are those corporations created pursuant to the Corporation Code. Significantly, petitioners are not created under the said code, but on the contrary, they were created pursuant to a special law and are government primarily by its provision.

No consideration may thus be given to petitioners' contention that the operative act which created the water districts are the resolutions of the respective local sanggunians and that consequently, PD 198, as amended, cannot be considered as their charter.

It is to be noted that PD 198, as amended is the source of authorization and power to form and maintain a district. Section 6 of said decree provides:

"Sec. 6. Formation of District. – This Act is the source of authorization and power to form and maintain a district. Once formed, a district is subject to the provisions of this Act and not under the jurisdiction of any political subdivision. x x x."

Moreover, it must be observed that PD 198, contains all the essential terms necessary to constitute a charter creating a juridical person. For example, Section 6(a) provides for the name that will be used by a water district, thus:

"Section 6. x x x. To form a district, the legislative body of any city, municipality or province shall enact a resolution containing the following:

"a) The name of the local water district, which shall include the name of the city, municipality, or province, or region thereof, served by said system, followed by the words 'Water District.'

It also prescribes for the numbers and qualifications of the members of the Board of Directors:

"Sec. 8. Number and Qualifications. - The Board of Directors of a district shall be composed of five citizens of the Philippines who are of voting age and residents within the district. One member shall be a representative of civic-oriented service clubs, one member a representative of professional associations, one

member a representative of business, commercial or financial organizations, one member a representative of educational institutions and one member a representative of women's organization. No public official shall serve as director. Provided, however, that if the district has availed of the financial assistance of the Administration, the Administration may appoint any of its personnel to sit in the board of directors with all the rights and privileges appertaining to a regular member for such period as the indebtedness remains unpaid in which case the board shall be composed of six members;" (as amended by PDs Nos. 768 & 1479).

the manner of their appointment and nominations;

"Section 9. Appointment. - Board members shall be appointed by the appointing authority. Said appointments shall be made from a list of nominees, if any, submitted pursuant to Section 10. If no nominations are submitted, the appointing authority shall appoint any qualified person of the category to the vacant position;

"Section 10. Nominations. - On or before October 1 of each even-numbered year, the secretary of the district shall contact each known organization, association, or institution being represented by the director whose term will expire on December 31 and solicit nominations from these organizations to fill the position for the ensuing term. One

nomination may be submitted in writing by each such organization to the Secretary of the district on or before November 1 of such year: This list of nominees shall be transmitted by the Secretary of the district to the office of the appointing authority on or before November 15 of such year and he shall make his appointment from the list submitted on or before December 15. In the event the appointing authority fails to make his appointments on or before December 15, selection shall be made from said list of nominees by majority vote of the seated directors of the district constituting a quorum. Initial nominations for all five seats of the board shall be solicited by the legislative body or bodies at the time of adoption of the resolution forming the district. Thirty days thereafter, a list of nominees shall be submitted to the provincial governor in the event the resolution forming the district is by a provincial board, or the mayor of the city or municipality in the event the resolution forming the adoption of the district is by the city or municipal board of councilors, who shall select the initial directors therefrom within 15 days after receipt of such nominations;

their terms of office:

Section 11. Term of Office. - Of the five initial directors of each newly formed district, two shall be appointed for a maximum term of two years, two for a maximum term of four years, and one for a maximum term of six years. Terms of office of

all directors in a given district shall be such that the term of at least one director, but not more than two, shall expire on December 31 of each even-numbered year. Regular terms of office after the initial terms shall be for six years commencing on January 1 of odd-numbered years. Directors may be removed for cause only, subject to review and approval of the Administration;" (as amended by PD 768)

the manner of filling up vacancies:

"Section 12. **Vacancies.** - In the event of a vacancy in the board of directors occurring more than six months before expiration of any director's term, the remaining directors shall within 30 days, serve notice to or request the secretary of the district for nominations and within 30 days, thereafter a list of nominees shall be submitted to the appointing authority for his appointment of a replacement director from the list of nominees. In the absence of such nominations, the appointing authority shall make such appointment. If within 30 days after submission to him of a list of nominees the appointing authority fails to make an appointment, the vacancy shall be filled from such list by a majority vote of the remaining members of the Board of Directors constituting quorum. Vacancies occurring within the last six months of an unexpired term shall also be filled by the Board in the above manner. The director thus appointed shall serve the unexpired term only;"

(as amended by PD 768).

and the compensation and personal liability of the members of the Board of Directors:

“Section 13. Compensation. - Each director shall receive a per diem, to be determined by the board, for each meeting of the board actually attended by him, but no directors shall receive per diems in any given month in excess of the equivalent of the total per diems of four meeting in any given month. No director shall receive other compensation for services to the district.

“Any per diem in excess of P50.00 shall be subject to approval of the Administration (as amended by PD 768).

“Section 14. Personal Liability. No director may be held to be personally liable for any action of the district.”

Noteworthy, the above quoted provisions of PD 198, as amended, are similar to those which are actually contained in other corporate charters. The conclusion is inescapable that the said decree is in truth and in fact the charter of the different water districts for it clearly defines the latter’s primary purpose and its basic organizational set-up. In other words, PD 198, as amended, is the very law which gives a water district juridical personality. While it is true that a resolution of a local sanggunian is still necessary for the final creation of a district, this Court is of the opinion that said resolution cannot be considered as its charter, the same being intended only to implement the provisions of said decree. In passing a resolution forming a water district, the local

sanggunian is entrusted with no authority or discretion to grant a charter for the creation of a private corporation. It is merely given the authority for the formation of a water district, on a local option basis, to be exercised under and in pursuance of PD 198.

More than the aforequoted provisions, what is of important interest in the case at bar is Section 3, par. (b) of the same decree which reads:

“Section 3(b). Appointing authority. - The person empowered to appoint the members of the Board of Directors of a local water district, depending upon the geographic coverage and population make-up of the particular district. In the event that more than seventy-five percent of the total active water service connections of a local water districts are within the boundary of any city or municipality, the appointing authority shall be the mayor of that city or municipality, as the case may be; otherwise, the appointing authority shall be the governor of the province within which the district is located: Provided, That if the existing waterworks system in the city or municipality established as a water district under this Decree is operated and managed by the province, initial appointment shall be extended by the governor of the province. Subsequent appointments shall be as specified herein.

If portions of more than one province are included within the boundary of the district, and the appointing authority is to be the governors then the power to appoint

shall rotate between the governors involved with the initial appointments made by the governor in whose province the greatest number of service connections exists (as amended by PD 768).

The above-quoted section definitely sets to naught petitioners' contention that they are private corporations. It is clear therefrom that the power to appoint the members who will comprise the Board of Directors belongs to the local executives of the local subdivision units where such districts are located. In contrast, the members of the Board of Directors or trustees of a private corporation are elected from among the members and stockholders thereof. It would not be amiss to emphasize at this point that a private corporation is created for the private purpose, benefit, aim and end of its members or stockholders. Necessarily, said members or stockholders should be given a free hand to choose those who will compose the governing body of their corporation. But this is not the case here and this clearly indicates that petitioners are definitely not private corporations.

The foregoing disquisition notwithstanding, We are, however, not unaware of the serious repercussion this may bring to the thousands of water districts employees throughout the country who stand to be affected because they do not have the necessary civil service eligibilities. As these employees are equally protected by the constitutional guarantee to security of tenure. We find it necessary to rule for the protection of such right which cannot be impaired by a subsequent ruling of this Court. Thus, those employees who have acquired their permanent employment status at the time of the

promulgation of this decision cannot be removed by the mere reason that they lack the necessary civil service eligibilities.

ACCORDINGLY, the petition is hereby DISMISSED. Petitioners are declared "government-owned or controlled corporations with original charter" which fall under the jurisdiction of the public respondents CSC and COA.

SO ORDERED.

(SGD) **IEO D. MEDIALDEA**
Associate Justice

WE CONCUR:

(SGD) **MARCELO B. FERNAN**
Chief Justice

(SGD) **ANDRES R. NARVASA**
Associate Justice

(SGD) **AMEURFINA A. MELENCIO-HERRERA**
Associate Justice

(ON LEAVE)
HUGO E. GUTIERREZ, JR.
Associate Justice

(SGD) **ISAGANI A. CRUZ**
Associate Justice

(SGD) **EDGARDO L. PARAS**
Associate Justice

(ON LEAVE)
FLORENTINO P. FELICIANO
Associate Justice

(SGD) **TEODORO R. PADILLA**

Associate Justice

(SGD) **ADBULWAHID A. BIDIN**

Associate Justice

(ON IEAVE)

ABRAHAM F. SARMIENTO

Associate Justice

(SGD) **CAROLINA C. GRINO-AQUINO**

Associate Justice

(SGD) **FLORENZ D. REGALADO**

Associate Justice

(SGD) **HILARIO G. DAVIDE, JR.**

Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

(SGD) **MARCELO B. FERNAN**

Chief Justice

Separate Opinions:

BIDIN, J., Dissenting:

I regret I have to register my dissent in this case. I agree with the main ponencia that P.D. 198, as amended, authorizes the different local legislative bodies (Sanggunian) to form and create their respective water districts through a Resolution which they will pass subject to the guidelines, rules and regulations therein laid down. The issue, therefore, to be resolved is whether the local water districts

so created are government-owned or controlled corporations with original charters embraced by the Civil Service as contemplated by Art. IX-B, Sec. 2[1] of the 1987 Constitution.

P. D. 198 is a general legislation which authorized the formation of water districts. However, the operative act which creates a water district is not said decree but the resolution of the Sanggunian concerned forming and maintaining a local water district. Thus, Section 2 of the P. D. 198, among others, provides:

“Sec. 2. Declaration of Policy – x x x To encourage the formulation of such local water districts and the transfer thereto of existing water supply and waste water disposal facilities, this Decree provides by general act the authority for the formation thereof, on a local option basis. x x x” (Underscoring supplied)

Implementing the above policy, Title II of

P. D. 198 provides:

“TITLE II. – LOCAL WATER DISTRICT LAW

CHAPTER I. - Title

Sec. 4. Title – The provisions of this Title shall be known and referred to as the ‘Local water District Law.’

CHAPTER II. – Purpose and Formation

Sec. 5. Purpose. – Local water districts may be formed pursuant to this Title for the purposes of (a) acquiring, installing, improving, maintaining and operating water supply and distribution systems for domestic, industrial, municipal and agricultural uses for residents and lands within the boundaries of such districts (b) providing, maintaining and operating wastewater collection,

treatment and disposal facilities, and (c) conducting such other functions and operations incidental to water resource development, utilization and disposal within such districts, as are necessary or incidental to said purpose.

Sec. 6. Formation of District. – This Act is the source of authorization and power to form and maintain a district. For purposes of this Act, a district shall be considered as a quasi-public corporation performing public service and supplying public wants. As such, a district shall exercise the powers, rights and privileges given to private corporations under existing laws, in addition to the powers granted in, and subject to such restrictions imposed, under this Act.

x x x

Sec. 7. Filing of Resolution. - A certified copy of the resolution or resolutions forming a district shall be forwarded to the office of the Secretary of the Administration. If found by the Administration to conform to the requirements of Section 6 and the policy objectives in Section 2, the resolution shall be duly filed. The district shall be deemed duly formed and existing upon the date of such filing. A certified copy of said resolution showing the filing stamp of the Administration shall be maintained in the office of the district. Upon such filing, the local government or governments concerned shall lose ownership, supervision and control or any right whatsoever over the district except as provided herein."

(Underscoring supplied)

It is apparent that insofar as the formation of local water districts are concerned, P. D. 198 is not an original charter but a general act authorizing the formation of water districts on local opinion basis (Sec. 2, P. D. 198) similar to the Corporation Code. What is chartered, formed and created under P. D. 198 as a government corporation is the "Local Water Utilities Administration" attached to the Office of the President as follows:

"Sec. 49. Charter. – There is hereby chartered, created and formed a government corporation to be known as the 'Local Water Utilities Administration' which is hereby attached to the Office of the President. The provisions of this Title shall be and constitute the charter of the Administration."

On the other hand, local water districts are formed by resolutions of the respective Provincial, City and Municipal councils (Sec. 7, P. D. 198) filed with the Local Water Utilities Administration, a government corporation chartered under Section 49, P. D. 198 and attached to the Office of the President. Consequently, without the requisite resolution of the Sanggunian concerned forming the water district having been filed with the Local Water Utilities Administration, no water district is formed. What gives the water districts juridical personality is the resolution of the respective Sanggunian forming the district and filed with the Local Water Utilities Administration. Once formed, a water district is subject to the provisions of P. D. 198 and no longer under the jurisdiction of any political administration which shall thereafter lose ownership, supervision and control over the

district (Sec. 7 PD 198).

In view of the foregoing, I vote to Grant the petition and to declare petitioners as quasi-public corporations performing public service without original charters, and therefore not embraced by the Civil Service.

(SGD). **ADBULWAHID A. BIDIN**
Associate Justice

(SGD) **DANIEL T. MARTINEZ**
Clerk of Court

SECTION 10

EXECUTIVE ORDER NO. 286

REORGANIZING THE METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM (MWSS) AND THE LOCAL WATER UTILITIES ADMINISTRATION (LWUA) PURSUANT TO REPUBLIC ACT NO. 8041, OTHERWISE KNOWN AS THE NATIONAL WATER CRISIS ACT OF 1995

WHEREAS, as enunciated in Republic Act No. 8041, it is the “declared 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;”

WHEREAS, consistent with this policy, Section 7 of Republic Act No. 8041 authorized the President to revamp and reorganize the MWSS and the LWUA;

WHEREAS, the Joint Executive-Legislative Water Crisis Commission established under the same law has, after consulting representatives of the MWSS and the LWUA, proposed a reorganizational plan for the said agencies; and

WHEREAS, the proposed reorganization is consistent with the Administration’s framework for governance, having been designed to streamline and correct dysfunctions in the structure and operations of the MWSS and the LWUA to enable these agencies to become more effective, efficient and responsive to the country’s needs for potable water, as well as prepare the groundwork for their eventual privatization,

where feasible.

NOW, THEREFORE, I, FIDEL V. RAMOS, President of the Philippines, by virtue of the powers vested in me by law, consistent with the reorganization plan proposed by the Joint Executive-Legislative Water Crisis Commission, do hereby order:

SECTION 1. *Framework and Objectives.*

- The reorganization of the MWSS and LWUA shall be undertaken in the context of the Administration’s framework of governance. Accordingly, the role of the national government shall be to steer rather than row. It shall, to the extent possible, encourage the private sector to participate in the delivery of public goods through franchising, concession, management, privatization or other arrangements of the concerned agencies operations or facilities.

Prudence and restraint in the use of government resources shall be exercised. Efforts at streamlining and correcting dysfunctions in the operations and structures of the agencies concerned shall be undertaken to achieve more with less. The delivery of more effective, efficient, and responsible public service shall be paramount.

SECTION 2. *Reorganization Plan for the MWSS.* - The MWSS shall be reorganized, as follows:

2.1. *Officers.* - The MWSS shall be headed by an Administrator who shall be its chief executive officer. He shall be assisted by two (2) Senior Deputy Administrators, one for Operations and Customers Service and another for Resource Development and Management. There shall, moreover, be four (4) Deputy Administrators, one (1) for Engineering and Construction, one (1) for Finance and Administration, and two (2) for Customers Service. The Senior Deputy Administrators and

Deputy Administrators shall be appointed by the Board, upon the recommendation of the Administrator.

2.2 Organization and Management. - The Administrator, with the assistance of his Senior Deputy Administrators, shall provide overall direction and control over the operations and administration of MWSS.

(a) The Office of the Administrator shall have the following services and/or departments directly under its supervision:

- i. Corporate Planning Service
- ii. Internal Audit Service
- iii. Management Information Service
- iv. System Development Department
- v. Computer Service Department
- vi. Legal Department
- vii. Public Affairs Department

(b) The Office of the Senior Deputy Administrator for Operations and Customers Service shall be in charge of the operations and maintenance of the MWSS plants and other facilities, and the actual delivery of service to water users. It shall have direct supervision of the following departments:

- i. Water Production
- ii. Water Transmission and Meter Management
- iii. Sewerage

(c) To ensure more effective and responsive delivery of water services and increase revenues, Customers Service shall be divided into two Districts, each District to be headed by a Deputy Administrator. Each District shall have four service areas with each Area (or department) performing the following functions, as well as such other functions that may be assigned to it consistent with the purpose of decentralizing to ensure better public service:

- i. Revenue Generation, including

meter installation and reading, billing and collection

- ii. Facilities Operation Maintenance and Improvement
- iii. Meter Management
- iv. Public Information

(d) The Office of the Senior Administrator for Resource Development and Management shall have direct supervision over the Deputy Administrators for Engineering and Construction, and for Administration and Finance.

(e) The Office of the Deputy Administrator for Engineering and Construction shall undertake planning and programming, monitoring, and evaluation of projects for the development and expansion of waterworks and sewerage facilities. Specifically, it shall have direct supervision over the following departments:

- i. Project Planning
- ii. Project Design
- iii. Applied Research and Quality Control

The same Deputy Administrator shall have direct supervision over the Project Management Office, which comprises a pool of project managers, presently consisting of five (5).

(f) The Office of the Deputy Administrator for Finance and Administration shall be responsible for resource management and provision of administrative support services. It shall consist of the following departments:

- i. Accounting
- ii. Managerial Finance and Budget
- iii. Human Resource Development and Manpower Planning
- iv. General Services
- v. Personnel Management and Health Services

vi. Treasury

(g) The Table of Organization down to department level is provided for in Annex "A".

2.3. Authority to Revise the Number of Departments. - The MWSS is, subject to the approval of the President, authorized to revise the number of departments herein specified if and when the same becomes necessary by reason of a franchising, concession, privatization or other arrangements that will reduce the scope of its current operations and activities.”,

SECTION 3. Reorganization Plan for the LWUA. - The LWUA is hereby reorganized, as follows:

3.1. Officers. - The LWUA shall be headed by an Administrator who shall be its chief executive officer. He shall be assisted by a Senior Deputy Administrator. There shall, moreover, be three (3) Deputy Administrators, one (1) each for Finance, Administration and Area Operations. The Senior Deputy Administrator and Deputy Administrators shall be appointed by the Board upon the recommendation of the Administrator.

3.2. Organization and Management. - The Administrator, with the assistance of his Senior Deputy Administrator, shall provide over-all direction and control over the operations and administration of the LWUA.

(a) The Office of the Administrator shall have direct supervision over the following departments:

- i. Internal Control
- ii. Management Services
- iii. Public Affairs

(b) The Office of the Senior Deputy Administrator shall have direct supervision over the following departments:

- i. Special Projects
- ii. Legal

iii. Water Resource Research and Training

The Senior Deputy Administrator shall also exercise supervision over the three (3) Deputy Administrators.

(c) The Office of the Deputy Administrator for Finance shall be responsible for financial resources management and loans administration. Specifically, it shall have direct supervision over the following departments:

- i. Treasury
- ii. Accounting
- iii. Loans Administration
- iv. Water District Audit

(d) The Office of the Deputy Administrator for Administration shall be primarily responsible for the provision of administrative services. It shall have direct supervision over the following departments:

- i. Human Resource Management
- ii. Property Management
- iii. General Services

The Office of the Deputy Administrator for Area Operations shall have direct supervision over nine (9) area managers who will be responsible for the following functions at the field level:

- i. Project Planning
- ii. Project Monitoring and Evaluation
- iii. Water District Development
- iv. Loans Evaluation

(f) The Table of Organization down to department level is provided for in Annex "B".

3.3. Authority to Revise the Number of Departments. - The LWUA is, subject to the approval of the President, authorized to revise the number of departments herein specified if and when the same becomes necessary by reason of a franchising, concession, privatization or other arrangements that will reduce the scope of its current operations and

activities.

SECTION 4. *Detailed Staffing.* - The MWSS and LWUA are hereby directed to prepare their proposed detailed staffing or manning patterns accounting for all positions in the organization and the corresponding budgetary and resource rearrangements as may be necessary. They are, moreover, required to conduct a thorough personnel audit to determine their respective manpower requirements. An inventory of contracts of all contractual employees including casual and temporary employees shall also be made to determine the need for the continuation of their services.

The proposed staffing pattern shall be submitted to the Department of Budget and Management (DBM) for review not later than sixty (60) days from the date hereof. The DBM shall submit its recommendation to the President within thirty (30) days from receipt of the proposal but in no case later than ninety (90) days from the date hereof.

The revised staffing or manning pattern shall in no case exceed the number of existing authorized regular positions.

SECTION 5. *Revised Compensation.* - The MWSS and the LWUA are hereby authorized to adopt a revised and upgraded position classification and compensation package for its officers and employees, subject to the following conditions:

- a. no diminution of the present salaries and benefits of MWSS and LWUA personnel;
- b. the revised rates of compensation shall be commensurate to the improved and efficient revenue collection of the agency concerned as determined by their respective Boards of Trustees;
- c. the adjusted rates shall not exceed

industry and private sector rates of compensation;

d. approval by the Board of Trustee of their respective budgets which must be sufficient to cover the proposed adjustments on compensation;

e. the non-revenue water of the agency concerned shall in no case be more than forty percent (40%); and

f. final approval of the President.

SECTION 6. *Separation Pay.* - Any official or employee of the MWSS and LWUA who may be phased out by reason of the reorganization shall be entitled to such benefits as may be determined by existing laws. For this purpose, the MWSS, LWUA and DBM are hereby directed to study and propose schemes or measures to provide personnel who shall voluntarily retire from the service incentives and other benefits, including the possibility of accelerating the application of the revised compensation package under the Salary Standardization Law, Republic Act No. 6758. The recommendation should be submitted to the President not later than thirty (30) days from the date hereof.

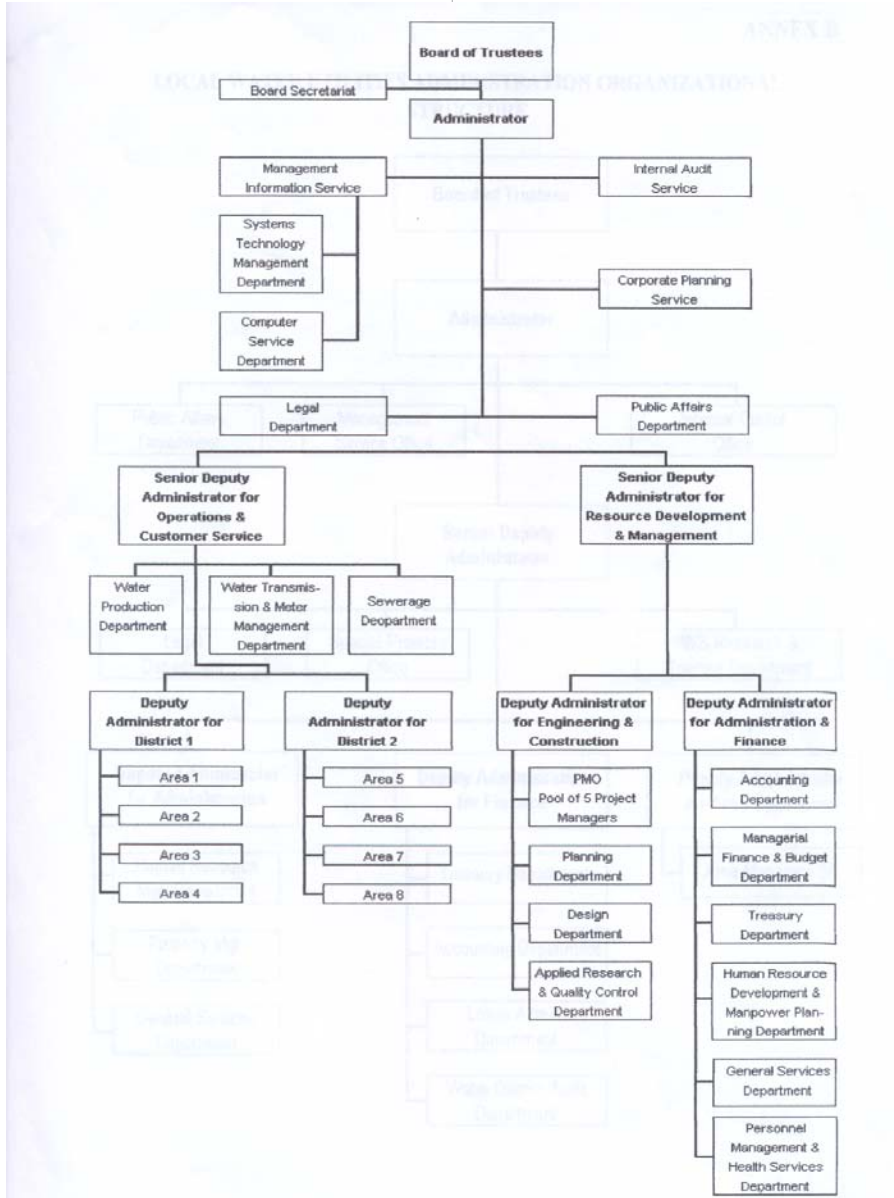
SECTION 7. *Effectivity.* - This Executive Order shall take effect the day after its complete publication in a newspaper of general circulation.

DONE in the City of Manila, this 6th day of December, in the year of Our Lord, Nineteen Hundred and Ninety-Five.

Published in the Manila Times on December 11, 1995.

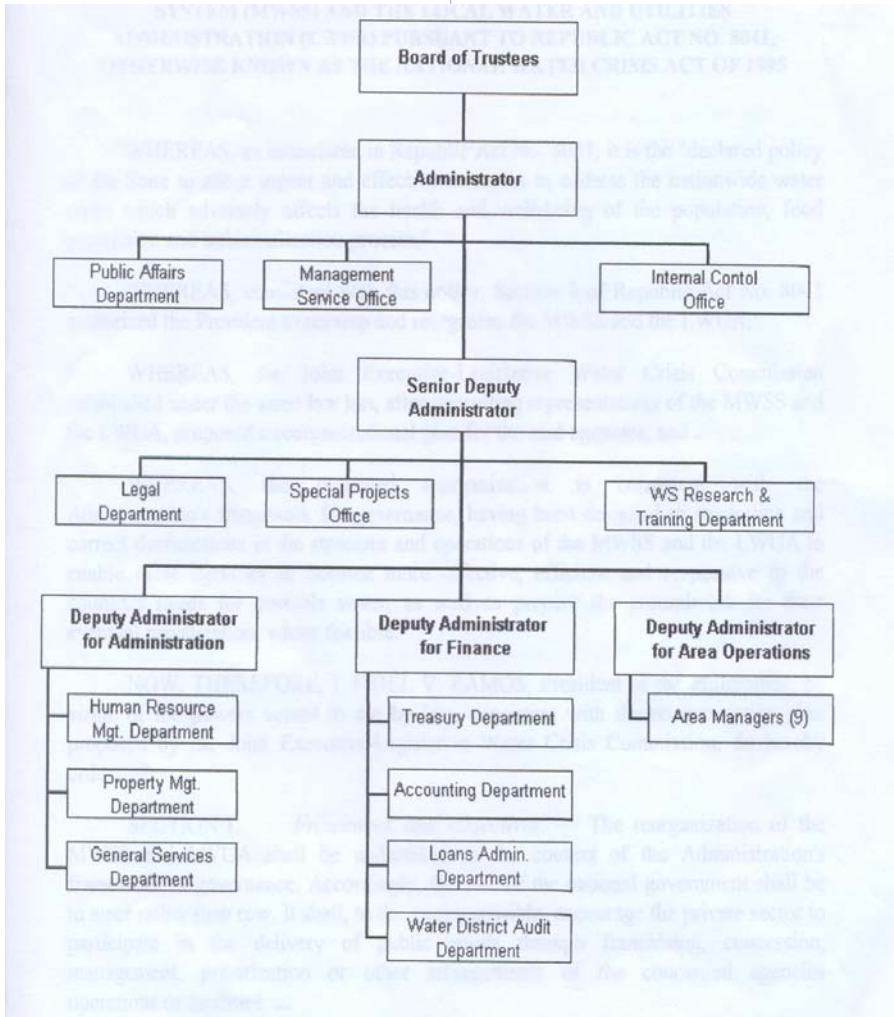
ANNEX A

METROPOLITAN WATERWORKS & SEWERAGE SYSTEM ORGANIZATIONAL STRUCTURE



ANNEX B

LOCAL WATER UTILITIES ADMINISTRATION ORGANIZATIONAL STRUCTURE



SECTION 11

MALACAÑANG
Manila

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 279

INSTITUTING REFORMS IN THE FINANCING POLICIES FOR THE WATER SUPPLY AND SEWERAGE SECTOR AND WATER SERVICE PROVIDERS AND PROVIDING FOR THE RATIONALIZATION OF LWUA'S ORGANIZATIONAL STRUCTURE AND OPERATIONS IN SUPPORT THEREOF.

WHEREAS, Presidential Decree No. 198 ("PD 198") established the Local Water Utilities Administration (LWUA), mandating it to serve as a "specialized lending institution" for the promotion, development and financing of local water utilities;

WHEREAS, the Local Government Units (LGUs) are responsible for the provision of basic services and facilities as enumerated under Section 17 of the Republic Act. No. 7160 (Local Government Code), including among others, the provision of water supply and sewerage services;

WHEREAS, shifts in government financing policies and constraints in the availability of financing from the National Government, and lack of investor confidence in the water supply and sewerage sector and limited capital stock and domestic and foreign borrowing authority have constrained LWUA from providing financing assistance to qualified Water Districts (WDs);

WHEREAS, there is a need to tap financing resources available to the water sector, including international grants, and funding from government financing institutions (GFIs), private financing institutions (PFIs), and LGUs;

WHEREAS, there is a need to review and rationalize current financing policies for the Philippine water supply and sewerage sector to allow for the efficient flow of resources thereto;

WHEREAS, cognizant of the urgency of the aforesaid need, the NEDA Board passed a resolution providing for the reforms in the financing of the water supply and sewerage sector and the creation of an Oversight Committee for the purpose of coordinating and overseeing the implementation of said financing reforms in the Philippine water supply and sewerage sector;

WHEREAS, the implementation of the recommended reforms requires that LWUA, as the focal government agency for financing and institutional development of local WDs, refocus its objectives and rationalize its operation;

WHEREAS, by virtue of Executive Order 123, s. of 2002, the regulation of tariffs of WDs will be undertaken by the National Water Resources Board (NWRB) with a proviso that LWUA, consistent with its mandate under PD 198, may continue reviewing the tariff of WDs in which it has financial exposure with the end view of ensuring their financial viability.

WHEREAS, the LWUA is currently attached to the Department of Public Works and Highways (DPWH) by virtue of Executive Order No. 124, s. of 1987;

WHEREAS, rationalization of LWUA's operations require closer policy and program coordination with the Office of the President

(OP);

WHEREAS, under Section 31, Chapter 10, Book III of Executive Order No. 292 or the Administrative Code of 1987, the President, in order to achieve simplicity, economy and efficiency, has continuing authority to reorganize the administrative structure of agencies under it;

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

PART I GENERAL PROVISIONS

SECTION 1. *Reform Objectives/Policies*

- All concerned government agencies and instrumentalities of the water supply and sewerage sector, including but not limited to the Department of Finance (DOF), the Municipal Finance Corporation (MFC), Department of Interior and Local Government (DILG), Department of Budget and Management (DBM), Department of Environment and Natural Resources (DENR), DPWH, National Economic and Development Authority (NEDA), LWUA, and the GFIs are hereby directed to pursue and implement the following reform objectives / policies in the water supply and sewerage sector:

(a) Improvement of investor confidence in the water supply and sewerage sector;

(b) Rationalization in the allocation of scarce financial resources in the water supply and sewerage sector through classification and graduation initiatives;

(c) Freedom of choice of water service providers in sourcing financing;

(d) Increase in the participation of LGUs, GFIs, and PFIs in the financing of the water

supply and sewerage sector;

(e) Stipulation of improved service and creation of financial self-sustainability for water service providers;

(f) Encouragement of initiatives aimed at self-sufficiency of water service providers, including, but not limited to, amalgamation, private sector participation, cost-recovery tariffs, and resource pooling;

(g) Grant of incentives for the improvement and graduation of water service providers;

(h) Education of consumers towards treating water as a scarce economic good; and

(i) Establishment of an independent economic regulator for the water supply and sewerage sector.

SEC. 2. *Definition of Terms* – For purposes of this Order, the term:

(a) Water Service Providers (WSPs) - refer to local water utilities such as WDs, LGU-run water utilities, rural waterworks and sanitation associations, barangay waterworks and sanitation associations, regardless of location.

(b) Amalgamation - refers to the consolidation, joint operation or annexation of two or more WSPs resulting into a water district.

(c) Classification – refers to the categorization of WSPs into non-creditworthy, pre-creditworthy, semi-creditworthy or creditworthy to determine proper allocation of financing.

(d) Cost Recovery Tariff - is the tariff required to cover capital and operation and maintenance costs of WSPs at all service levels.

(e) Creditworthy WSPs - are financially self-sustaining WSPs and capable of accessing financing from GFIs and/or PFIs.

(f) Government Financial Institutions (GFIs) – refer to the Development Bank of the Philippines (DBP), Land Bank of the Philippines (LBP) and other financing institutions owned and controlled by the Government

(g) Graduation - refers to the progression of a WSP from semi-creditworthy to creditworthy status or of a non-credit worthy to pre-creditworthy or of a pre-creditworthy WSP to semi-creditworthy status based on improvements in financial and operational indicators.

(h) Local Government Units (LGUs)- refer to the territorial and political subdivisions of the Philippines, consisting, of provinces, cities municipalities and barangays.

(i) Non-Creditworthy WSPs - refer to WSPs with potential to reach pre-creditworthy status in the medium-term, based on relevant financial and operational indicators set by the Oversight Committee.

(j) Pre-Creditworthy WSPs - refer to WSPs which are not likely to become creditworthy in the medium-term due to performance' issues but can demonstrate the potential for creditworthiness in the long-term, based on relevant financial and operational indicators set by the Oversight Committee.

(k) Semi-Creditworthy WSPs - refer to WSPs with the demonstrated ability to achieve creditworthiness in the short-term, based on relevant financial and operational indicators set by the Oversight Committee, but either lack the full criteria for creditworthiness or do not meet the criteria consistently.

PART II OVERSIGHT COMMITTEE

SEC. 3. *Oversight Committee* – An inter-agency Oversight Committee is hereby

constituted for purposes of coordinating and overseeing the implementation of the reforms in the financing, graduation and regulatory policies in the water supply and sewerage sector.

SEC. 4. *Composition* - The composition of the Oversight Committee shall be as follows:

Chair: Department of Finance (DOF)

Vice-Chair: National Economic and Development Authority (NEDA)

Members: Department of Budget and Management (DBM)

Department of Interior and Local Government (DILG):

Office of the President (OP)

Local Water Utilities Administration (LWUA)

Designated representatives of DOF, NEDA, DBM, DILG and OP must preferably be of Undersecretary level LWUA must be represented by its Administrator.

GFIs and the Municipal Development Fund Office (MDFO) may serve as resource persons during meetings of the Oversight Committee.

SEC. 5. *Functions* - The Oversight Committee shall, among others:

(a) Formulate the implementing rules and regulations (IRR) of this Order;

(b) Review the rationalization plan to be submitted by LWUA pursuant to Section 9 of this Order and submit its recommendations on said plan to the President for approval;

(c) Review the criteria for the classification of WSPs, recommended by the Water Development Group (WDG) of LWUA;

(d) Review the classification of WSPs prepared by LWUA-WDG, duly certified by LWUA-Head that the same is in accordance with the criteria presented to and reviewed by

the Oversight Committee. The Oversight Committee may subject the classification of the WSPs to audit;

(e) Prepare an action plan for the reforms in the financing policies in the water supply and sewerage sector for the near term and the medium term including incentive schemes that appropriate agencies may consider to offer to GFIs and PFI to encourage such institutions to lend to WSPs;

(f) Prepare and submit quarterly reports to the agency to which LWUA is attached; and

(g) Review the charter of LWUA and when necessary, propose amendments thereto.

The Oversight Committee shall immediately organize itself and set its policies and procedures to facilitate the implementation of the said reforms in the water supply and sewerage sector.

SEC. 6. *Technical Secretariat* - The Oversight Committee shall establish a Technical Secretariat under DOF to be staffed by personnel assigned by government agencies comprising it. It shall serve as the official repository of all data concerning the classification and evaluation of all WSPs,

SEC. 7. *Expenses* - Members of the Oversight Committee and its Technical Secretariat shall be entitled to receive honoraria and/or reimbursement of expenses as may be allowed subject to availability of funds and prevailing rules and regulations.

PART III LOCAL WATER UTILITIES ADMINISTRATION

SEC. 8. *Transfer to OP* - The LWUA, presently attached to the DPWH, is hereby attached to OP until such time it is transferred to DOF as provided for under Section 10 hereof.

In addition, the LWUA Board of Trustees (BOT) shall include representatives from the agency to which it is attached.

SEC. 9. *Rationalization of LWUA's organizational structure and operations* -

LWUA, subject to applicable laws and regulations, is hereby directed to review its organizational structure and internal policies and programs, rationalize its operation and refocus its objectives to include other WSPs, whenever feasible or applicable to facilitate implementation of and conform with the policies enunciated in this Order. To this extent, LWUA shall constitute and designate from its current organizational set-up, a Water Development Group (WDG), a Water Development Financier (WDF) and a Technical Assistance Group (TAG), or similar structures, with functions and responsibilities as follows:

A. Water Development Group (WDG)

The WDG shall have the following responsibilities;

(a) The WDG which shall be primarily charged with the continuation of LWUA's current institutional development services aimed at graduating WSPs, as well as the classification of WSPs.

(b) The WDG shall classify the WSPs into either creditworthy, semi-creditworthy, pre-creditworthy or non-creditworthy for the purpose of determining the appropriate sources of financing. WSPs initially classified by WDG as creditworthy and/or non-creditworthy shall be subject to further review by the Oversight Committee pursuant to Section 5 of this Order.

WSPs classified as semi-creditworthy and pre-creditworthy and non-credit worthy shall be subject to periodic review by the WDG at least once every three (3) years for purposes of reclassification. At their own instance,

WSPs may request the WDG for an annual reclassification review.

(c) Graduation - The WDG shall develop a graduation plan for non-creditworthy, pre-creditworthy and semi-creditworthy WSPs based on the following graduation initiatives:

LWUA-WDG shall monitor the implementation of the graduation plan and evaluate the effectiveness of the graduation initiatives undertaken by the semi-creditworthy, pre-creditworthy and non-credit worthy WSPs.

LWUA-WDG shall initially cover the classification and graduation plan and initiatives of WDs. It may also cover other WSPs as deemed applicable or feasible.

(d) Reporting - LWUA-WDG shall prepare and submit quarterly reports on its activities to the Oversight Committee and DOF.

B. Water Development Financier (WDF)

The WDF shall have the following responsibilities:

(a) The WDF which shall be primarily tasked to enhance and/or strengthen LWUA's lending functions and evaluate the applications for financial assistance.

(b) Re-orientation Towards Banking Principles - LWUA, through the WDF, shall enhance and/or strengthen its lending policies and functions to carry out and implement its mandate to provide financing particularly to non-credit worthy, pre-creditworthy and semi-creditworthy WDs, grounded on sound development banking principles. To this effect, LWUA shall adopt development banking principles which cater to the financing needs of WSPs and shall develop its own procedures for the monitoring of its loan portfolio. LWUA shall develop lending policies and guidelines in pursuit of the policies and principles espoused under this Executive Order within

90 days from its effectivity and submit the same to the Oversight Committee. LWUA shall conduct its operations in a transparent, efficient and effective manner.

(c) Strengthening of Collection Function - In the exercise of its lending functions, LWUA shall also strengthen its collection function from WDs as well as enhance its payment of loans to LWUA creditors. To this effect, all collections arising from LWUA's receivables shall constitute a special fund to be apportioned between debt servicing of LWUA loans and the added funding necessary to support the LWUA's graduation and technical assistance functions under the WDG and the TAG.

(i) Cost Recovery Tariff Initiatives - These are initiatives aimed at achieving widespread full cost recovery tariffs in the long term. The initiatives shall include the inventory of non-credit worthy, semi-creditworthy and pre-creditworthy WSPs to determine the degree to which tariffs are sufficient to accumulate at least a minimal reserve for collateral or counterpart equity. In addition, should the LGUs invest in WSPs, they should be allowed recovery of and' some minimal return on its investment.

(ii) Amalgamation and Private Sector Participation Initiatives - These are initiatives aimed at achieving economies of scale and efficiency of service through the use of identified amalgamation and private sector participation techniques based on technical, geographical, economic and other indicators.

LWUA shall develop the necessary guidelines during the transition period for the amalgamated WDs and LGUs.

(iii) Management Structure and Governance - These initiatives pertain to institutional improvements within the WSPs

structure leading to greater accountability and improved service.

(iv) LGU/WSP Resource Coordination for Credit Enhancement. - This refers to the pooling of resources between semi-creditworthy and/or pre-creditworthy or semi-creditworthy and/or non-creditworthy WSPs and the relevant LGUs in their service areas to finance water supply and sewerage projects or create the collateral needed to borrow from GFIs and PFIs.

(v) Education - This refers to communication and information initiatives on the benefits of graduation initiatives including cost recovery tariffs, amalgamation, private sector participation and LGU/WSP resource coordination.

(vi) Technical Assistance to non-credit worthy and pre-creditworthy WSPs - This refers to technical assistance to support graduation initiatives which may be given with or without charge within a value threshold that may be determined by LWUA-WDG.

(d) Segregation of LWUA Loan Portfolios - For purposes of identification and administrative efficiency, LWUA shall maintain separate accounting, payment and collection systems for existing loans and loans to be granted henceforth pursuant to the reforms instituted in this Executive Order.

C. Technical Assistance Group (TAG)

TAG shall have the following responsibilities:

(a) TAG shall continue LWUA's program of providing technical assistance to WSPs, in accordance with the proceeding sections.

(b) TAG shall extend project-related technical assistance to GFIs and credit-worthy WSPs on a competitive basis, consistent with applicable laws, rules and regulations on government procurement.

(c) Above a certain value threshold, which threshold shall be determined by LWUA, TAG shall extend project-related technical assistance to semi-creditworthy WSPs on a competitive basis, consistent with applicable laws, rules and regulations on government procurement.

(d) LWUA-TAG shall extend project-related assistance to non-creditworthy and pre-creditworthy WDs which may be with or without charge within a certain value threshold to be determined by LWUA to support projects funded by LWUA-WDF.

SEC. 10. Within thirty (30) days from the effectivity of this Order, LWUA shall review its current structure and submit its rationalized plan to the Oversight Committee, consistent with the policy reforms enunciated under this Order. The Oversight Committee shall evaluate the rationalization plan within thirty (30) days from receipt. LWUA, with the endorsement of the Oversight Committee, shall submit the rationalization plan to the President for final approval.

Upon approval by the President of the reforms in the water supply and sewerage sector, including the rationalized organization and manpower structure of LWUA, LWUA shall then be transferred to DOF. Pursuant to Section 51 of PD 198, at least three (3) of the trustees must be employees of the National Government. DOF shall always be represented in the LWUA-BOT.

PART IV FINANCING POLICIES

SEC. 11. **Responsibility of LGUs** - In line with the principle of devolution of the provision of basic services under the Local Government Code, LGUs shall be encouraged to provide

delivery of water supply and sewerage services through, but not limited to, investments in, or loans to WSPs. LGUs shall as a general policy, be financially and operationally responsible for the WSPs within their respective jurisdictions.

SEC. 12. *Sources of Financing* - The sources of financing for the water supply and sewerage sector shall be as follows:

(a) Creditworthy WSPs shall be eligible to source financing at commercial lending rates from GFIs and PFIs. Pursuant thereto, LWUA, with respect to creditworthy WDs shall enhance and streamline its waiver procedures to effect the reform objectives/policies enunciated herein. GFIs shall strengthen their skills base and develop lending programs specially tailored to the needs of the water supply and sewerage sector.

(b) Semi-creditworthy WDs shall be eligible to source concessional debt financing from the LWUA-WDF, as well as GFIs and PFIs when possible.

(c) Pre-creditworthy WDs shall be eligible to source grants from donors and deep concessional financing from the LWUA-WDF.

(d) Non-creditworthy WDs shall continue to be eligible for financing under the LWUA-WDF. However, LGUs are hereby encouraged to provide financial and operational support for such WDs and other WSPs within their respective jurisdictions. DILG and MDFO shall provide the necessary technical and financial support within their respective mandates.

(e) WSPs, including eligible WDs, can access financing from GFIs, PFIs, MDFO, and LGUs, whenever possible.

LWUA-WDG shall provide the necessary incentives for graduation such as extension of greater flexibility in WD's operation as a WD graduate from one stage to the next.

LWUA-WDG shall provide guidelines to encourage graduation, which shall be approved by LWUA-BOT for submission to the Oversight Committee.

SEC. 13. *Role of Financial Institution* – The classification of WSPs shall merely be a determinant of eligibility for the various sources of financing, but shall not in any way be construed as an outright guarantee of actual financing from the designated source.

PART V FINAL PROVISIONS

SEC. 14. The Oversight Committee shall formulate the IRR of this Order within 90 days from its effectivity, which shall be published in accordance with the requirements of the Administrative Code of 1987 and other pertinent laws.

SEC. 15. The Oversight Committee shall cease to exist three (3) years after the approval by the President of the rationalized organization and manpower structure of LWUA, with any remaining function of the Committee to be assumed by the DOF.

SEC. 16. Any violation of this Order and of its IRR shall be subject to disciplinary action and other penalties as provided for in said IRR and other relevant laws and issuances.

SEC. 17. If any provision of this Order is declared unconstitutional or invalid, the other provisions not affected thereby shall remain in full force and effect.

SEC. 18. All orders, executive issuances, rules and regulations, administrative resolutions, or parts thereof, inconsistent with the provisions of this Order are hereby repealed or modified accordingly.

SEC. 19. This Order shall take effect upon its publication in the Official Gazette or in a

newspaper of general circulation in the Philippines.

DONE, in the City of Manila, this 2nd of day of February in the year of our Lord, Two Thousand and Four.

By the President:

(SGD) ALBERTO G. ROMULO
Executive Secretary

Republic of the Philippines
DEPARTMENT OF FINANCE
 Manila

IMPLEMENTING RULES AND REGULATIONS OF EXECUTIVE ORDER NO. 279, SERIES OF 2004, "PRESCRIBING GUIDELINES ON INSTITUTING REFORMS IN THE FINANCING POLICIES FOR THE WATER SUPPLY AND SEWERAGE SECTOR AND WATER SERVICE PROVIDERS AND PROVIDING FOR THE RATIONALIZATION OF LWUA'S ORGANIZATIONAL STRUCTURE AND OPERATIONS IN SUPPORT THEREOF

Section 1. *Purpose*

To prescribe the guidelines, criteria, grounds and procedures which shall govern financing policies for the water supply and sewerage sector and the rationalization of LWUA's organizational structure, operation and refocusing of its objectives.

Section 2. *Coverage*

These IRR shall cover all water districts (WDs) other water service providers (WSPs) outside the coverage of MWSS/Maynilad/Manila Water and all concerned government agencies which have a role in the implementation of EO 279, such as but not limited to the Department of Finance (DOF), National Economic and Development Authority (NEDA), Department of Budget and Management (DBM), Department of Interior and Local Government (DILG), Office of the President (OP), Local Water Utilities Administration (LWUA), Government Financial Institutions (GFIs), Municipal Finance Corporation (MFC), Department of Public Works and Highways (DPWH), Department of Environment and Natural Resources (DENR),

Rural Waterworks and Sanitation Associations (RWSAs) and Barangay Waterworks and Sanitation Associations (BWSAs).

Section 3. *Reforms, Objectives and Policies*

In view of the shifts in government financing policies and constraints in the availability of financing from the National Government, there is a need to review and rationalize current financing policies for the Philippine water supply and sewerage sector to allow for the efficient flow of resources to the sector. Cognizant of the need, these IRR hope to address the following reforms, objectives and policies:

(a) Improvement of investor confidence in the water supply and sewerage sector;

(b) Rationalization in the allocation of scarce financial resources in the water supply and sewerage sector through classification and graduation initiatives;

(c) Freedom of choice of WSPs in sourcing financing;

(d) Increase in the participation of LGUs, GFIs, and PFI in the financing of the water supply and sewerage sector;

(e) Stimulation of improved service and creation of financial self-sustainability for WSPs;

(f) Encouragement of initiatives aimed at self-sufficiency of water service providers, including, but not limited to, amalgamation, private sector participation, cost-recovery tariffs, and resource pooling;

(g) Grant of incentives for the improvement and graduation of WSPs; and

(h) Education of consumers towards treating water as a scarce economic good.

Section 4. *Definition of Terms*

For the purpose of these IRR, the

following terms are defined:

(a) Amalgamation – consolidation, joint operation or annexation of two or more WSPs resulting into a WD.

(b) Classification – categorization of WSPs into non-creditworthy, pre-creditworthy, semi-creditworthy or creditworthy to determine proper allocation of financing.

(c) Cost Recovery Tariff – tariff that is required to cover investment in capital expenditures, operating expenditures and debt servicing, including minimal reserve for collateral or counterpart equity, and reserve for recovery of and some minimal return on LGU's investment/infusion in the WDs or WSPs.

(d) Creditworthy WSPs – financially self-sustaining WSPs capable of accessing financing from GFIs and/or PFIs.

(e) Government Financial Institutions (GFIs) – Development Bank of the Philippines (DBP), Land Bank of the Philippines (LBP) and other financing institutions owned and controlled by the Government.

(f) Graduation – the progression of a WSP from non-creditworthy to pre-creditworthy status or from a pre-creditworthy to semi-creditworthy status and/or from a semi-creditworthy to creditworthy status based on improvements in financial and operational indicators.

(g) Local Government Units (LGUs) – territorial and political subdivisions of the Philippines, consisting of provinces, cities, municipalities and barangays.

(h) Long Term – period covering more than five (5) years,

(i) Medium Term – period covering between three (3) and five (5) years.

(j) Non-Creditworthy WSPs – WSPs with potential to reach pre-creditworthy status in the medium-term, based on relevant financial

and operational indicators set by the Oversight Committee.

(k) Pre-Creditworthy WSPs – WSPs which are not likely to become creditworthy in the medium-term due to performance issues but can demonstrate the potential for creditworthiness in the long-term, as may be determined based on relevant financial and operational indicators set by the Oversight Committee.

(l) Private Financial Institutions (PFIs) – private entities which are primarily organized for the purpose of extending credit facilities to consumers and to industrial or agricultural enterprises. Financing institutions other than government financial institutions. These include universal and commercial banks.

(m) Semi-Creditworthy WSPs – WSPs with the demonstrated ability to achieve creditworthiness in the short-term, based on relevant financial and operational indicators set by the Oversight Committee, but either lack the full criteria for creditworthiness or do not meet the criteria consistently.

(n) Short Term – period covering one year (1) to less than three (3) years.

(o) Technical Assistance – includes feasibility study, detailed engineering design, review of feasibility study and engineering design, preparation of work program, construction supervision, start-up operations, operations and maintenance assistance, rehabilitation of dilapidated systems, well drilling and construction of new wells, rehabilitation and repair of old wells and emergency repair of water supply system. Financing for technical assistance involving pre-feasibility or feasibility studies, project identification, sector survey, institution building activities including training, shall be charged against beneficiaries unless grants

are available for the purpose. On the other hand, consultancy/advisory services related to construction activities, including detailed engineering shall be considered as part of the project capital cost and may be financed by the project loan.

(p) Value Threshold – the level at which LWUA may grant project related technical assistance for free to the PCW and NCW WSPs without affecting LWUA's viability. This will be determined by LWUA on a yearly basis depending on LWUA's capability to absorb such additional cost.

(q) Water Service Providers (WSPs) – local water utilities such as WDs, LGU-run water utilities, rural waterworks and sanitation associations (RWSAs), and barangay waterworks and sanitation associations (BWSAs), regardless of location.

Section 5. ***Responsibilities***

The implementation of the recommended reforms requires that LWUA as the local government agency for financing and institutional development of local WDs, focuses its objectives and rationalizes its operations. Accordingly, the rationalization of LWUA's organizational structure, operation and refocusing of its objectives, and the implementation of the reforms in the financing policies for the water supply and sewerage sector, as defined in Section 2 of these IRR, require close policy coordination among the concerned government agencies.

5.1 Local Water Utilities Administration

LWUA, subject to applicable laws and regulations, shall review its organizational structure and internal policies and programs, rationalize its operations and refocus its objectives to include WSPs, whenever feasible or applicable, to facilitate implementation of and conform with the policies enunciated in

EO 279. Further, LWUA shall conduct its operations in a transparent, efficient and effective manner.

LWUA shall constitute and designate from its current organization set-up, a Water Development Group (WDG), a Water Development

Financier (WDF) and a Technical Assistance Group (TAG), or similar structures, with functions and responsibilities as follows:

5.1 A Water Development Group (WDG)

WDG shall have the following responsibilities:

(a) It shall be primarily charged with the continuation of LWUA's current institutional development services aimed at graduating WSPs, as well as the classification of WSPs.

(b) It shall classify the WSPs into either creditworthy, semi-creditworthy, pre-creditworthy or non-creditworthy for the purpose of determining the appropriate sources of financing WSPs initially classified by WDG as creditworthy and/or non-creditworthy shall be subject to further review by the Oversight Committee pursuant to Section 5.2(b) of these IRR.

LWUA shall initially cover the classification and graduation plan and initiatives of WDs. It may also cover other WSPs as deemed applicable or feasible.

To facilitate the classification of the WDs, LWUA shall prepare the criteria for classification and submit the same to the Oversight Committee for review within 30 days upon effectivity of EO 279.

The criteria shall consider:

- i. financial indicators such as current ratio, debt service ratio, debt/equity ratio, profit margin ratio and cash flow ratio; and
- ii. operational indicators such as collection efficiency; non-revenue water and

service connections/staff.

LWUA shall closely coordinate with the GFIs in determining the criteria for classification.

The classification of WDs shall be duly approved by the LWUA Administrator for submission to the Oversight Committee for review within 90 days upon completion of review of classification criteria by the OC.

For the initial classification, WDs have to meet the criteria for three (3) consecutive years to be considered creditworthy. WDs classified as semi-creditworthy, pre-creditworthy and non-creditworthy shall be subject to periodic review by WDG at least once every three (3) years for purposes of reclassification. In like manner, subsequent classification shall require three (3) years consistent favorable evaluation. At their own instance, WDs may request the WDG for an annual reclassification review.

Any changes in the classification should be submitted to the Oversight Committee.

Lending to WDs initially classified as creditworthy shall be governed by Section 9 (b) of these IRR.

c. It shall develop a graduation plan for non-creditworthy, pre-creditworthy and semi-creditworthy WSPs based on the following graduation initiatives:

i. Cost Recovery Tariff Initiatives - these are initiatives aimed at achieving widespread full cost recovery tariffs in the long-term. The initiatives shall include the inventory of non-creditworthy, semi-creditworthy and pre-creditworthy WSPs to determine the degree to which tariffs are sufficient to accumulate at least a minimal reserve for collateral or counterpart equity. In addition, should the LGUs invest in WSPs, they should be allowed recovery of and some minimal return on their

investment.

ii. Amalgamation and Private Sector Participation initiatives - these are initiatives aimed at achieving economics of scale and efficiency of service through the use of identified amalgamation and private sector participation techniques based on technical, geographical, economic and other indicators.

LWUA shall formulate within 180 days upon effectivity of these IRR, the necessary guidelines to be observed by the amalgamated WSPs during the transition period. Among other things, the guidelines shall address the a) incentives for amalgamation, b) mechanics of amalgamation, c) restructuring of the Board of Directors and officer of the amalgamated WSPs with respect but not limited to tenure of office and surviving positions, and d) controlling WSPs taking into account considerations such as the size, financial condition and the location of the participating WSPs.

iii. Management Structure and Governance - These initiatives pertain to institutional improvements within the WSPs structure leading to greater accountability and improved service.

iv. LGU/WSP Resource Coordination for Credit Enhancement - this refers to the pooling of resources between semi-creditworthy and/or pre-creditworthy and/or non-creditworthy WSPs and the relevant LGUs in their service areas to finance water supply and sewerage projects or create the collateral needed to borrow from GFIs and PFIs.

To allow LGU recovery of and some minimal return on its investments in the WSPs pursuant to (c) (i) and (c) (iv) of this Section, LWUA shall formulate benchmarks for LGU sharing in the earnings of the WSPs in coordination with the MFC and the DOF within

180 days upon effectivity of these IRR.

v. Education – refers to communication and information initiatives on the benefits of graduation initiatives including cost recovery tariffs, amalgamation, private sector participation and LGU/WSP resource coordination.

vi. Technical Assistance to non-creditworthy and pre-creditworthy WSPs – refers to technical assistance to support graduation initiatives which may be given with or without charge within the value threshold that may be determined by LWUA-WDG.

LWUA-WDG shall monitor the implementation of the graduation plan and evaluate the effectiveness of the graduation initiatives undertaken by the semi-creditworthy, pre-creditworthy and non-creditworthy WSPs.

d. The LWUA-WDG shall prepare and submit quarterly reports on its activities to the Oversight Committee and DOF.

For the purposes of Section 5.1 A (c) of these IRR and Sec. 12 of EO 279, LWUA shall submit to the Oversight Committee, guidelines to encourage graduation as approved by the LWUA Board of Trustees within 180 days upon effectivity of these IRR. Said guidelines shall include incentives such as, but not limited to greater flexibility in WD's operation as WD graduates from one stage to the next, and enjoyment of LWUA's streamlined waiver procedures.

5.1.B Water Development Financier (WDF)

WDF shall have the following responsibilities:

a. It shall be primarily tasked to enhance and/or strengthen LWUA's lending functions and evaluate the applications for financial assistance.

b. Re-orientation Towards Banking Principles - LWUA, through the WDF, shall enhance and/or strengthen its mandate as a specialized lending agency under PD 198 as amended by providing financing particularly to non-creditworthy, pre-creditworthy and semi-creditworthy WDs, grounded on sound development banking principles. To this effect, LWUA shall adopt development banking principles, which cater to the financing needs of WSPs and shall develop its own procedures for the monitoring of its loan portfolio. LWUA shall develop lending policies and guidelines in pursuit of the policies and principles espoused under EO 279 in coordination with the MFC and GFIs within 90 days from its effectivity and submit the same to the Oversight Committee. The new lending policies and guidelines shall only apply to new loans to be approved by LWUA for prospective WD-borrowers.

c. Strengthening of Collection Function - In the exercise of its lending functions, LWUA shall also strengthen its collection function from WDs as well enhance its payment of loans to LWUA creditors. To this effect, all collection arising from LWUA receivables shall constitute a special fund to be apportioned to debt servicing of LWUA loans, additional funding necessary to support the LWUA's graduation and technical assistance functions under the WDG and the TAG.

d. Segregation of LWUA Loan Portfolios - For purposes of identification and administrative efficiency, LWUA shall maintain separate accounting, payment and collection systems for existing loans and loans to be granted henceforth pursuant to the reforms instituted under EO 279.

5.1.C Technical Assistance Group (TAG)
TAG shall have the following

responsibilities:

a. It shall continue LWUA's program of providing technical assistance to WSPs, in accordance with the proceeding sections.

b. It shall extend project-related technical assistance to GFIs, PFIs and creditworthy WSPs on a competitive basis, consistent with the applicable laws, rules and regulations on government procurement.

c. Above a certain value threshold, which threshold shall be determined by LWUA in accordance with the definition provided for under Section 4 of these IRR, TAG shall extend project-related technical assistance to semi-creditworthy WSPs on a competitive basis, consistent with applicable laws, rules and regulations on government procurement.

d. It shall extend project-related assistance to non-creditworthy and pre-creditworthy WSPs funded by the LWUA-WDF. This assistance may be with or without charge within a certain value threshold to be determined by LWUA on a yearly basis.

5.1.D Within 30 days from the effectivity of EO 279, LWUA shall review its current structure and submit its rationalized plan to the Oversight Committee, consistent with the policy reforms enunciated under the said EO. The Oversight Committee shall evaluate the rationalization plan within 30 days from receipt.

5.1.E LWUA with the endorsement of the Oversight Committee, shall submit the rationalization plan to the President for final approval not later than 75 days upon the effectivity of the EO.

a. Upon approval by the President of the reforms in the water supply and sewerage sector, including the rationalized organization and staffing structure of LWUA, an EO shall be issued attaching LWUA to DOF, for policy

and program coordination.

Oversight Committee (OC)

The Oversight Committee constituted pursuant to Section 3 of EO 279 shall coordinate and oversee the implementation of the reforms in the financing and graduation policies in the water supply and sewerage sector.

In addition to the function explicitly taken from the EO, the OC shall:

a. Review the criteria for the classification of WSPs, recommended by the LWUA within 30 days upon submission by LWUA;

b. Review the classification of WSPs prepared by LWUA pursuant to Sec. 9 A(b) EO 279, duly certified by the LWUA Administrator that the same is in accordance with the criteria presented to and reviewed by the Oversight Committee pursuant to Sec. 5 (d) of EO 279. The Oversight Committee shall review the same within 60 days upon submission by LWUA. The Oversight Committee may subject the classification of the WSP to audit;

Immediate actions include, among others, the review of LWUA Charter as provided under Section 5 of EO 279 including the classification of water districts, graduation of WSPs, reform in LWUA financial waiver process and compliance of LWUA to provisions of EO 279 and of these IRR within the specified timelines. On the other hand, medium term actions include the determination of appropriate incentives for GFIs and the PFIs to lend to WSPs.

All functions of the Oversight Committee, which are continuing in nature, shall be performed by the DOF, as provided for under Section 15 of EO 279.

Section 6. **Attachment**

Upon approval by the President of the

reforms in the water supply and sewerage sector, including the rationalized organization structure and the staffing pattern of LWUA, LWUA shall then be attached to the DOF. Pursuant to Section 51 of PD 198, at least three (3) of the trustees must be employees of the National Government (NG). NG representatives must be at least Director level, DOF shall always be represented in the LWUA Board of Trustees.

Section 7. *Expenses*

Members of the Oversight Committee and its Technical Secretariat shall be entitled to receive honoraria and/or reimbursement of expenses as may be allowed subject to availability of funds and prevailing rules and regulations.

FINANCING POLICIES

Section 8. *Responsibility of LGUs*

In line with the principle of devolution of the provision of basic services under the Local Government Code, LGUs shall be encouraged to provide delivery of water supply and sewerage through, but not limited to, investments in, or loans to WSPs. LGUs shall as general policy, be financially and operationally responsible for the WSPs, excluding WDs and RWSAs, within their respective jurisdictions.

Section 9. *Source of Financing*

The source of financing for the water supply and sewerage sector shall be as follows:

a. Creditworthy WSPs shall be eligible to source financing at commercial lending rates from GFIs and PFIs. Pursuant thereto, LWUA with respect to creditworthy WDs shall enhance and streamline its waiver procedures to effect the reform objectives/policies

enunciated under EO 279. However, LWUA shall work out an arrangement to GFIs/PFIs to ensure repayment of LWUA loan to WSP. GFIs shall strengthen their skills base and develop lending programs specially tailored to the needs of the water supply and sewerage sector;

b. Creditworthy WDs may be eligible for financing from LWUA in case no funds are available from other sources, subject to prioritization criteria giving preference to NCW up to SCW WDs/WSPs, availability of funds and provided that these WDs undertake graduation initiatives such as pooling of resources, amalgamation, among others with the end objective of accessing financing from GFIs/PFIs and sources other than LWUA;

c. Semi-creditworthy (SCW) WDs shall be eligible to source concessional project financing as grants from donor agencies, financial assistance made available through representative of the District, LGU financial assistance packages or financing from other donors made available and are coursed through the LWUA-WDF. Said WSPs shall be re-oriented towards meeting the lending criteria of GFIs and PFIs to qualify them for eventual financing in the medium term whenever possible;

d. Pre-creditworthy (PCW) WDs shall be eligible from donors and deep concessional financing from the LWUA-WDF.

e. Non-creditworthy (NCW) WDs shall continue to be eligible for financing under the LWUA-WDF. However, LGUs are hereby encouraged to provide financial and operational support for such WDs and other WSPs within their respective jurisdictions. DILG and MFC shall provide the necessary technical and financial support within their respective mandates;

f. Whenever concessionary loan/grant funds are available from the NG and other sources, the LWUA shall allocate the said funds to the SCW, PCW and NCW WDs which have the potential to demonstrate increased viability; and

g. WSPs including eligible WDs, can access financing from the GFIs, PFIs, MFC, and LGUs, whenever possible and shall be consistent with the provisions of these IRR.

DILG shall, within the mandate and existing programs, pursue and active campaign program to implement policies in the EO which concern the LGU.

Section 10. *Role of Financing Institution*

The classification of WSPs shall merely be a determinant of eligibility for the various sources of financing, and shall not in any way be construed as an outright guarantee of actual financing from the designated source.

Section 11. *Repealing Clause*

All Circulars or Resolutions or part thereof, which are inconsistent with these IRR, are hereby repealed or modified accordingly.

Section 12. *Effectivity*

These IRR shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

Done in the City of Manila, this 16th day of July in the year of our Lord, Two Thousand and Four.

Oversight Committee

(SGD) JUANITA D. AMATONG

Secretary of Finance
Chairman

(SGD) ROMULO L. NERI

National Economic & Development
Authority
Director-General
Vice-Chairman

(SGD) EMILIA T. BONCODIN

Department of Budget & Management
Secretary
Member

(SGD) JOSE D. LINA, JR.

Department of Interior & Local Government
Secretary
Member

(SGD) GAMALIEL A. CORDOBA

Office of the President
Deputy Executive Secretary
Member

(SGD) LORENZO H. JAMORA

Local Water Utilities Administration
Administrator
Member

SECTION 12

Republic of the Philippines
Congress of the Philippines
Metro Manila

Twelfth Congress

Third Regular Session

Begun and held in Metro Manila, on Monday, the twenty-eighth day of July, two thousand and three.

Republic Act No. 9286

AN ACT FURTHER AMENDING PRESIDENTIAL DECREE NO. 198, OTHERWISE KNOWN AS "THE PROVINCIAL WATER UTILITIES ACT OF 1973", AS AMENDED

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

Section 1. Section 13 of Presidential Decree No. 198, as amended, is hereby amended to read as follows:

"Sec. 13. *Compensation.* - Each director shall receive *per diem* to be determined by the Board, for each meeting of the Board actually attended by him, but no director shall receive *per diems* in any given month in excess of the equivalent of the total *per diem* of four meetings in any given month.

"Any *per diem* in excess of One hundred fifty pesos (P150.00) shall be subject to the approval of the Administration. In addition thereto, each director shall receive allowances

and benefits as the Board may prescribe subject to the approval of the Administration."

Sec. 2. Section 23 of Presidential Decree No. 198, as amended, is hereby amended to read as follows:

"Sec. 23. *The General Manager.* - At the first meeting of the Board, or as soon thereafter as practicable, the Board shall appoint, by a majority vote, a general manager and shall define his duties and fix his compensation. Said officer shall not be removed from office, except for cause and after due process."

Sec. 3. *Separability Clause.* - If any section or provision of this Act is declared unconstitutional or invalid, the other sections or provisions not affected thereby shall continue to be in force and effect.

Sec. 4. *Repealing Clause.* - All acts, decrees, executive orders, rules and regulations, part or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

Sec. 5. *Effectivity Clause.* - This Act shall take effect upon its approval.

Approved.

(Signed) JOSE DE VENECIA JR.

Speaker of the House of Representatives

(Signed) FRANKLIN M. DRILON

President of the Senate

This Act which is a consolidation of Senate Bill No. 2727 and House Bill No. 4861 was finally passed by the Senate and the House of Representatives on February 6, 2004 and February 7, 2004, respectively.

(Signed) ROBERTO P. NAZARENO

Secretary General

House of Representatives

(Signed) OSCAR G. YABES

Secretary of the Senate

Approved: April 02, 2004

**(Signed) GLORIA MACAPAGAL-
ARROYO**

President of the Philippines

SECTION 13

EXECUTIVE ORDER NO. 387

TRANSFERRING THE LOCAL WATER UTILITIES ADMINISTRATION FROM THE OFFICE OF THE PRESIDENT TO THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH) AND STRENGTHENING THE SUPERVISION BY THE DPWH SECRETARY OVER THE METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM.

WHEREAS, the Local Water Utilities Administration (LWUA), which was created by virtue of Presidential Decree No. 198, as amended, is currently attached to the Office of the President by virtue of Executive Order No. 279, series of 2004;

WHEREAS, the Metropolitan Waterworks and Sewerage System (MWSS) was created by virtue of Republic Act No. 6234, as amended, and is currently attached to the DPWH by virtue of Executive Order No. 124, series of 1987;

WHEREAS, there is a need for a concerted and well-coordinated effort in formulating policies as well as planning and implementing programs and projects for the water sector;

WHEREAS, there is a need to speed-up the provision of potable water in every barangay;

WHEREAS, the DPWH is mandated to ensure that the planning, design, construction and maintenance of infrastructure facilities such as national highways, flood control and water resource development systems are in accordance with the highest level and safety

and efficiency and with the overall national development objectives;

WHEREAS, under Section 31, Chapter 10, Book III of Executive Order No. 292, series of 1987, otherwise known as the "Administrative Code of 1987", the President, in order to achieve simplicity, economy and efficiency, has the continuing authority to reorganize the administrative structure of the Office of the President.

NOW THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. *Transfer of LWUA to DPWH.* – The Local Water Utilities Administration (LWUA) is hereby transferred from the Office of the President to the Department of Public Works and Highways (DPWH).

SECTION 2. *Authority to Exercise Administrative Supervision.* – The Secretary of Public Works Highways is hereby authorized to exercise administrative supervision over the LWUA and the MWSS, with the objective of providing a concerted and well-coordinated effort in formulating policies, as well as planning and implementing programs and projects for the water sector.

For the purpose, the DPWH Secretary shall among others:

a. Coordinate and oversee the policy-making processes of the respective governing boards of the LWUA and the MWSS;

b. Require the submission of reports as the DPWH Secretary may deem necessary, including periodic reports of their respective policies and the implementation of their major programs and projects, and their respective audited financial statements within sixty (60)

days after the close of the fiscal year;

c. Initiate measures within the agency to promote efficiency and effectiveness, including, but not limited to, the conduct of management audits, performance evaluations and inspections to determine compliance with established policies, standards and guidelines;

d. To take such action as may be necessary for the proper performance of official functions, including rectification of violations, abuses and other forms of maladministration; and

e. In general, to oversee the operations of the LWUA and the MWSS to ensure that these agencies are managed efficiently and effectively.

SECTION 3. *Rules and Regulations.* –

The DPWH Secretary, in consultation with the Chairman of the LWUA and the MWSS, is hereby authorized to issue rules and regulations for the effective implementation of the provisions of this Executive Order;

SECTION 4. *Repealing Clause.* – The provisions of Executive Order No. 279 (s. 2004) which are inconsistent with the provisions of this Executive Order hereby repealed, amended or modified accordingly. All other executive issuance, rules, regulations or parts thereof, which are inconsistent with any of the provisions thereof are hereby repealed, amended or modified accordingly.

SECTION 5. *Effectivity.* – This Executive Order shall take effect upon its publication in the Official Gazette or in a newspaper of general circulation in the Philippines.

DONE in the City of Manila, this 18th day of November in the year of Our Lord, Two Thousand and Four.

By the President:

EDUARDO R. ERMITA

Executive Secretary

SECTION 14

MALACAÑANG
MANILA

EXECUTIVE ORDER NO. 421

IMPLEMENTING THE REFOCUSING OF FUNCTIONS AND ORGANIZATIONAL STRUCTURE OF THE LOCAL WATER UTILITIES ADMINISTRATION UNDER EO 279 AND PROVIDING OPTIONS AND BENEFITS FOR EMPLOYEES WHO MAY AFFECTED THEREON

WHEREAS, it is the policy of government to adopt institutional reforms and effect functional, operational and organizational adjustments in the bureaucracy to continuously improve the quality and efficiency of public service delivery and transform it into an efficient and results-oriented structure;

WHEREAS, Executive Order (EO) No. 279 provides for the rationalization of LWUA's organizational structure and refocusing its objectives to fully implement the reforms in the financing policies in the water supply and sewerage sector and water service providers;

WHEREAS, section 79 of the General Provisions of RA 9336 (General Appropriations Act of 2005) mandates, among others, the adoption of institutional strengthening measures to improve service delivery and enhance productivity; identification of areas where improvement are necessary; and implementation of corresponding structure, functional and operational adjustments that will result in streamlined organization and

operation and improved performance and productivity.

NOW, THEREFORE, I, GLORIA MACAPAGAL ARROYO, President of the Philippines, by virtue of the powers vested in me by law, do hereby order the following:

SECTION 1. *Core functions.* LWUA shall provide institutional development services, and strengthen its, ending practices and policies on granting financial assistance grounded on sound development banking principles aimed at graduating water districts (WDs) and other water service providers (WSPs), allowing efficient use of financial resources, extend technical assistance to WDs/WSPs and addressing the need for a greater number of WDs/WSPs.

SECTION 2. *Specific Shifts in Policy Directions, Functions, Programs, Activities and Strategies.* To fully implement the reform objectives/policies in the water supply and sewerage sector, LWUA shall:

- a. Improve investor's confidence in the water supply and sewerage sector;
- b. Rationalize the allocation of financial resources in the water supply and sewerage sector through classification and graduation initiatives;
- c. Expand the freedom of choice of water service providers in sourcing their funding requirements;
- d. Increase the participation of Local Government Units (LGUs), Government Financial Institutions (GFIs), and Private Financial Institutions (PFIs) in financing the water supply and sewerage sector;
- e. Stimulate improved service and create financial self-sustainability for water service providers;
- f. Encourage initiatives aimed at self-

sufficiency of water service providers, including, but not limited to, amalgamation, private sector participation, cost recovery tariffs, and resource pooling;

- g. Grant initiatives for the improvement and graduation of water service providers;
- h. Educate consumers towards treating water as a scarce economic good; and
- i. Perform such other functions as are necessary for the implementation of the foregoing objectives/policies.

SECTION 3. **Organizational Structure.**

LWUA rationalized organization and management structure shall be composed of the following:

3.1 Board of Trustees. - The LWUA Board of Trustees (BOT) shall formulate policy direction for the over-all development of the country's water supply program. It shall be composed of a Chairman and four members with at least three (3) trustees coming from the National Government, provided that DOF shall always be represented in the LWUA - BOT. The Administrator of LWUA shall be an ex-officio Vice Chairman of the LWUA-BOT. There shall be a Board Secretariat, a Legal Counsel and an Internal Audit Department under the Board of Trustees.

3.2 The LWUA Administrator. The LWUA shall be headed by an Administrator to be appointed by the President. As chief executive officer of LWUA, the Administrator shall direct and supervise the operation of LWUA and its corporate performance, execute and administer policies and guidelines approved by the Board of Trustees.

3.3 Deputy Administrators. There shall be a Deputy Administrator for each of the following major Groups:

- 1. Water Development Group (WDG) (Luzon),
- 2. WDG- Visayas/Mindanao,
- 3. Water Financier Group, and
- 4. Administrative Service Group.

3.3.1 Water Development Group (WDG). There shall be two WDGs: one group for Luzon and another for Visayas/Mindanao.

The WDG shall be primarily responsible for the continuation of LWUA's current institutional development services aimed at graduating WDs/WSPs, as well as the classification of the credit worthiness of WDs/WSPs for purposes of determining the appropriate source of financing; it shall develop a graduation plan for semi-creditworthy, pre-creditworthy and non-creditworthy WDs/WSPs based on the graduation initiatives provided under EO 279; and, it shall also monitor the implementation of the graduation plan and evaluate the effectiveness of the graduation initiatives undertaken by WDs/WSPs and other functions undertaken by WDs/WSPs.

The WDG shall operate in four (4) areas, as follows;

- I. WDG-Luzon shall be handling Areas 1 and 2

Area 1 (covers Region I, 2, 3 and CAR), and

Area 2 (covers Regions 4 and 5).

- 2. WDG- Visayas/Mindanao shall be handling Areas 3 and 4;

Area 3 (covers Regions 6, 7 and 8),

Area 4 (covers Regions 9, 10, 11, 12 and ARMM region).

Each Area shall be composed of the following divisions namely;

- 2.1 Corporate Governance Division
- 2.2 Cost Recovery Tariff Division
- 2.3 Special Coordination Division
- 2.4 Engineering Division

3. Technical Assistance Department (TAD). - The TAD shall continue LWUA's program of providing technical assistance to WDs/WSPs. Consistent with applicable laws, rules and regulations on government procurement, the TAD shall extend project-related technical assistance to GFIs and creditworthy WDs/WSPs on a competitive basis: Provided that above a certain value threshold, LWUA shall extend project related technical assistance to semi creditworthy, pre-creditworthy WDs/WSPs on a competitive basis. The TAD shall also extend project related assistance to non-creditworthy WDs/WSPs which may be with or without charge within a certain value threshold. The TAD shall have three divisions, to wit:

- 3.1 Project Development Division
- 3.2 Water Services Training Division
- 3.3 Research/Water Laboratory Division

3.3.2 Water Development Finance Group (WDFG). The WDFG shall enhance and/or strengthen LWUA's lending policies and functions for the purpose of carrying out and implementing its mandate in providing financing, particularly to non-creditworthy, pre-creditworthy and semi-

creditworthy WDs/WSPs, grounded on sound development banking principles. It shall develop its own procedure for the monitoring of its loan portfolio; it shall strengthen the collection functions from WDs/WSPs as well as enhance its payment of loans to L WUA creditors. The WDF shall have three departments to wit:

- 3.3.2.1 Treasury Department
- 3.3.2.2 Loan Portfolio Management Department
- 3.3.2.3 Accounting Department
- 3.3.3 **Administrative Services Group (ASG).** The ASG shall provide the requisite support and ancillary services to the organization, with the following departments:
 - 3.3.3.1 Human Resources Management Department
 - 3.3.3.2 Property Management Department
 - 3.3.3.3 General Services Department

3.4 Abolition of the Office of the Senior Deputy Administrator. The Office of the Senior Deputy Administrator is hereby abolished and its functions subsumed under the Office of the Administrator and the Deputy Administrators for each WDG.

SECTION 4. Staffing Pattern. Within 30 days after the issuance of this Order, the staffing pattern of LWUA shall be submitted to the Department of Budget and Management (DBM) for review and approval.

LWUA is given the flexibility to make changes in its staffing pattern; Provided, that the number of plantilla positions is maintained; Provided further, that the same shall be subject to the approval of DBM.

SECTION 5. Options for Personnel Who

May Be Affected by the Rationalization of Functions. Personnel who may be affected by the rationalization of functions shall have the following options:

- 5.1 Remain in government service, provided that their appointments, whether permanent or temporary, shall be attested by the Civil Service Commission (CSC); Provided further, that those with temporary appointments shall be guaranteed tenure up to the expiration of their appointment only, or
- 5.2 Avail of the retirement/separation benefits herein provided.

SECTION 6. *Personnel Who Would Opt to Remain in Government Service.* Affected personnel who would opt to remain in government service shall be either be:

- a. placed by the CSC in other agencies where additional personnel are required;
- or
- b. transferred to CSC, if not placed within two (2) months, to remain therein until a match could be found.

Their compensation shall be transferred to the recipient agency or to CSC as the may be.

Affected LWUA personnel who choose to remain in government service but would later object to his/her new job assignment, without justifiable meritorious reasons approved by the CSC, shall be deemed separated/retired and shall be paid the appropriate retirement, separation or unemployment under existing retirement/separation laws, without the incentives provided herein.

SECTION 7. *Benefits of Personnel Who Would Opt to Retire or Be Separated from the Service.* Affected personnel, with appointments attested by the CSC, whether hired on a permanent or temporary basis, who

would opt to retire or be separated from the service pursuant to Section 5 hereof and those hired on a casual or contractual basis, if qualified, shall be given the option to avail themselves of any of the following, whichever is beneficial to them:

7.1 Retirement gratuity provided under RA 1616, as amended, payable by the last employer of the affected personnel, plus the refund of retirement premiums payable by the Government Service Insurance Service (GSIS), without the incentive herein provided.

7.2 Retirement benefit under RA 660 or applicable retirement, separation or unemployment benefit under RA 8291, if qualified, plus the following applicable incentives:

- 7.2.1 1/2 month of the present basic salary for every year of government service, for those who have rendered 20 years of service and below;
- 7.2.2 3/4 month of the present basic salary for every year of government service, computed starting from 1st year, for those who have rendered 21-30 years of service; and
- 7.2.3 one (1) month of the present basic salary for every year of government service, computed starting from the 1st year, for those who have rendered more than 30 years of service.

For purpose of Section 7.2.1 to 7.2.3, employment for a fraction of a year shall be considered as employment for the whole year.

PROVIDED: That for the purpose of computing the total amount of incentive that an affected personnel would receive, only his/her government service up to age 59 and a fraction thereof

would be counted: government service starting at the age 60 would no longer be subject to the incentive herein provided;

PROVIDED FURTHER: That for the purpose of complying with the required number of years of service under RA 8291, the portability scheme under RA 7699 (An Act Instituting Limited Portability Scheme in the Social Security Insurance Systems by Totalizing the Workers' Creditable Services or Contributions in Each of the Systems) may be applied, subject to existing policies and guidelines;

PROVIDED FURTHERMORE: That on the day of separation, the GSIS shall pay the amount of retirement/separation/unemployment benefits payable by the GSIS, to which an affected employee may be entitled to under the provisions of this Order, subject to the submission of the required documents to the GSIS one (1) month before the set date of retirement/separation.

7.3 Those with less than three (3) years of government service may opt to avail of the separation gratuity under RA No. 6656; plus the appropriate incentive provided under Section 7.2.

No affected employee who opted for retirement/separation shall receive less than an aggregate amount of Fifty Thousand Pesos (P50,000.00) as his retirement/separation gratuity benefit from both the National Government and the GSIS.

SECTION 8. *Return by the GSIS of the National Government's Share in the Retirement Premiums of Personnel Who Cannot Avail of RA No. 660 or RA 8291.* -

The GSIS shall return to the National Government the corresponding share of the government to the retirement premiums, with interest, of employees who are not yet entitled to avail either RA 660 or RA 8291.

SECTION 9. *Other Benefits of Retired/ Separated Personnel.* - LWUA affected personnel who opted to retire or be separated shall, in addition to the applicable benefits above, be entitled to the following:

9.1 Refund of Pag-IBIG Contributions. All affected personnel who are members of the Pag-IBIG shall be entitled to the refund of their contributions (both personal and government), pursuant to existing rules and regulations of the Home Development Mutual Fund;

9.2 Commutation of Unused Vacation and Sick Leave Credits. All LWUA affected personnel shall be entitled to the commutation of unused vacation and sick leave credits in accordance with existing rules and regulations. They are also allowed to monetize their accumulated compensatory time-off credits, if any.

SECTION 10. *Resulting Staffing Pattern and Personnel.* - To ensure that the new rationalized organization is staffed with competent and dedicated civil servants, the LWUA Management shall draw up the deployment of personnel to the new OSSP with utmost care, subject to all pertinent Civil Service rules and regulations. Further, LWUA Management shall ensure the implementation of appropriate personnel action on affected employees in accordance with the corresponding guidelines as may be issued by the DBM.

SECTION 11. *Transition Plan.* - Towards the smooth and expeditious implementation of its plan, the LWUA Management shall prepare and implement a step-by-step action

plan for the transition from the old structure to the new rationalized organization. In this regard, it shall closely supervise and properly document turnover of responsibilities and accountabilities.

SECTION 12. *Funding.* - Funds needed to implement this rationalization, as well as the payment of the separation/retirement benefits, not covered by the GSIS, shall be taken from available LWUA corporate funds, subject to the usual accounting and auditing rules and regulations. In case of funding deficiency, the National Government may provide assistance in the payment of incentives to affected personnel, in accordance with applicable laws, and subject to the usual accounting and auditing rules and regulations.

SECTION 13. *Effectivity of the Retirement/Separation package.* The option to avail of the retirement /separation package shall be available up to two (2) months after the DBM approval of the L WUA staffing pattern, provided that such period may be extended only in exceptional circumstances upon the recommendation of the LWUA Administrator and approval by the DBM. L WUA shall ensure that there is a smooth transition from the old to the new rationalized organization. Affected employee who opted to avail of the retirement/separation package shall not be included in the selection and placement process of employees in the new staffing pattern. However, they shall not be considered retired/separated from the service until their actual receipt of the benefits provided herein.

SECTION 14. *Prohibition on Rehiring of Personnel Retired/separated from the Service.* - A personnel who would opt to retire or be separated as a result of the rationalization efforts shall not be appointed

or hired in any agency of of the Executive Branch, except in educational institutions and hospitals, within a period of five (5) years. Reemployment in any other Branch of Government shall be considered as new entry to the civil service.

SECTION 15. *Repealing Clause.* - All issuances, order, rules and regulations or parts thereof that are inconsistent with this Executive Order are hereby revoked, amended or modified accordingly.

SECTION 16. *Effectivity.* - This Executive Order shall take effect immediately.

DONE in the City of Manila, this 13th day of April, in the year of our Lord two thousand and five.

By Authority of the President:

(SGD) EDUARDO R. ERMITA
Executive Secretary

SECTION 15

Republika ng Pilipinas
KAGAWARAN NG KATARUNGAN
Department of Justice
Manila

OFFICE OF THE SECRETARY

– Case No. OSJ-2005-03

**CAMARINES NORTE WATER
DISTRICT (CNWD),**
Petitioner,

-versus-

**BUREAU OF INTERNAL
REVENUE (BIR),**
Respondent,

x-----x

DECISION

Subject herein is the petition for Arbitration filed by Camarines Norte Water District (CNWD), through its statutory counsel, the Office of the Government Corporate Counsel (OGCC) against the Bureau of Internal Revenue (BIR), represented by its Commissioner, pursuant to Chapter 14, Book V of Executive order (EO.) No. 292, which adopted the provisions of P. D. 242 prescribing the procedure for the administrative settlement or adjudication of disputes, claims and controversies between and among government offices, agencies and instrumentalities, including government-owned or controlled corporations.

In its Amended Petition, herein petitioner

prays that this Office issue an Order against respondent to defer from collecting the alleged tax deficiency amounting to Php 9,736,486.17, plus increments as contained in its decision dated April 19, 2005, and that, after proceeding, we render a ruling (a) to declare that it is not subject to income tax pursuant to Section 32 (B) (7) (b) of the National Internal Revenue Code (NIRC) of 1997, (b) to declare that it is not subject to franchise tax, or, in the alternative, should it be liable for franchise tax, it should no longer be liable for value added tax and (c) to declare that the petitioner is not liable for payment of increments for deficiency income and value added taxes for taxable year 2000.

Petitioner alleges, among others, that it seeks from this Office “proper interpretation and application of laws relative to the exemption, or liability, of the petitioner from payment of income tax, franchise tax, and other internal revenue taxes;” that it is a public water utility performing an essential government function; that its income is exempt from taxes pursuant to Section 32 (B) 97) (b) of the Tax Code, as amended; that BIR Ruling No. 074-98 has already been superseded or abandoned by BIR Ruling Nos. 018-2000 and DA-088-2001; that the assessments issued against it is contrary to the uniformity and equal protection clauses of the Constitution; that P. D. No. 198 is a special law that should prevail over the Tax Code which is a general law and that the assessments are contrary to the general welfare clause of the constitution and inimical to public interest.

As alleged in the pleadings, the following are the background facts relevant to

petitioner's claim for exemption from payment of income tax, franchise tax, value added tax and other deficiency income and value added taxes for taxable year 2000:

1. On November 13, 2001, Letter of Authority No. 00061324 was issued authorizing and directing Revenue Officer Romulo C. Baguid of Revenue District Office 64, Daet, Camarines Norte, to examine the books of accounts and other accounting records of CNWD for all internal revenue tax purposes covering the taxable year 2000.
2. As a result, it was determined that CNWD is liable to deficiency income and value added taxes for the same year.
3. On February 3, 2003, a Preliminary Assessment Notice was issued followed by a Formal Letter of Demand and the corresponding Final Assessment Notices on July 3, 2003, against CNWD demanding payment allegedly of the total amount of P9,736,486.17.
4. CNWD disputed the assessments and on August 26, 2003, the BIR rendered as decision denying the protest of CNWD.
5. On November 11, 2003, CNWD, through the OGCC, filed a request for reconsideration and on April 19, 2005, the Commissioner of Internal Revenue denied with finality the protest of CNWD and consequently ordered CNWD to pay the aggregate amount

allegedly of P9,734,486.17 as deficiency income and value added taxes for taxable year 2000, plus increments that have accrued thereon until the actual date of payment.

6. On May 25, 2005, the petitioner elevated the matter to this Office as to the proper interpretation or the correctness of ruling of the Commissioner of Internal Revenue.

In its Answer, dated October 20, 2005, which was filed beyond the reglementary period of fifteen (15) days to file an answer, the respondent specifically denies the nature of this petition and prays for the dismissal of this petition for lack of merit.

Respondent avers that petitioner seeks to dispute the decision rendered by respondent on its protest against the assessments issued by it. It submits that this Office lacks jurisdiction to take cognizance of its decision on disputed assessments; that it is the Court of Tax Appeals that has jurisdiction; that the appellate jurisdiction of the Court of Tax Appeals is exclusive; and that the power to interpret the provisions of the Tax Code is with the respondent and this interpretation is subject to review by the Secretary of Finance and not by the Secretary of Justice.

Respondent also contends that when R. A. No. 7109, entitled "An Act Granting Tax Exemption Privileges to Local Water Districts," took effect, it expressly extinguished the tax exemption privileges of petitioner after the lapse of five (5) years from its effectivity thereby making CNWD liable for income and franchise taxes.

Respondent further argues that in order for the petitioner to be exempt under section 32 (B) (7) (b) of the Tax Code two conditions should be met: (1) the income derived must be from a public utility or from the exercise of any essential government function, and (2) the income must accrue to the Government of the Philippines or to any political subdivision thereof; and that failure to satisfy both two conditions makes the petitioner liable.

Finally, respondent argues, among others, that petitioner cannot contend that it is performing government functions when the law creating it states that it is engaged in a proprietary functions; that its exemption privilege cannot hinge on previous BIR Rulings; and that local water districts have different charters and are governed by different laws.

By way of reply to the respondent's Answer, petitioner maintains that this Office has jurisdiction over the instant case; that respondent is estopped from assailing the jurisdiction of this Office; and that petitioner satisfies the requirements of Section 32 (B) (7) (b) of the Tax Code.

No amicable settlement having been reached during the preliminary conference, the instant petition, on motion of petitioner, duly concurred in by the respondent, was considered submitted for resolution based on the pleadings and memoranda to be filed with this Office. However, while petitioner submitted its Memorandum, the respondent failed to submit any.

Petitioner reiterated in its position paper that this Office has jurisdiction over the instant case; that respondent is estopped

from assailing the jurisdiction of this Office and that it complies with the requirements for exemption under section 32 (B) (7) (b) of the Tax Code.

We find for the petitioner.

It bears stress, at the outset, that while on its face, it appears that the instant petition was brought up to question the validity of the disputed assessment made by the respondent against CNWD, the petitioner herein, there is also here, in fact and on closer scrutiny, a question of law involved, i.e., the proper interpretation of Section (B) (7) (b) of the NIRC of 1997, and both parties have conflicting interpretations thereof requiring, therefore, this Office to interpret the same pursuant to its authority under Section 66 and 68, Chapter 14, Book IV of E.O. No. 292, to wit:

"Chapter 14 – Controversies among Government Offices and Corporations

Sec. 66. *How Settled.* – All disputes, claims and controversies, solely between or among the departments, bureaus, office, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, such as those arising from the interpretation and application of statutes, contracts or agreements, shall be administratively settled or adjudicated in the manner provided in this Chapter. xxx

xxx xxx

Sec. 68. *Disputes Involving Questions of Fact and Law.* – C ases

involving mixes questions of law and of fact or only factual issues shall be submitted to and settled or adjudicated by:

The Solicitor General, if the dispute, claim or controversy involves only departments, bureaus, offices and other agencies of the National Government as well as government-owned or controlled corporations or entities of whom he is the principal law officer or general counsel; and

The Secretary of Justice in all other cases not falling under paragraph (1).” (underscoring supplied)

The jurisdiction of this Department over the case cannot, thus, be disputed.

Moreover, assuming, argumentatively, that the provisions of E. O. No. 292, earlier-quoted, do not apply, this Office can still assume jurisdiction over the case based on the principle of estoppel. Respondent, it must be noted, had, on at least one occasion, which we take judicial notice of, involving the same issues that have been raised in the instant case, assailed the jurisdiction of the Court of Tax Appeals (CTA) and claimed that since the petitioner MCWD is a government-owned and controlled corporation, the dispute should be settled in accordance with the provisions of Chapter 14, Book IV of the Administrative Code of 1987. As a result thereof, CTA dismissed the petition for review in order to be filed before this Office.

“The operation of the principle of estoppel on the question of jurisdiction seemingly depends upon whether the lower

court actually had jurisdiction or not. If it had no jurisdiction but the case was tried and decided upon the theory that it had jurisdiction, the parties are not barred, on appeal, from assailing such jurisdiction, for the same ‘must exist *as a matter of law*, and *may not be conferred by consent of the parties or by estoppel*’ (5C.J.S. 861-863). However, if the lower court *had* jurisdiction, and the case was heard and decided upon a given theory, such, for instance, as the court had *no* jurisdiction, the party who induced it to adopt such theory will not be permitted, on appeal, to assume an inconsistent position—that the lower court *had* jurisdiction. Here, the principle of estoppel applies. The rule that jurisdiction is conferred by law, and does not depend upon the will of the parties, have no bearing thereon. (underscoring supplied)

Respondent, is therefore, estopped from assailing the jurisdiction of this Office. It does not matter if it is a rule that government is never estopped by the mistakes or errors of its agents. The rationale is because certain affirmative acts of public officials may give rise to estoppel, as what happened in this case.

Going now to the merits of the case, the subject provision of the National Internal Revenue Code, insofar as pertinent, is clear and categorical:

“SEC. 32. *Gross Income.* –

xx

xx

(B) *Exclusion from Gross Income.*

– The following items shall not be included in gross income and shall be exempt from taxation under this Title:

xx

xx

Miscellaneous Items. –

xx

xx

Income Derived by the Government or its Political Subdivisions. – Income derived from any public utility or from the exercise of any essential governmental function accruing to the Government of the Philippines or to any political subdivision thereof.”

It is a basic rule in statutory interpretation that when the words and phrases of a statute are clear and unequivocal, their meaning must be determined from the language employed and the statute must be taken to mean exactly what it says. The probable intent cannot be speculated apart from the language used because when the law is clear, it is not susceptible to interpretation-only to application.

A careful perusal of Section 32(B) (7) of the NIRC, above-quoted, shows that income derived (a) from any public utility and that derived (b) from the exercise of any essential government function accruing to the Government of the Philippines or to any political subdivision thereof are two different items which shall not be included in gross income and shall be exempt from taxation under the law. The subject NIRC provision is clear enough as to require an interpretation.

Consequently, if the GOCC, as the petitioner herein, derives income from its operation as a public utility, the income is excluded from gross income, irrespective of

whether or not said income accrued to the Government of the Philippines or to any political subdivision thereof. But if the income was derived from the exercise of any essential government function, the above-quoted provision requires that the income must accrue to the government or any of its political subdivision for it to be excluded from gross income.

The exemption in the first case is justified by its nature as a public utility. A public utility has been defined as “1. a company that provides necessary services to the public, such as telephone lines and service, electricity, and water, xxx, 2. a person, corporation or other association that carries on an enterprise for the accommodation of the public, the members of which are entitled as a matter of right to use its facilities.” Likewise, the Supreme Court, in one case, has had occasion to define a public utility as one organized for “hire or compensation” to serve the public, which is given the right to demand its service.

Indeed, the income of the petitioner falls under the first category of income that is exempt from taxation having derived the same from its operation as a public utility that renders necessary services to the public, and which status had even been recognized and acknowledged by the respondent, albeit impliedly and indirectly, when, in its ruling, respondent admitted that local water districts are public utilities.

Upon the other hand, the other exemption is justified by the fact that the income results from the exercise of an essential government function and accrues to the government or its

political subdivision. In both instances, a contrary view would also be opposed to the rule that, generally, the government cannot tax itself for to do so would not be beneficial to the government.

We cannot subscribe to the position advanced by the respondent that in order to satisfy the requirements of said provision of law two conditions should be met, namely, (1) the income derived must be from a public utility or from the exercise of any essential government function, and (2) the income must accrue to the Government of the Philippines or to any political subdivision thereof, not only because the law is clear enough to require an interpretation but also because of the use of the disjunctive article "or".

In statutory construction, the use of the word "or" signifies "alternative", "dissatisfaction" and "independence" of one thing from each of the other things enumerated. When used, the various members of the sentence are to be taken separately. This must be distinguished from the use of the conjunctive word "and" which, when used, connotes that the various members of a sentence are to be taken jointly. Thus, we cannot but agree more with the petitioner's claim that the phrase "accruing to the Government of the Philippine or to any political subdivision thereof " only qualifies the income from the exercise of any essential government function to which it is attached and does not qualify the income derived from a public utility.

Moreover, anent the section heading of Section 32 (B) (7) (b), suffice it to say that while the same can be resorted to in the

construction of statutes to determine or ascertain legislative intent, the same is not conclusive. In the language of the Supreme Court:

It is a familiar law that when the text itself of a statute or a treaty is clear and unambiguous, there is neither necessity nor propriety in resorting to the preamble or headings or epigraphs of a section for interpretation of the text, especially where such epigraphs or headings of sections are mere catchwords or reference aids indicating the general nature of the text that follows. Xxx Being nothing more than a convenient index to the contents of the articles of the Code, they cannot in any event have the effect of modifying or limiting the unabiguous words of the text. Secondary aids may be consulted to remove, not to create doubt.

Neither are we prepared to subscribe to respondent's claim that since under Section 3 of R.A. No. 7109, the tax exemption privileges granted to "all water districts shall be enjoyed only for a period of five (5) years from the effectivity of (the) Act," "all LWD's, such as herein peitioner, became liable for income and franchise taxes," among others.

It must be stressed that while in its ruling in Tanjay Water District vs. Gabaton, 172 SCRA 253, dated April 17, 1989, the Supreme Court, citing Hagonoy Water District vs. NLRC, said' that local water districts are quasi-public corporations, in Davao City Water District vs. Civil Service Commission, 201 SCRA 593, it categorically stated that water districts are "government-owned or

controlled corporations created under a special law and not under the Corporation Code of the Philippines.” As the Court explicitly expounded in the much later case of Felicianbo vs. Commission on Audit, 419 SCRA 3673, quoting Section 16, Article XII of the Constitution:

“In short, Congress cannot enact a law creating a private corporation with a special charter. Such legislation would be unconstitutional. Private corporations may exist only under a general law. If the corporation is private, it must necessarily exist under a general law. Stated differently, only corporations created under a general law can qualify as private corporations. Under existing laws, that general law is the Corporation Code, except that the Cooperative Code governs the incorporation of cooperatives.

The Constitution authorizes Congress to create government-owned or controlled corporations through special charters. Since private corporations cannot have special charters, it follows that Congress can create corporations with special charters only if such corporations are government-owned or controlled.

Obviously, LWDs are not private corporations because they are not created under the Corporation Code. xxx.

At this point, it may significant to point out that while, as rightfully interpreted by the respondent in its Ruling No. 074-98, under Section 27 (c) of the NIRC, which states that

—

“Sec. 27 xxx

(c) Government-owned or Controlled Corporations, Agencies or Instrumentalities-The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies or instrumentalities owned or controlled by the Government, except the Government Service Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance (PHIC), the Philippine Charity Sweepstakes Office (PCSO), and the Philippine Amusement and Gaming Corporation (PAGCOR), shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in similar business, industry or activity.”

only five (5) corporations, namely GSIS, SSS, PHIC, PCSO and PAGCOR are exempted from the payment of regular corporate income tax, this Office has occasion to rule that the enumeration under the law is not exclusive. In fact, respondent impliedly agreed with our view when it issued BIR Ruling No. 018-2000, dated January 20, 2000, declaring that the income of the National Power Corporation (NPC), a government-owned or controlled corporation at the same time a public utility engaged in the supply of electricity, is exempted from income tax pursuant to Section 32 (B) (7) (b) of the Tax Code, and BIR Ruling No. DA 088, dated May 16, 2001, declaring that MWSS, a government-owned public utility, is equally exempted from income tax pursuant to the same section.

We feel that it is timely at this point in time to set the record straight, that water

districts all over the country must be declared as exempt from tax as they are no difference from MWSS that is engaged in the supply of potable drinking water to the public in Metro Manila.

To rule otherwise violates the equal protection of the laws. The phrase equal protection of the laws signifies that "all persons subject to legislation shall be treated alike under like circumstances and conditions both in the privileges conferred and liabilities imposed."

We do not see rational basis in exempting PAGCOR and PCSO *vis-a-vis* MWSS and Water Districts from income tax where one proceeds from gambling while the other proceeds from basic necessity. This could be the reason why the respondent find it wise to exempt MWSS and NAPOCOR in its ruling by breeching the non-exclusivity of Section 27(c) of the NIRC. If respondent can exempt MWSS there is no reason why it cannot exempt the water districts all over the country. There is no reason why a huge company can be exempt while a small entity cannot be exempt.

On the issue of Franchise Tax and Value-Added Tax, Section 119, of the Tax code of 1997 provides that:

"Sec. 119. Tax on Franchises. Any provision of general or special law to the contrary notwithstanding, there shall levied, assessed and collected in respect to all franchises on radio and/or television broadcasting companies whose annual gross receipts of the preceding year does not exceed Ten

Million pesos (P10,000,000.00), subject Section 236 of this code, a tax of three percent (3%) and on electric, gas and water utilities, a tax of two percent (2%) on the gross receipts derived from the business covered by the law granting the franchise: xxx"

It is clear from the above provision that the CNWD is liable for Franchise Tax of two percent (2%) of its gross receipts, however since it is now subject to franchise tax, they are exempt from VAT on their services that are already subject to franchise.

WHEREFORE, premises considered, CNWD is declared exempt from payment of income tax as an exclusion from gross income, liable for payment of franchise tax but exempt from VAT and all other increments thereto.

With respect to the prayer of the petitioner that this Office issue a Cease and Desist Order against respondent to defer from collecting the amount of Php 9,736,486.17 the same is hereby GRANTED.

No costs.

SO ORDERED.

Manila, Philippines, March 20, 2006-05-

29

(Sgd) **RAUL M. GONZALES**
Secretary

Produced by
PUBLIC AFFAIRS DEPARTMENT
LOCAL WATER UTILITIES ADMINISTRATION
FEBRUARY 2007