

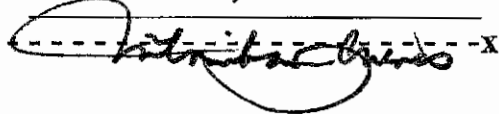
EN BANC

G.R. No. 185184 – METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM, represented by its Administrator, DIOSDADO JOSE M. ALLADO, Petitioner, v. PROVINCIAL GOVERNMENT OF BULACAN, represented by GOVERNOR JOSEFINA M. DELA CRUZ, Respondent.

Promulgated:

October 3, 2023

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CONCURRING OPINION

CAGUIOA, J.:

This Petition for Review on Certiorari¹ (Petition) filed by petitioner Metropolitan Waterworks and Sewerage System (MWSS) challenges the May 30, 2008 Decision² (assailed Decision) and October 24, 2008 Resolution³ (assailed Resolution) of the Court of Appeals (CA) in CA-G.R. CV No. 86701.⁴ The assailed Decision and Resolution uphold the right of respondent Provincial Government of Bulacan (Province of Bulacan) to share in the proceeds derived from the supply and distribution of water sourced from Angat Dam on the basis of Article X, Section 7⁵ of the Constitution.

The *ponencia* grants the Petition.

Foremost, the *ponencia* holds that the water sourced from Angat Dam does not form part of the national wealth of the State.⁶ Further, even if such water is deemed part of the national wealth of the State, MWSS still cannot be held liable to pay the Province of Bulacan its claim for equitable share, as MWSS is not engaged in the “utilization and development” of water resources within the context of Article X, Section 7 of the Constitution.⁷

I concur with the *ponencia* and submit this Concurring Opinion to expound on the requirements that must be established to justify a claim for equitable share under Article X, Section 7 of the Constitution; specifically

¹ *Rollo*, pp. 12–49.

² *Id.* at 51–68. Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Amelita G. Tolentino and Lucenito N. Tagle.

³ *Id.* at 69–73. Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Amelita G. Tolentino.

⁴ *Id.* at 12.

⁵ SECTION 7. Local governments shall be entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, in the manner provided by law, including sharing the same with the inhabitants by way of direct benefits.

⁶ *See ponencia*, pp. 13–20.

⁷ *See id.* at 21–26.



highlighting the reasons why the water sourced from Angat Dam does not constitute national wealth, why said water cannot be deemed situated or localized within the territory of the Province of Bulacan, and why the operations of MWSS do not qualify as “utilization and development” within the context of Article X, Section 7 of the Constitution.

To summarize:

First, the water sourced from Angat Dam does **not** constitute “national wealth” as contemplated under the Constitution, applicable law, and jurisprudence.

Second, even assuming for the sake of argument, that the water impounded in Angat Dam constitutes national wealth, this water cannot be deemed situated within a single territory. In this connection, the letter-certification⁸ issued by the National Power Corporation (NPC) (NPC Certification) relied upon by the lower courts is wholly insufficient to support the finding that “71.9% to 88.5%” of the water in Angat Dam is exclusively sourced from the Province of Bulacan.

Third, assuming further that the water sourced from Angat Dam constitutes national wealth that is indigenous to the Province of Bulacan, the operations of MWSS constitute neither utilization nor development of water resources so as to give rise to the equitable share asserted. The conjunctive term “utilization and development,” as used in Article X, Section 7 of the Constitution, denotes, as was intended by the framers to mean, exploitation, and therefore contemplates operations geared toward profit-generation. The operations of MWSS, which clearly involve only the providing of essential public services, do not qualify as profit-generating activities.

Finally, the water supplied and distributed by MWSS through its concessionaires is drawn from its water rights allocation from the State.⁹ Granting the Province of Bulacan its alleged equitable share would, in effect, mandate MWSS to compensate the Province of Bulacan for the use of water over which it has no right. This subverts the State’s exclusive authority to regulate the use of water, and renders nugatory the system of water allocation under the Water Code.¹⁰

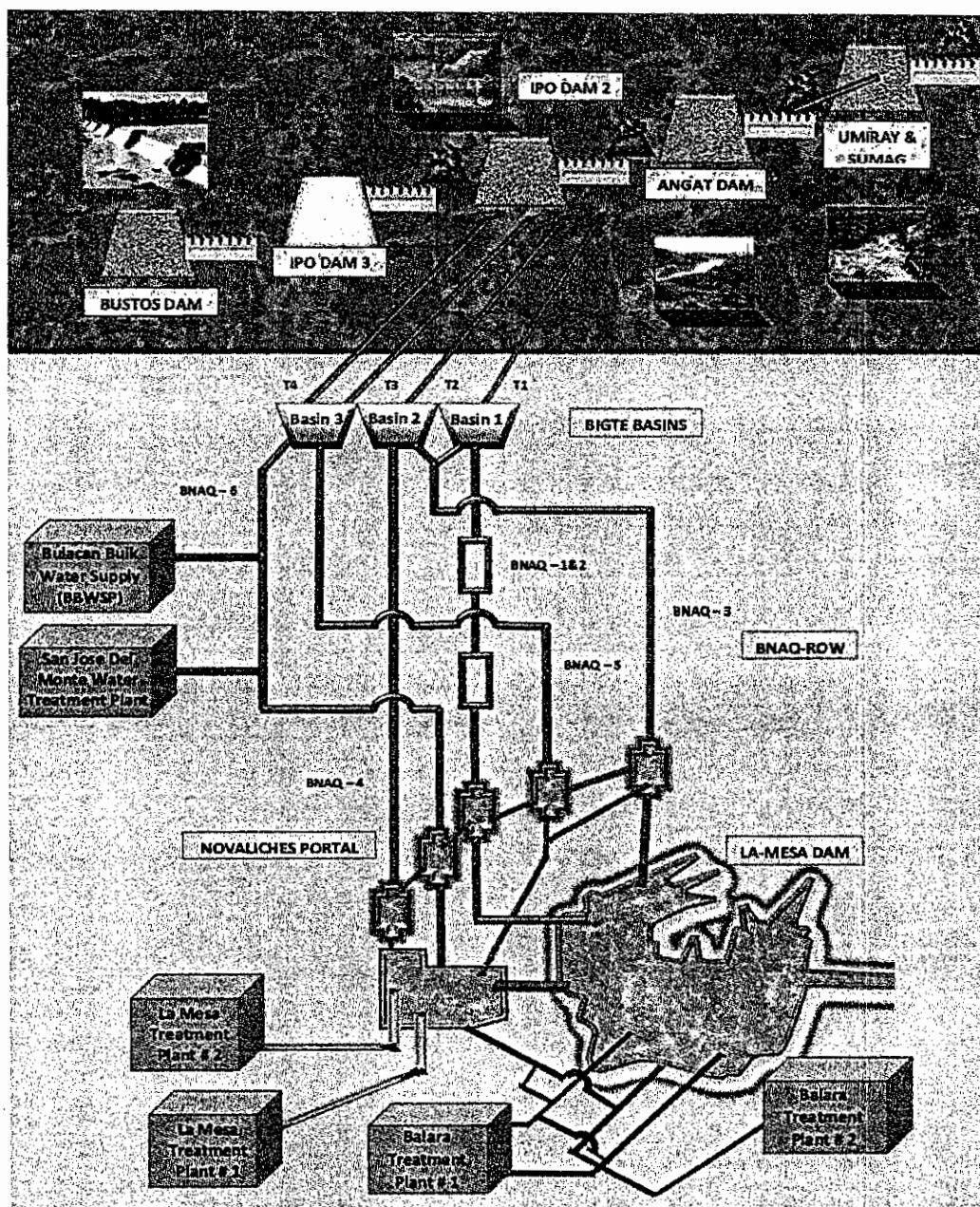
⁸ *Rollo*, pp. 139–141.

⁹ Increased to 50 cubic meters per second (CMS) for September 2023. *See MWSS allocation for Sept. raised to 50 cms, September 4, 2023, available at* <https://www.bworldonline.com/economy/2023/09/04/543511/mwss-allocation-for-sept-raised-to-50-cms/> (last accessed on October 3, 2023).

¹⁰ Presidential Decree No. 1067 (1976), A Decree Instituting a Water Code, Thereby Revising and Consolidating the Laws Governing Ownership, Appropriation, Utilization, Exploitation, Development, Conservation and Protection of Water Resources, otherwise known as “The Water Code of the Philippines” (WATER CODE).

Preliminary concerns

Before delving into the legal issues, it is important to understand the basic infrastructure of the water supply and distribution system of Metro Manila as this signals the far-reaching implications that any claim based on Article X, Section 7 of the Constitution will have.



As shown in the diagram,¹¹ Angat Dam is only one of several dams that form part of Metro Manila’s water supply and sewerage system. These dams are located within the jurisdiction of different local government units (LGUs). The main sources of Metro Manila’s water supply are the Angat, Ipo, and La Mesa dams.¹² While Angat and Ipo dams are located in the Province of Bulacan, La Mesa is located in Quezon City. A portion of the water funneled to the Angat and Ipo dams is further sourced from Umiray River, which is

¹¹ *Metro Manila Water Supply System*, available at <https://mwss.gov.ph/learn/metro-manila-water-supply-system/> (last accessed on October 3, 2023).

¹² *Id.*

located in the Province of Quezon.¹³ Moreover, as the Province of Bulacan acknowledges in its Comment,¹⁴ portions of the water stored in Angat Dam similarly flow from watershed areas located in the provinces of Quezon, Nueva Ecija, and Rizal.¹⁵

A decision that upholds the right of the Province of Bulacan to share in the proceeds derived from the supply and distribution of water from Angat Dam will similarly entitle all the aforesaid LGUs to claim their respective shares therein. This will have the effect of significantly increasing the water rates chargeable against the end-consumers.

I expound.

I. *Assignment of MWSS' functions via concession agreements*

Under Republic Act No. 6234¹⁶ (MWSS Charter), MWSS is mandated to undertake the operation, maintenance, expansion, development, and improvement of the Metro Manila waterworks system, thus:

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

....

(f) To construct, maintain, and operate dams, reservoirs, conduits, aqueducts, tunnels, purification plants, water mains, pipes, fire hydrants, pumping stations, machineries and other waterworks for the purpose of supplying water to the inhabitants of its territory, for domestic and other purposes; and to purify, regulate and control the use, as well as prevent the wastage of water;

(g) To construct, maintain, and operate such sanitary sewerages as may be necessary for the proper sanitation and other uses of the cities and towns comprising the System;

....

(i) To construct, develop, maintain and operate such artesian wells and springs as may be needed in its operation within its territory;

....

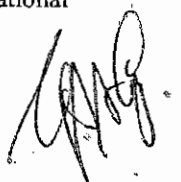
(k) To construct works across, over, through and/or alongside, any stream, water-course, canal, ditch, flume, street, avenue, highway or railway, whether public or private, as the location of

¹³ *MWSS 2016 Annual Report*, p. 10, available at <https://mwss.gov.ph/wp-content/uploads/MWSS-AR2016-6th-Final.pdf> (last accessed on October 3, 2023).

¹⁴ *Rollo*, pp. 147–174.

¹⁵ *See id.* at 156–157.

¹⁶ An Act Creating the Metropolitan Waterworks and Sewerage System and Dissolving the National Waterworks and Sewerage Authority; and for Other Purposes (1971) (MWSS Charter).



said works may require: *Provided*, That, such works be constructed in such manner as to afford security to life and property and so as not to obstruct traffic: *Provided, further*, That the stream, water-course, canal, ditch, flume, street, avenue, highway or railway so crossed or intersected be restored without unnecessary delay to its former state. Any person or entity whose right may be prejudice[d] by said works shall not obstruct the same; however, he shall be given reasonable notice before the construction and shall be paid just compensation. The System shall likewise have the right to locate, construct and maintain such works on, over and/or through any street, avenue, or highway and land and/or real rights of the Republic of the Philippines or any of its branches, agencies and political subdivisions upon due notice to the office, or entity concerned, subject solely to the condition that the street, avenue, or highway in which said works are constructed be restored without unnecessary delay to its former state unless otherwise agreed upon by the System and the office or entity concerned;

....

- (n) To approve, regulate, and supervise the establishment, operation and maintenance of waterworks and deepwells within its jurisdiction operated for commercial, industrial and governmental purposes and to fix just and equitable rates or fees that may be charged to customers thereof;
- (o) To assist in the establishment, operation and maintenance of waterworks and sewerage systems within its jurisdiction under cooperative basis;
- (p) To approve and regulate the establishment and construction of waterworks and sewerage systems in privately owned subdivisions within its jurisdiction[.]

These functions have been passed on by MWSS to the concessionaires through their respective concession agreements. To illustrate, Sections 2.1 and 2.1.1 of the Revised Concession Agreement (RCA) between MWSS and its east zone concessionaire Manila Water Company, Inc. (MWCI)¹⁷ and the RCA between MWSS and its west zone concessionaire Maynilad Water Services, Inc. (Maynilad)¹⁸ similarly provide:

2.1 Grant of Concession

On the terms and subject to the conditions set forth herein, MWSS hereby grants to the Concessionaire, as a public utility to perform certain functions and as a public utility for the exercise of certain rights and powers under the Charter, the right to manage, operate, repair, decommission and refurbish the Facilities in the Service Area, including the right to bill and

¹⁷ "MWCI RCA", available at <https://mwss.gov.ph/wp-content/uploads/MWCI-THE-REVISED-CONCESSION-AGREEMENT-2021-compressed.pdf> (last accessed on October 3, 2023).

¹⁸ "Maynilad RCA", available at <https://ro.mwss.gov.ph/wp-content/uploads/2022/01/REVISED-CA-FOR-MAYNILAD-18-MAY-2021.pdf> (last accessed on October 3, 2023).

collect for water and sewerage services supplied in the Service Area (the "Concession"). The Concessionaire shall perform its functions and exercise its rights under this Agreement directly or, in respect of functions and rights delegated to the Common Purpose Facilities Agreement.

2.1.1 Scope of Grant

The MWSS, subject to its to [sic] authority under its Charter, hereby assigns to the Concessionaire, the following rights and obligations solely in relation to the Service Area:

- (a) finance, design and construct the Facilities, except as otherwise provided in this Agreement;
- (b) undertake the operation and maintenance of the Facilities in the Service Area;
- (c) treat Raw Water and wastewater in the Service Area;
- (d) provide and manage the services to the Customers;
- (e) bill and collect payment from the Customers for the services;
- (f) source Raw Water from catchment areas, watersheds, springs, wells and reservoirs in the Service Area, subject to the applicable Authorizations from the relevant Government Authorities; and
- (g) provide connections to public sewer and septic and sanitation cleaning as sewerage services.¹⁹

On May 10, 2023, MWSS reportedly signed amendments to the MWCI and Maynilad RCAs.²⁰ As of the time of this writing, however, signed copies thereof are not yet publicly available through online resources. Nevertheless, the grant and scope of grant of concession are not among the amendments identified by the Department of Finance, whose Secretary chairs the Water Concessions Review Committee.²¹

In consideration for the assignment of the rights and obligations detailed above, the concessionaires pay MWSS concession fees. In return, the concessionaires are permitted to bill and collect payment for the provision of their services to the general public. Through this mechanism, the concessionaires recover their respective investments and gain reasonable rates of return.

¹⁹ *Id.* at 7–8.

²⁰ *Revised agreement of water concessionaires to balance consumer protection and viability of investments – DOF*, May 16, 2023, available at <https://www.dof.gov.ph/revised-agreement-of-water-concessionaires-to-balance-consumer-protection-and-viability-of-investments-dof/> (last accessed on October 3, 2023).

²¹ *Id.*

II. *Determination of concession fees*

The concession fees chargeable against MWSS' concessionaires are fixed by the relevant provisions of their respective concession agreements. To illustrate, Section 6.4 of the MWCI and Maynilad RCAs provides:

6.4 Concession Fee

By January 15 of each calendar year, MWSS shall provide the Concessionaire with a schedule of all anticipated amounts due in connection with the Concession Fee payable during that year, as described in paragraphs (a) and (b) below:

- (a) Not later than fourteen (14) days prior to the date on which any scheduled payment of *principal, interest, fees or other amount is due under a MWSS Loan*, MWSS shall notify the Concessionaire in writing of the total amount due on that payment date and of the Peso equivalent thereof (the "Peso Equivalent") calculated at the then prevailing exchange rate. Not later than one (1) business day prior to each such payment date, the Concessionaire shall remit to such account as MWSS shall instruct an amount, in Pesos, exclusive of any penalties or default interest charges not attributable to a late payment of the Concession Fee by the Concessionaire (each such payment being referred to herein as a "Concession Fee"), equal to the sum of:
 - (i) *The percentage of the aggregate Peso Equivalent due under any MWSS Loan which has been disbursed during the Concession Period (including MWSS Loans for Existing Projects and the [Umiray-Angat Transbasin Project] on the relevant payment date set forth in Schedule 13, shall be agreed with MWSS on a case by case basis.*
- (b) In addition, the Concessionaire shall pay to MWSS on the first business day of January 1998 and the succeeding years *thereafter an amount equal to one-half (1/2) of the annual budget for MWSS for that year, provided that such annual budget shall not, for any year, exceed Two Hundred Million Pesos (Php 200,000,000.00), subject to annual [Consumer Price Index] adjustments.*

As of January 2021, the fee set under this paragraph is Five Hundred Seventy-Six Million, Six Hundred Fifty-five Thousand, Six Hundred Twenty-three Pesos (Php576,655,623.00[.])

*Each Concession Fee shall be treated as an Expenditure of the Concession and the Concessionaire's payment obligation in respect thereof shall rank at least pari passu with its unsecured payment obligations under all other debt instruments that may be executed by the Concessionaire.*²² (Emphasis supplied)

²² MWCI and Maynilad RCAs, *supra* notes 17 and 18, at 17-18.

It is clear from Section 6.4 that the concession fees payable to MWSS consist of two components: (i) the amount of maturing payments on the existing loans of MWSS, which is fixed; and (ii) the amount of its annual budget, which is variable.

III. *Determination of the concessionaires' rates*

The standard rates that may be charged to the public or end-consumers by the concessionaires for the provision of water and sewerage services are also set by their respective concession agreements, and are subject to general adjustment at five-year intervals through the rate rebasing mechanism.²³

During each rate rebasing exercise, the standard rates are determined on the basis of the information submitted by the concessionaires to the MWSS Regulatory Office.²⁴ **It is the parties' ultimate intention that such rates be set at a level which would permit the concessionaires to earn a reasonable rate of return over the term of their respective concessions.**²⁵

To this end, the costs necessary for the operation, maintenance, expansion, development, and improvement of the waterworks system are factored into the standard rates chargeable against the end-consumers. Thus, the concessionaires are required to provide the following information prior to each rate rebasing date: (i) expenditures; (ii) receipts; (iii) cash flows; (iv) opening cash position; and (v) future cash flows.²⁶ "Expenditures" have a fixed definition under the concession agreements, thus:

"Expenditures" includes pre-operating and operating expenditures, capital maintenance and investments expenditures, working capital requirements, business taxes, and *concession fees*; but excludes: penalties, interest charges on late payments, financing costs, bad debt provisions, depreciation provisions and tax on income. Expenditures "efficiently and prudently incurred" does not include, among other things, payments for (X) Disapproved Assets or (Y) fees for management or consulting services required by the Concessionaire in order to carry out its obligations under this Agreement payable to any shareholder or affiliate of the Concessionaire to the extent, in the judgment of the Regulatory Office, that such fees do not represent the best value available in the market for such services.²⁷ (Emphasis supplied)

IV. *The effect of the provision for equitable share*

As stated, a decision that upholds the right of the Province of Bulacan to share in the proceeds derived from the supply and distribution of water from

²³ See MWCI and Maynilad RCAs, sec. 9.4, *id.* at 27.

²⁴ See MWCI and Maynilad RCAs, sec. 9.4.1, *id.*

²⁵ See MWCI and Maynilad RCAs, sec. 9.4, *id.*

²⁶ See MWCI and Maynilad RCAs, sec. 9.4.1, *id.*

²⁷ See MWCI and Maynilad RCAs, art. I, *id.* at 4.

Angat Dam will similarly entitle all the aforesaid LGUs to claim their respective shares therein. Evidently, giving to each concerned LGU 1% of the annual gross receipts of MWSS will take up a significant portion of the concession fees intended to cover maturing payments due on the existing loans of MWSS, its statutory obligations, as well as its annual operating and administrative expenses.

It bears noting that at present, MWSS is already obligated to remit dividends to the national government pursuant to Republic Act No. 7656:²⁸

SECTION 3. *Dividends.* — All government-owned or -controlled corporations shall declare and remit at least fifty percent (50%) of their annual net earnings as cash, stock or property dividends to the National Government. This section shall also apply to those government-owned or -controlled corporations whose profit distribution is provided by their respective charters or by special law, but shall exclude those enumerated in Section 4 hereof: *Provided*, That such dividends accruing to the National Government shall be received by the National Treasury and recorded as income of the General Fund.

SECTION 4. *Exemptions.* — The provisions of the preceding section notwithstanding, government-owned or -controlled corporations created or organized by law to administer real or personal properties or funds held in trust for the use and the benefit of its members, shall not be covered by this Act such as, but not limited to: the Government Service Insurance System, the Home Development Mutual Fund, the Employees Compensation Commission, the Overseas Workers Welfare Administration, and the Philippine Medical Care Commission.

SECTION 5. *Flexible Clause.* — In the interest of national economy and general welfare, the percentage of annual net earnings that shall be declared by a government-owned or -controlled corporation may be adjusted by the President of the Philippines upon recommendation by the Secretary of Finance.

However, recognizing the need to ensure the viability of MWSS, President Gloria Macapagal-Arroyo significantly reduced the dividend rate of MWSS for fiscal years 2001 to 2006²⁹ based on the authority granted by Section 5 above, thus:

Issuance	Dividend Rate	Year
Executive Order No. 167, series of 2003 ³⁰	30%	2001

²⁸ An Act Requiring Government-Owned or -Controlled Corporations to Declare Dividends Under Certain Conditions to the National Government, and for Other Purposes (1993).

²⁹ See Executive Order No. 167, series of 2003; Executive Order No. 529, series of 2006; Executive Order No. 591, series of 2006; and Executive Order No. 741, series of 2008.

³⁰ Adjusting the Dividend Rates of Selected Government-Owned and/or Controlled Corporations on Their 2001 Net Earnings Pursuant to Section 5 of Republic Act No. 7656.

Executive Order No. 529, series of 2006 ³¹	11% or an equivalent amount of not less than PHP 65.31 Million	2002
Executive Order No. 529, series of 2006	10% or an equivalent amount of not less than PHP 109.97 Million	2003
Executive Order No. 529, series of 2006	10% or an equivalent amount of not less than PHP 66.20 Million	2004
Executive Order No. 591, series of 2006 ³²	5% or an equivalent amount of not less than PHP 57.06 Million	2005
Executive Order No. 741, series of 2008 ³³	5% or an equivalent amount of not less than PHP 130.80 Million	2006

The remittance of shares in favor of the LGUs will be in addition to the dividends required by Republic Act No. 7656. Accordingly, this will undoubtedly have a significant impact on the financial position of MWSS and resultantly, on the public or its end-consumers.

On this score, it bears noting that the concession fees serve as the only source of active income of MWSS, as confirmed by the Statement of Comprehensive Income incorporated in the latest annual audited financial statement of MWSS,³⁴ which is quoted here for reference:

<u>PARTICULARS</u>	<u>2022</u>	<u>2021</u> <u>(AS RESTATED)</u>	<u>INC/(DEC)</u>	<u>%</u>
REVENUE				
SERVICE INCOME AND BUSINESS INCOME				
OTHER SERVICE INCOME – CONCESSION FEES	256,272,000.00	152,526,000.00	103,746,000.00	68%
INTEREST INCOME	3,730,512.72	3,667,292.38	63,220.34	2%
TOTAL SERVICE INCOME AND BUSINESS INCOME	260,002,512.72	156,193,292.38	103,809,220.34	66%
TOTAL REVENUE	260,002,512.72	156,193,292.38	103,809,220.34	66%

Thus, to create a buffer against the shortfall that will be caused by the diversion of a portion of the concession fees to the LGUs, MWSS will have

³¹ Adjusting the Dividend Rates of Metropolitan Waterworks and Sewerage System on Its 2002, 2003 and 2004 Net Earnings Pursuant to Section 5 of Republic Act No. 7656.

³² Adjusting the Dividend Rate of Metropolitan Waterworks and Sewerage System on Its 2005 Net Earnings Pursuant to Section 5 of Republic Act No. 7656.

³³ Adjusting the Dividend Rate of Metropolitan Waterworks and Sewerage System on Its 2006 Net Earnings Pursuant to Section 5 of Republic Act No. 7656.

³⁴ MWSS-Regulatory Office Detailed Statement of Comprehensive Income for the Year Ended December 31, 2022 (Post-Closing), available at https://ro.mwss.gov.ph/wp-content/uploads/2023/02/MWSS-RO-Financial-Statement_December-31-2022-Post-Closing.pdf (last accessed on October 3, 2023).

to call for an increase in its annual budget for operating expenses, which is the only variable component of the concession fees. **As a result, the increase in concession fees will trigger an increase in water supply and sewerage prices, as these fees are among the costs that are factored into the determination of standard rates chargeable against the end-consumers.**

Notice should be taken of the fact that the Province of Bulacan has already benefited from the supply and distribution of water covered by its *own* water rights allocation through the Bulacan Bulk Water Supply Project undertaken by another concessionaire, Luzon Clean Water Development Corporation (LCWDC).³⁵ Through this project, the Province of Bulacan appears to have already received an upfront payment of PHP 350,000,000.00 from LCWDC³⁶ on account of the use of the Province of Bulacan's water rights allocation amounting to 1.9 CMS.³⁷ As will be explained in further detail below, there is no basis to similarly grant the Province of Bulacan additional compensation in the case, considering that the water rights allocation used for the supply and distribution of water from Angat Dam pertains solely to MWSS.³⁸

This cautionary note is made with the recognition that the Province of Bulacan's claim is anchored on the Constitution. The desire to grant said claim is therefore understandable, as such grant ostensibly gives life to the policy of ensuring local autonomy. *Nevertheless*, it should be borne in mind that the autonomy of local governments cannot be hastily prioritized at the expense of the very systems which support them, particularly in cases where, as here, the LGU in question has failed to establish its claim by sufficient evidence.

To this end, I now proceed to address the central question raised in the Petition—whether or not, pursuant to the Constitution and the provisions of the Local Government Code³⁹ (LGC), the Province of Bulacan is entitled to an equitable share in the proceeds derived from the supply and distribution of water sourced from Angat Dam.

Right to equitable share

The right of LGUs to have an equitable share in the proceeds resulting from the utilization and development of national wealth is set forth in Article X, Section 7 of the Constitution, thus:

³⁵ *MWSS 2016 Annual Report*, *supra* note 13, at 18.

³⁶ *Bulacan Bulk Water project agreement inked*, available at https://ppp.gov.ph/in_the_news/bulacan-bulk-water-project-agreement-inked/ (last accessed on October 3, 2023).

³⁷ *MWSS 2016 Annual Report*, *supra* note 13, at 18.

³⁸ The LCWDC Concession Agreement is not available online. Nevertheless, the upfront payment mentioned above is confirmed by Ramon Ang via press release (LCWDC is a consortium formed by San Miguel Corporation and Korea Water Resources Corp.), see *Bulacan Bulk Water project agreement inked*, *supra* note 36.

³⁹ Republic Act No. 7160 (1991), An Act Providing for a Local Government Code of 1991.

SECTION 7. Local governments shall be entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, in the manner provided by law, including sharing the same with the inhabitants by way of direct benefits.

The law that implements the foregoing policy is Section 289 of the LGC. It reads:

SECTION 289. *Share in the Proceeds from the Development and Utilization of the National Wealth.* — Local government units shall have an equitable share in the proceeds derived from the utilization and development of the national wealth within their respective areas, including sharing the same with the inhabitants by way of direct benefits.

Hence, the right to equitable share under Article X, Section 7 is subject to the concurrence of the following requisites: (i) the proceeds subject of the equitable share must be derived from **national wealth**; (ii) the national wealth from which the proceeds are derived must be **within the territory of the claimant-LGU**; and (iii) the proceeds must result from the **utilization and development, as contemplated under the Constitution**.

Not one of these requisites obtains in this case.

Water sourced from Angat Dam does not constitute national wealth.

The Constitution does not define “national wealth”. Nevertheless, the deliberations of the 1986 Constitutional Commission suggest that “national wealth” pertains to natural resources, identified under Article XII⁴⁰ of the Constitution:

MR. OPLE. Madam President, the issue has to do with Section 8 on page 2 of Committee Report No. 21:

Local taxes shall belong exclusively to local governments and they shall likewise be entitled to share in the proceeds of the exploitation and development of the national wealth within their respective areas.

Just to cite specific examples, in the case of timberland within the area of jurisdiction of the Province of Quirino or the Province of Aurora, we feel that the local governments ought to share in whatever revenues are generated from this particular natural resource which is also considered a national resource in a proportion to be determined by Congress. This may mean sharing not with the local government but with the local population. The geothermal plant in the Macban, Makiling-Banahaw area in Laguna, the Tiwi Geothermal Plant in Albay, there is a sense in which the people in

⁴⁰ Article XII, Section 2 of the Constitution states that “[a]ll lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State.”

these areas, hosting the physical facility based on the resources found under the ground in their area which are considered national wealth, should participate in terms of reasonable rebates on the cost of power that they pay. This is true of the Maria Cristina area in Central Mindanao, for example. May I point out that in the previous government, this has always been a very nettlesome subject of Cabinet debates. Are the people in the locality, where God chose to locate His bounty, not entitled to some reasonable modest sharing of this with the national government? Why should the national government claim all the revenues arising from them? And the usual reply of the technocrats at that time is that there must be uniform treatment of all citizens regardless of where God's gifts are located, whether below the ground or above the ground. This, of course, has led to popular disenchantment. In Albay, for example, the government then promised a 20-percent rebate in power because of the contributions of the Tiwi plant to the Luzon grid. Although this was ordered, I remember that the Ministry of Finance, together with the National Power Corporation, refused to implement it. There is a bigger economic principle behind this, the principle of equity. If God chose to locate the great rivers and sources of hydroelectric power in Iligan, in Central Mindanao, for example, or in the Cordillera, why should the national government impose fuel adjustment taxes in order to cancel out the comparative advantage given to the people in these localities through these resources? So, it is in that sense that under Section 8, the local populations, if not the local governments, should have a share of whatever national proceeds may be realized from this natural wealth of the nation located within their jurisdictions.⁴¹

The foregoing intent is reflected in the Implementing Rules and Regulations of the LGC which defines "national wealth" as "all natural resources situated within the Philippine territorial jurisdiction including lands of public domain, waters, minerals, coal, petroleum, mineral oils, potential energy forces, gas and oil deposits, forest products, wildlife, flora and fauna, fishery and aquatic resources, and all quarry products."⁴²

In asserting its claim, the Province of Bulacan takes this definition to mean that all waters, regardless of source, necessarily form part of the national wealth.⁴³ *However*, the Court's ruling in *IDEALS, Inc. v. PSALM*⁴⁴ (*IDEALS case*) already declared otherwise.

In the *IDEALS case*, petitioner Initiatives for Dialogue and Empowerment Through Alternative Legal Services, Inc. (*IDEALS*) sought to enjoin the sale of the Angat Hydro-Electric Power Plant (*AHEPP*) to Korea Water Resources Corporation (*K-Water*), a foreign corporation which won the public bidding conducted by respondent Power Sector Assets and Liabilities Management Corporation (*PSALM*).⁴⁵ There, *IDEALS* argued, among others, that the bidding and award of the disputed contract to *K-Water* violated the constitutional provisions on the exploration, development, and utilization of water as a natural resource. According to *IDEALS*, these activities can only

⁴¹ III Record, Constitutional Commission 178 (August 11, 1986).

⁴² Rules and Regulations Implementing the Local Government Code of 1991, art. 386(b).

⁴³ See Comment filed by the Province of Bulacan, *rollo*, pp. 154-155.

⁴⁴ 696 Phil. 486 (2012) [Per J. Villarama, Jr., *En Banc*].

⁴⁵ *Id.* at 502.

be done by Filipino citizens and/or corporations which are at least 60% Filipino-owned.⁴⁶

Resolving this particular issue, the Court held that the generation of electric power by using the dam water which enters the AHEPP does *not* amount to the appropriation of a natural resource as contemplated under the Constitution and the Water Code. The Court's discussion on the matter is insightful:

It is the position of PSALM that as the new owner only of the hydroelectric power plant, K-Water will be a mere operator of the Angat Dam. In the power generation activity, *K-Water will have to utilize the waters already extracted from the river and impounded on the dam.* This process of generating electric power from the dam water entering the power plant thus does not constitute appropriation within the meaning of natural resource utilization in the Constitution and the Water Code.

The operation of a typical hydroelectric power plant has been described as follows:

Hydroelectric energy is produced by the force of falling water. The capacity to produce this energy is dependent on both the available flow and the height from which it falls. Building up behind a high dam, water accumulates potential energy. This is transformed into mechanical energy when the water rushes down the sluice and strikes the rotary blades of turbine. The turbine's rotation spins electromagnets which generate current in stationary coils of wire. Finally, the current is put through a transformer where the voltage is increased for long distance transmission over power lines.

....

The DOJ has consistently regarded hydropower generation by foreign entities as not constitutionally proscribed based on the definition of water appropriation under the Water Code, thus:

Opinion No. 173, 1984

This refers to your request for opinion on the possibility of granting water permits to foreign corporations authorized to do business in the Philippines[.]

....

... while the Water Code imposes a nationality requirement for the grant of water permits, the same refers to the privilege "to appropriate and use water." This should be interpreted to mean the extraction of water from its natural source (Art. 9, P.D. No. 1067). Once removed

⁴⁶ *Id.* at 506.

therefrom, they cease to be a part of the natural resources of the country and are the subject of ordinary commerce and may be acquired by foreigners (Op. No. 55, series of 1939) . . . in case of a contract of lease, the water permit shall be secured by the lessor and included in the lease as an improvement. The water so removed from the natural source may be appropriated/used by the foreign corporation leasing the property.

Opinion No. 14, S. 1995

The nationality requirement imposed by the Water Code refers to the privilege "to appropriate and use water." This, we have consistently interpreted to mean the extraction of water directly from its natural source. *Once removed from its natural source the water ceases to be a part of the natural resources of the country and may be subject of ordinary commerce and may even be acquired by foreigners.* (Secretary of Justice Op. No. 173, s. 1984; No. 24, s. 1989; No. 100, s. 1994)

In fine, we reiterate our earlier view that a foreign entity may legally process or treat water after its removal from a natural source by a qualified person, natural or juridical.

Opinion No. 122, s. 1998

The crucial issue at hand is the determination of whether the utilization of water by the power plant to be owned and operated by a foreign-owned corporation (SRPC) will violate the provisions of the Water Code.

As proposed, the participation of SRPC to the arrangement commences upon construction of the power station, consisting of a dam and a power plant. After the completion of the said station, its ownership and control shall be turned over to NPC. However, SRPC shall remain the owner of the power plant and shall operate it for a period of twenty-five (25) years.

It appears that the dam, which will be owned and controlled by NPC, will block the natural flow of the river. The power plant, which is situated next to it, will entirely depend upon the dam for its water supply which will pass through an intake gate situated one hundred (100) meters above the riverbed. Due to the distance from the riverbed, water could not enter the power plant absent the dam that traps the flow of the river. It appears further that no water shall enter the power tunnel without specific dispatch instructions from NPC, and such supplied water shall be used only by SRPC for power generation and not for any other purpose. When electricity is generated therein, the same shall be supplied to NPC for distribution to the public.

These facts . . . viewed in relation to the Water Code, specifically Article 9 thereof, . . . clearly show that there is no circumvention of the law.

This Department has declared that the nationality requirement imposed by the Water Code refers to the privilege “to appropriate and use water” and has interpreted this phrase to mean the extraction of water directly from its natural source (Secretary of Justice Opinion No. 14, s. 1995). “Natural” is defined as that which is produced without aid of stop, valves, slides, or other supplementary means (see Webster’s New International Dictionary, Second Edition, p. 1630). The water that is used by the power plant could not enter the intake gate without the dam, which is a man-made structure. Such being the case, the source of the water that enters the power plant is of artificial character rather than natural. This Department is consistent in ruling, that once water is removed from its natural source, it ceases to be a part of the natural resources of the country and may be the subject of ordinary commerce and may even be acquired by foreigners.

.....


The latest executive interpretation is stated in DOJ Opinion No. 52, s. 2005 which was rendered upon the request of PSALM in connection with the proposed sale structure for the privatization of hydroelectric and geothermal generation assets (Gencos) of NPC. PSALM sought a ruling on the legality of its proposed privatization scheme whereby the non-power components (dam, reservoir and appurtenant structures and watershed area) shall be owned by the State through government entities like NPC or [the National Irrigation Administration (NIA)] which shall exercise control over the release of water, while the ownership of the power components (power plant and related facilities) is open to both Filipino citizens/corporations and 100% foreign-owned corporations.

Sustaining the position of PSALM, then Secretary Raul M. Gonzalez opined:

Premised on the condition that only the power components shall be transferred to the foreign bidders while the non-power components/structures shall be retained by state agencies concerned, we find that both PSALM’s proposal and position are tenable.

.....

Applied to the instant case, and construed in relation to the earlier-mentioned constitutional inhibition, it would appear clear that while both waters and geothermal steam are, undoubtedly “natural resources”, within the meaning of Section 2[,] Article XII of the present Constitution, hence, their exploitation, development and utilization should be limited to Filipino citizens or corporations or associations at



least sixty per centum of the capital of which is owned by Filipino citizens, the utilization thereof can be opened even to foreign nationals, after the same have been extracted from the source by qualified persons or entities. *The rationale is because, since they no longer form part of the natural resources of the country, they become subject to ordinary commerce.*

A contrary interpretation, *i.e.*, that the removed or extracted natural resources would remain inalienable especially to foreign nationals, can lead to absurd consequences, *e.g.*, that said waters and geothermal steam, and any other extracted natural resources, cannot be acquired by foreign nationals for sale within or outside the country, which could not [have] been intended by the framers of the Constitution.

....

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

....

On the other hand, "water right" is defined in the Water Code as the privilege granted by the government to appropriate and use water. Black's Law Dictionary defined "water rights" as "[a] legal right, in the nature of a corporeal hereditament, to use the water of a natural stream or water furnished through a ditch or canal, for general or specific purposes, such as irrigation, mining, power, or domestic use, either to its full capacity or to a measured extent or during a defined portion of the time," or "the right to have the water flow so that some portion of it may be reduced to possession and be made private property of individual, and it is therefore the right to divert water from natural stream by artificial means and apply the same to beneficial use."

Under the Water Code concept of appropriation, a foreign company may not be said to be "appropriating" our natural resources if it utilizes the waters collected in the dam and converts the same into electricity through artificial devices. Since the NPC remains in control of the operation of the dam by virtue of water rights granted to it, as determined under DOJ Opinion No. 122, s. 1998, there is no legal impediment to foreign-owned companies undertaking the generation of electric power *using waters already appropriated by NPC, the holder of water permit*. Such was the situation of hydropower projects under the BOT contractual arrangements whereby foreign investors are allowed to finance or undertake construction and rehabilitation of infrastructure projects and/or own and operate the facility constructed. However, in case the facility requires a public utility franchise, the facility operator must be a Filipino corporation or at least 60% owned by Filipino.⁴⁷ (Emphasis supplied; some citations omitted)

⁴⁷ *Id.* at 540-546.

Following the Court's ruling in the *IDEALS case*, the water flowing into Angat Dam is deemed appropriated once collected, that is, at the point it flows into the man-made structure through artificial means. **At this point, the water ceases to be a "natural resource" within the contemplation of the Water Code.** Simply stated, once water is diverted and captured through the use of man-made structures or other artificial means, it ceases to become a natural resource. Necessarily, the use of water stored in Angat Dam, whether for the purpose of power generation (in the case of K-Water), or distribution (in the case of MWSS through its concessionaires), no longer constitutes the "utilization and development of national wealth," as the source of water is artificial, rather than natural in character.

The water impounded in Angat Dam cannot be deemed situated within a single territory.

Even if it be assumed *arguendo* that the water in Angat Dam forms part of the national wealth of the State, I find that such water cannot be deemed situated solely within the territory of the Province of Bulacan.

The deliberations of the 1986 Constitutional Commission confirm that the right to equitable share granted to LGUs under Article X, Section 7 of the Constitution was crafted as a mechanism to enhance local autonomy:

MR. MAAMBONG. Let me put it this way, Mr. Presiding Officer.

The flagship provision of local government, from our standpoint, is the provision that local governments will be given local autonomy.

MR. NOLLEDO. I agree, Mr. Presiding Officer.

MR. MAAMBONG. Because of that, right after Section 1 when we talk about territorial and political subdivisions, we immediately place the flagship provisions on local autonomy in Section 2. *In view of this concept of local autonomy, it necessarily follows that we have to put after Section 2, Sections 12, 13 and 14 because when the local government units have local autonomy, we give them the power to create sources of revenue, which is Section 12. We give them the power to have a just share in national taxes, which is Section 13, and we give them the power to have a share in the proceeds of the national wealth.* That is precisely the concept that we have tried to present, Mr. Presiding Officer.⁴⁸ (Emphasis supplied)

The location of the resource is therefore crucial in determining whether the right to equitable share accrues in favor of the claimant-LGU. As the constitutional provision clearly states, the national wealth in question must be within the area of the LGU for the latter to be entitled to share in the proceeds resulting therefrom.

⁴⁸ V Record, Constitutional Commission 903 (October 12, 1986).

In fact, a close reading of the deliberations shows the framers' intent to **limit the application of Article X, Section 7 to those resources the origins of which can be determined with certainty or simply, "localized"**. To reiterate:

MR. OPLE. . . .

. . . .

Just to cite specific examples, in the case of timberland within the area of jurisdiction of the Province of Quirino or the Province of Aurora, we feel that the local governments ought to share in whatever revenues are generated from this particular natural resource which is also considered a national resource in a proportion to be determined by Congress. This may mean sharing not with the local government but with the local population. *The geothermal plant in the Macban, Makiling-Banahaw area in Laguna, the Tiwi Geothermal Plant in Albay, there is a sense in which the people in these areas, hosting the physical facility based on the resources found under the ground in their area which are considered national wealth, should participate in terms of reasonable rebates on the cost of power that they pay. This is true of the Maria Cristina area in Central Mindanao, for example.* May I point out that in the previous government, this has always been a very nettlesome subject of Cabinet debates. *Are the people in the locality, where God chose to locate His bounty, not entitled to some reasonable modest sharing of this with the national government? Why should the national government claim all the revenues arising from them? And the usual reply of the technocrats at that time is that there must be uniform treatment of all citizens regardless of where God's gifts are located, whether below the ground or above the ground. This, of course, has led to popular disenchantment. In Albay, for example, the government then promised a 20-percent rebate in power because of the contributions of the Tiwi plant to the Luzon grid. Although this was ordered, I remember that the Ministry of Finance, together with the National Power Corporation, refused to implement it. There is a bigger economic principle behind this, the principle of equity. If God chose to locate the great rivers and sources of hydroelectric power in Iligan, in Central Mindanao, for example, or in the Cordillera, why should the national government impose fuel adjustment taxes in order to cancel out the comparative advantage given to the people in these localities through these resources? So, it is in that sense that under Section 8, the local populations, if not the local governments, should have a share of whatever national proceeds may be realized from this natural wealth of the nation located within their jurisdictions.*⁴⁹ (Emphasis supplied)

Here, the water stored in Angat Dam consists of surface water, that is, water flowing over lands, water from rainfall, and water from agriculture runoff, seepage and drainage.⁵⁰ The water that flows into Angat Dam therefore originates from multiple sources and accumulates as it passes through its natural course. The water in Angat Dam cannot therefore be deemed situated within a single territory (that is, the Province of Bulacan), considering that

⁴⁹ III Record, Constitutional Commission 178 (August 11, 1986).

⁵⁰ See WATER CODE, art. 5(d).

such water is sourced from multiple jurisdictions.⁵¹ **Undoubtedly, such water is not indigenous to the Province of Bulacan.**

In this connection, the Province of Bulacan attempts to establish that a significant portion of the water in Angat Dam is sourced from its territory and should therefore be deemed situated or located within its boundaries. However, the evidence on record is manifestly insufficient to support such finding.

To recall, the lower courts made a finding that 88.5% of the water that flows into Angat Dam is sourced from Bulacan. This percentage allegedly went down to 71.9% after the Umiray Transbasin began operating in July 2000. These findings, however, are anchored principally on the NPC Certification issued in favor of the Province of Bulacan. It reads, in part:

Based on the **NAMRIA Topographic Map** with a scale of 1:50,000, our calculations on the watershed areas of Angat dam/reservoir showed the following:

Angat Dam Watershed Area under Quezon Province	39 Sq.km.	6.9%
Angat Dam Watershed Area under N. Ecija Province	2 Sq.km.	0.3%
Angat Dam Watershed Area under Rizal Province	24 Sq.km.	4.3%
Angat Dam Watershed Area under Bulacan Province	499 Sq.km.	88.5%
Total Watershed Area [o]f Angat Dam	564 Sq.km.	100.0%

.....

On the other hand, considering the trans-basin inflows from Umiray River Basin to Angat dam/reservoir since July 2000 resulted in the watershed area distribution as follows:

Umiray Watershed Area	130 Sq.km.	18.7%
Angat Dam Watershed Area under Quezon Province	39 Sq.km.	5.6%
Angat Dam Watershed Area under N. Ecija Province	2 Sq.km.	0.3%
Angat Dam Watershed Area under Rizal Province	24 Sq.km.	3.5%
Angat Dam Watershed Area under Bulacan Province	499 Sq.km.	71.9%
Total Watershed Area [o]f Angat Dam + Umiray	694 Sq.km.	100.0% ⁵²

The NPC Certification further states:

⁵¹ See Comment filed by the Province of Bulacan, *rollo*, pp. 156–157.

⁵² *Rollo*, pp 139–140.

The average monthly contributions in Million Cubic Meters (MCM) of water exclusively sourced from the Province of Bulacan based on the 88.5% watershed area [without the Umiray River Basin] under the province are as follows:

Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
MCM	94.7	56.3	44.2	32.9	53.2	95.0	168.8	195.0	169.7	274.8	259.7	213.2

Therefore, the average monthly contributions in Million Cubic Meters (MCM) of water exclusively sourced from the Province of Bulacan based on the 71.9% watershed area [with the Umiray Basin] under the province are tabulated as follows:

Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
MCM	56.2	74.5	43.2	25.1	63.5	54.8	221.5	165.4	120.0	126.5	226.8	207.3 ⁵³

I submit that the lower courts erred in relying on the foregoing NPC Certification as basis to hold that 71.9% to 88.5% of the water in Angat Dam is exclusively sourced from the territory of the Province of Bulacan.

Foremost, it is apparent that the NPC Certification only indicates the size of the watershed areas that are geographically located within the respective jurisdictions of Nueva Ecija, Rizal, Quezon Province, and Bulacan, and that the average MCM monthly contributions tabulated therein are merely approximations made on the basis only of the total land area of the watershed within an LGU’s territory.

A watershed is defined as “a region or area bounded peripherally by a divide, and draining ultimately to a particular watercourse or body of water.”⁵⁴ **Verily, the land area of the watershed pertaining to each LGU is not indicative of the amount of water sourced therefrom.** The amount of water diverted by each watershed depends on the amount of rain which happens to fall on these watershed areas, as well as the environmental conditions which vary from one territory to the other. To my mind, the NPC Certification miserably fails to provide sufficient basis to support the conclusion that “71.9% to 88.5%” of the water in Angat Dam is exclusively sourced from or “localized” in the Province of Bulacan.

Moreover, for the purpose of presentation of evidence, documents are classified as either public or private. As stated in Rule 32, Section 19 of the Revised Rules on Evidence, public documents consist of: (i) the written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country; (ii) documents acknowledged before a notary public except

⁵³ *Id.* at 140. See also *id.* at 157, as quoted by the Province of Bulacan in its Comment.

⁵⁴ MERRIAM-WEBSTER DICTIONARY, “watershed,” available at <https://www.merriam-webster.com/dictionary/watershed> (last accessed on October 3, 2023).

last wills and testaments; and (iii) public records, kept in the Philippines, of private documents required by law to be entered therein. All other writings are classified as private documents.

In *Republic v. Galeno*⁵⁵ (*Galeno*), respondent therein filed a petition to correct the lot area reflected on her Torrens title. The Court ultimately resolved to dismiss said petition due to respondent's failure to present, as witnesses, the public officers who issued the certifications which she presented in support of her petition. In its Decision, the Court expounded on the nature of certifications issued by government officials, thus:

A scrutiny of the evidence marked and formally offered by respondent before the court *a quo* shows that the former failed to prove that there was sufficient basis to allow the correction of the area of the subject property in OCT No. 46417 from 20,948 square meters to 21,248 square meters.

Records reveal that respondent offered in evidence the following documents: (a) the Certification issued by a certain Althea C. Acevedo (Acevedo), Engineer IV, Chief of the Technical Services Section of the Office of the Regional Technical Director, Land Management Services of the DENR in Iloilo City, which states that "the true and correct area of [L]ot 2285, Cad. 246 Dingle Cadastre is 21,928 square meters;" (b) the technical description of Lot No. 2285, a copy of which was certified by Ameto Caballero (Caballero), Chief of the Surveys Division, while another copy was certified correct by Acevedo; and (c) the approved subdivision plan of Lot No. 2258, certified by Rogelio M. Santome (Santome), Geodetic Engineer; Alfredo Muyarsas (Muyarsas), Chief of the Regional Surveys Division, and Edgardo R. Gerobin (Gerobin), OIC, Regional Technical Director of the Land Management Services, DENR. On the strength of these pieces of evidence, respondent sought a reconciliation of the area of the subject property with the records of the DENR.

Unfortunately, the foregoing documentary evidence are not sufficient to warrant the correction prayed for. The Court cannot accord probative weight upon them in view of the fact that the public officers who issued the same did not testify in court to prove the facts stated therein.

In *Republic v. Medida*, the Court held that certifications of the Regional Technical Director, DENR cannot be considered *prima facie* evidence of the facts stated therein, holding that:

Public documents are defined under Section 19, Rule 132 of the Revised Rules on Evidence as follows:

(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;

⁵⁵ 803 Phil. 742 (2017) [Per J. Perlas-Bernabe, First Division].

(b) Documents acknowledged before a notary public except last wills and testaments; and

(c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

Applying Section 24 of Rule 132, the record of public documents referred to in Section 19(a), when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record, or by his deputy.

Section 23, Rule 132 of the Revised Rules on Evidence provides:

“Sec. 23. *Public documents as evidence.* — Documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts stated therein. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.”

The CENRO and **Regional Technical Director, FMS-DENR, certifications [do] not fall within the class of public documents contemplated in the first sentence of Section 23 of Rule 132.** The certifications do not reflect “entries in public records made in the performance of a duty by a public officer,” such as entries made by the Civil Registrar in the books of registries, or by a ship captain in the ship’s logbook. **The certifications are not the certified copies or authenticated reproductions of original official records in the legal custody of a government office. The certifications are not even records of public documents.**

As such, *sans* the testimonies of Acevedo, Caballero, and the other public officers who issued respondent’s documentary evidence to confirm the veracity of its contents, the same are bereft of probative value and cannot, by their mere issuance, prove the facts stated therein. *At best, they may be considered only as prima facie evidence of their due execution and date of issuance but do not constitute prima facie evidence of the facts stated therein.*

In fact, the contents of the certifications are hearsay because respondent’s sole witness and attorney-in-fact, Lea Galeno Barraca, was incompetent to testify on the veracity of their contents, as she did not prepare any of the certifications nor was she a public officer of the concerned government agencies. Notably, while it is true that the public prosecutor who represented petitioner interposed no objection to the admission of the foregoing evidence in the proceedings in the court below, it should be borne in mind that “hearsay evidence, whether objected to or not, has no probative value unless the proponent can show that the evidence falls within the exceptions to the hearsay evidence rule,” which do not, however, obtain in this case. Verily, while respondent’s documentary

evidence may have been admitted due to the opposing party's lack of objection, it does not, however, mean that they should be accorded any probative weight.⁵⁶ (Emphasis supplied; citations omitted)

The pronouncements of the Court in *Galeno* apply in this case. The NPC Certification is not a public document under Rule 32, Section 19 of the Revised Rules on Evidence. It is neither a written official act nor a record thereof. It was not acknowledged before a notary public. It is also not a public record made in the performance of a duty of a public officer.⁵⁷ Thus, the NPC Certification is a private document.

Since the NPC Certification is a private document, its due execution and authenticity must first be proved before it can be considered as evidence of the matters stated therein. The manner of proof is governed by Rule 132, Section 20 of the Revised Rules on Evidence. To reiterate:

SECTION 20. *Proof of private document.* — Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

(a) By anyone who saw the document executed or written; or

(b) By evidence of the genuineness of the signature or handwriting of the maker.

Any other private document need only be identified as that which it is claimed to be.

The Province of Bulacan admits that no witness was presented to testify as to the due execution and authenticity of the NPC Certification. Nevertheless, it insists that the lower courts properly relied thereon because the parties agreed during the preliminary conference that no witnesses would be presented, and that the case would be decided on the basis of position papers filed with the RTC.⁵⁸

To my mind, this justification does not suffice considering that MWSS was not aware of the existence of the NPC Certification during the preliminary conference. This fact is confirmed by no less than the RTC Order⁵⁹:

The legal issues cannot be resolved without associating them to the facts. The facts can not be distanced from the issues. This [c]ourt is not unmindful that only those evidence formally offered can be considered (Sec. 34, Rule 132 of the Rules) but it takes note that to prove its point, [the Province of Bulacan] identified, marked and formally offered the assailed document, Exhibit "L". [The Province of Bulacan's] Pre-trial Brief contains a reservation for additional evidence. *The document [was] evidently not*

⁵⁶ *Id.* at 747-750.

⁵⁷ *See* REVISED RULES ON EVIDENCE, Rule 132, sec. 23.

⁵⁸ *See* Comment file by the Province of Bulacan, *rollo*, pp. 152-154.

⁵⁹ RTC Order dated January 31, 2006, *id.* at 80-90.

available during the preliminary conference of [p]re-trial as could be read from its date of request (March 14, 2005) and reply (April 4, 2005)[. I]n relation to the held preliminary conference[, this document] may be allowed for good cause shown under the . . . Guidelines by Trial Court Judges and Clerks of Court in the Conduct of Pre-trial Conference. [MWSS'] arguments are not persuasive [to the effect] that there was a denial of its right to confront the pleader (of Exhibit "L"). Counsels during the preliminary conference have agreed that witnesses need not be presented. . . . Counsels went further by mutually agreeing to submit issues determinative of the main case through position papers. . . . MWSS could not now be heard to complain of the procedure taken. This, notwithstanding, . . . MWSS has not totally foreclosed its right as [it] strongly opposed the conclusions given in the NAMRIA Topographical Map of the [NPC].⁶⁰ (Emphasis supplied)

Further, it is a well-settled rule that hearsay evidence, whether objected to or not, cannot be given credence for it has no probative value.⁶¹

In this regard, I wish to stress that the document that I find insufficient, as explained above, is the NPC Certification. Lest there be any confusion, I do not propose that the Court rule upon the admissibility of the National Mapping and Resource Information Authority (NAMRIA) Topographic Map referred to in the NPC Certification precisely because it was not presented during the proceedings below. Because of this, the Court does not have sufficient information to make any determination with respect to its nature and contents. To be clear, the NAMRIA Topographic Map is different from the NPC Certification.

Here, the lower courts' findings rest on the contents of the NPC Certification, which, as stated, was not offered and authenticated in accordance with the Revised Rules on Evidence. **Further, the figures in the NPC Certification are based on a supposed NAMRIA Topographic Map which was not presented during the course of the proceedings.** These facts, taken together, render the NPC Certification bereft of probative value, and leave the lower courts' findings with absolutely no basis.

*The operations of MWSS **do not** involve utilization and development so as to entitle the Province of Bulacan to a share in the proceeds derived therefrom.*

Finally, I find that the operations of MWSS do not constitute "utilization and development" so as to trigger the application of Article X, Section 7 of the Constitution.

MWSS was created for the purpose of providing two essential public services—the operation and maintenance of waterworks and sewerage

⁶⁰ *Id.* at 89–90.

⁶¹ *See Arjonillo v. Pagulayan*, 819 Phil. 256, 265 (2017) [Per J. Martires, Third Division].

systems.⁶² To fulfill these purposes, MWSS is vested with several functions that are outlined in the MWSS Charter. To reiterate:

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

....

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

⁶² See MWSS Charter, sec. 1.



unnecessary delay to its former state unless otherwise agreed upon by the System and the office or entity concerned;

....

- (n) To approve, regulate, and supervise the establishment, operation and maintenance of waterworks and deepwells within its jurisdiction operated for commercial, industrial and governmental purposes and to fix just and equitable rates or fees that may be charged to customers thereof;
- (o) To assist in the establishment, operation and maintenance of waterworks and sewerage systems within its jurisdiction under cooperative basis;
- (p) To approve and regulate the establishment and construction of waterworks and sewerage systems in privately owned subdivisions within its jurisdiction;
- (q) To have exclusive and sole right to test, mount, dismount and remount water meters within its jurisdiction[.]

At present, MWSS, through its concessionaires, provides essential public services within its jurisdiction—the uninterrupted and adequate supply and distribution of potable water for domestic and other purposes, and the operation and maintenance of sewerage services. The act of providing essential public services does not constitute utilization and development of national wealth so as to entitle the Province of Bulacan to a portion of proceeds resulting therefrom.

As keenly observed by Chief Justice Alexander G. Gesmundo (Chief Justice Gesmundo), the conjunctive term “utilization and development” under Article X, Section 7 of the Constitution should be understood to mean “exploitation,” that is, to use for one’s own advantage or profit. In *Republic v. Provincial Government of Palawan*⁶³ where the respondent LGU sought to claim its share in the proceeds of the Camago-Malampaya natural gas project, this Court examined the rationale behind Article X, Section 7 on which the Province of Bulacan also bases its claim:

MR. NATIVIDAD. The history of local governments shows that the usual weaknesses of local governments are: 1) fiscal inability to support itself; 2) lack of sufficient authority to carry out its duties; and 3) lack of authority to appoint key officials.

Under this Article, are these traditional weaknesses of local governments addressed to [sic]?

MR. NOLLEDO. Yes. The first question is on fiscal inability to support itself. It will be noticed that we widened the taxing powers [o]f local

⁶³ 844 Phil. 453 (2018) [Per J. Tijam, *En Banc*].

governments. I explained that exhaustively yesterday unless the Gentleman wants me to explain again.

MR. NATIVIDAD. No, that is all right with me.

MR. NOLLEDO. *There is a right of retention of local taxes by local governments and according to the Natividad, Ople, Maambong, de los Reyes amendment, local government units shall share in the proceeds of the exploitation of the national wealth within the area or region, etc.*

....

MR. OPLE. . . .

In the hinterland regions of the Philippines, most municipalities receive an annual income of only about [PHP 200,000.00] so that after paying the salaries of local officials and employees, nothing is left to fund any local development project. This is a prescription for a self-perpetuating stagnation and backwardness, and numbing community frustrations, as well as a chronic disillusionment with the central government. The thrust towards local autonomy in this entire Article on Local Governments may suffer the fate of earlier heroic efforts of decentralization which, without innovative features for local income generation, remained a pious hope and a source of discontent. To prevent this, this amendment which Commissioner Davide and I jointly propose will open up a whole new source of local financial self-reliance by establishing a constitutional principle of local governments, and their populations, sharing in the proceeds of national wealth in their areas of jurisdiction. *The sharing with the national government can be in the form of shares from revenues, fees and charges levied on the exploitation or development and utilization of natural resources such as mines, hydro-electric and geothermal facilities, timber, including rattan, fisheries, and processing industries based on indigenous raw materials.*⁶⁴ (Emphasis supplied)

A reading of the deliberations on the 1987 Constitution quoted above reveals that the conjunctive term “utilization and development” was intended to mean more than how it is commonly used and understood. **The framers repeatedly used the term “exploit” in explaining the rationale behind Article X, Section 7 of the 1987 Constitution. The term “exploit” or “exploitation” is generally defined as “to take advantage of” or “make use of meanly or unjustly for one’s own advantage or profit.”**⁶⁵

It is significant to note that the term “exploitation” was in fact used in the initial version of the provision in question. However, “exploitation” was replaced with the term “utilization” upon the suggestion of Commissioner Bennagen to merely “temper the unsavory connotation”⁶⁶ inherent in the term. Nevertheless, this formal change did *not* change the framers’ intent of

⁶⁴ *Id.* at 511–512.

⁶⁵ WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY (1976 ed.).

⁶⁶ III Record, Constitutional Commission 484 (August 19, 1986).

confining the application of Article X, Section 7 to cases involving the exploitation of national wealth for profit-generating purposes.

THE PRESIDENT. Commissioner Bennagen is recognized.

MR. BENNAGEN. Thank you, Madam President.

On Section 13, page 3, I propose to change the word "exploitation" to UTILIZATION in order to temper the unsavory connotation of the word "exploitation," which, incidentally, has already been deleted in the other provisions for consistency.

MR. MONSOD. Madam President.

THE PRESIDENT. Commissioner Monsod is recognized.

MR. MONSOD. I agree with Commissioner Bennagen. As a matter of fact, in the interest of harmonizing the words with the wording of the Article on National Economy and Patrimony, we are already avoiding the word "exploitation" and instead we are using the words "UTILIZATION and development." So, is it all right if we harmonize it that way, Madam President?

THE PRESIDENT. Yes.

MR. NOLLEDO. The Committee accepts the amendment.

MR. MONSOD. Thank you.

MR. OPLE. I also support the amendment.

THE PRESIDENT. What is the word to be used?

MR. BENNAGEN. "UTILIZATION and development" and delete the word "exploitation."

THE PRESIDENT. The Acting Floor Leader is recognized.

MR. SARMIENTO. Madam President, may I ask that the Chairman, Commissioner NolleDO, read the whole of Section 13 before we vote on it.

MR. NOLLEDO. Madam President, Section 13, as amended, now reads as follows: "Local governments shall be entitled to **EQUITABLY** share in the proceeds of the UTILIZATION and development of the national wealth within their respective areas **IN THE MANNER PROVIDED BY LAW, INCLUDING THEIR SHARING WITH THE INHABITANTS BY WAY OF DIRECT BENEFITS TO THEM.**"

MR. MONSOD. Madam President.

THE PRESIDENT. Commissioner Monsod is recognized.

MR. MONSOD. Can we delete the words "TO THEM" in the last sentence of the Section?

THE PRESIDENT. Is there any objection?

MR. OPLE. I support the amendment, Madam President.

MR. DAVIDE. Madam President.

THE PRESIDENT. Commissioner Davide is recognized. Is it still on Section 13?

MR. DAVIDE. Yes, Madam President. This is just to transpose the Guingona amendment. Instead of the phrase "to EQUITABLY share in," I propose TO AN EQUITABLE SHARE so that it will harmonize with the just share in the national taxes.

MR. NOLLEDO. I accept the amendment, Madam President.

MR. OPLE. I support the amendment.

MR. SARMIENTO. May I ask the Chairman of the Committee to read the whole of Section 13, as amended, so we can vote on it?

MR. NOLLEDO. Madam President, Section 13, as amended very recently, now reads as follows: "Local governments shall be entitled TO AN EQUITABLE SHARE in the proceeds of the UTILIZATION and development of the national wealth within their respective areas IN THE MANNER PROVIDED BY LAW, INCLUDING THEIR SHARING WITH THE INHABITANTS BY WAY OF DIRECT BENEFITS."

VOTING

THE PRESIDENT. As many as are in favor of this Section 13, as read by the Chairman, please raise their hand. (*Several Members raised their hand.*)

As many as are against, please raise their hand. (*One Member raised his hand.*)

The results show 31 votes in favor and 1 against; the amendment is approved.⁶⁷ (Emphasis in the original)

Thus, consistent with the observations of Chief Justice Gesmundo, I find merit in the assertions of MWSS, thus:

⁶⁷ *Id.* at 484-485.

[MWSS] is thus not engaged in the “utilization and development of national wealth” but in the operation and maintenance of waterworks and sewerage systems. It is clear that the equitable share referred to in Section 18 of the LGC is the direct result of the development and utilization of a natural resource (in this case, water) within the local government’s boundaries or territories.

. . . Indeed, there is a significant, quantitative difference between “utilization and development of national wealth,” on the one hand, and “operation and maintenance of waterworks and sewerage system,” on the other. The former contemplates a situation where the government utilizes or exploits the country’s resources primarily to generate income or derive profits. The use of the term “national wealth” in Article X, Section 7 of the Constitution suggests that the said provision applies in cases where the utilization of the country’s wealth begets more wealth. Since the government profits from such wealth, the framers of the Constitution deemed it fair for the government to share profits with the LGUs where the national wealth is situated.

. . . In contrast, the government’s “operation and maintenance of waterworks and sewerage systems” (through the defendant) is not primarily intended to generate income or derive profits. The primary purpose is to provide a basic necessity – adequate supply of clean water and a sanitary sewerage system. *In fact, even if the operation and maintenance of waterworks and sewerage systems do not bring profits to the government, the latter would still have to engage in them, for they are essential to the proper operation of society.* As [MWSS’] Charter states, “the proper operation and maintenance of waterworks system to insure an uninterrupted and adequate supply and distribution of potable water for domestic and other purposes and the proper operation and maintenance of sewerage systems are essential public services because they are vital to public health and safety.” This is not the activity contemplated by the clause “development and utilization of national wealth” in Article X, Section 7 of the Constitution.⁶⁸ (Emphasis supplied)

As aptly explained by Chief Justice Gesmundo, the conjunctive term “utilization and development” under Article X, Section 7 should be properly understood as “exploitation”. It follows that the “proceeds” meant to serve as the base for the equitable share granted to the LGUs pertain only to proceeds derived for the purpose of gaining profit, i.e., gains resulting from an excess of returns over expenditures.

The term “proceeds” is more akin to the term “income,” which is generally defined as “money that is earned from doing work or received from investments.”⁶⁹ The nature of “income” as a general term is further highlighted by the qualifiers often used in relation thereto, such as gross and net.

⁶⁸ See Petition, *rollo*, pp. 38–39.

⁶⁹ CAMBRIDGE DICTIONARY, “income”, available at <https://dictionary.cambridge.org/us/dictionary/english/income> (last accessed on October 3, 2023).

at


Hence, while I recognize that MWSS receives income in the form of concession fees, this inflow of income does not automatically render the operations of MWSS into an endeavor that is profit-driven. A cursory reading of Section 13 of the MWSS Charter shows that the priorities for which this income is earmarked pertain exclusively to debt servicing, operational costs, and administrative expenses. The provision reads:

SECTION 13. *Disposition of Income.* — The income of the System shall be disposed of according to the following priorities:

First, to pay its contractual and statutory obligations and to meet its essential current operating expenses;

Second, to serve at least fifty [percent] (50%) of the balance exclusively for the expansion, development and improvement of the System; and

Third, to allocate the residue enhancing the efficient operation and maintenance of the System which include increases of administrative expenses or increases or adjustment of salaries and other benefits of the employees.

As previously discussed, MWSS sources its active income solely from the fees it receives from its concessionaires. In turn, the amount of annual concession fees is determined by the sum of two components—the amount of maturing payments on MWSS' existing loans, which is fixed; and (ii) the amount of its annual budget, which is variable.

A reading of the disclosure report of MWSS on its “Loans and Foreign & Domestic Borrowing Ceiling” as of June 30, 2019⁷⁰ shows that its outstanding loans relate exclusively to expansion, optimization, distribution, and rehabilitation projects, namely: (i) Umiray-Angat Transbasin Project; (ii) Angat Water Utilization and Aqueduct Improvement Project Phase II; (iii) Angat Water Transmission Improvement Project; (iv) Angat Water Supply Optimization Project; (v) Manila South Water Distribution Project; (vi) Metro Manila Sewerage and Sanitation Project; (vii) Manila Water Supply Rehabilitation Project II; and (viii) Pasig Rehabilitation Project.⁷¹ Hence, the first component of the concession fees covers the first and second priorities under Section 13 of the MWSS Charter.

On the other hand, the amount of the annual budget, which determines the variable component of the concession fees, is subject to the parameters set in the relevant issuances of the Department of Budget and Management (DBM). In fact, in the corporate budget call for fiscal year 2020, DBM Corporate Budget Memorandum No. 41⁷² required the total budget of GOCCs

⁷⁰ Available at <https://mwss.gov.ph/wp-content/uploads/BORROWINGS-062019.pdf> (last accessed on October 3, 2023).

⁷¹ *Id.*

⁷² Dated March 5, 2019.



to be based on the total cash requirements for (a) ongoing programs, activities, and projects; and (b) new and expanded spending. Verily, the items that make up the annual budget of MWSS correspond to pre-determined expenses identified prior to any given fiscal year. For MWSS, these correspond to the **operation, maintenance, and administrative expenses** referred to in the third paragraph of Section 13 above.

From the foregoing, it becomes clear that **the income which MWSS receives is meant only to sustain its own operations and ensure its continued stability and viability so that it may continue to fulfill its mandate**—“[t]he proper operation and maintenance of waterworks system to insure an uninterrupted and adequate supply and distribution of potable water for domestic and other purposes and the proper operation and maintenance of sewerage systems”⁷³ which are, by law, characterized as essential public services.⁷⁴

At this juncture, it is useful to distinguish between the income which accrues in favor of MWSS in the form of concession fees and that which accrues in favor of the concessionaires in the form of service fees collected directly from the consumers. As explained, the amount of the concession fees paid to MWSS is determined by the amount of its maturing payments and the annual budget necessary for its continued operations.

On the other hand, the service fees paid by the consumers to the concessionaires is determined by the expenses incurred by the latter in the fulfillment of their respective concession agreements and the amount necessary to allow a reasonable rate of return on the concessionaires' respective investments. As stated in the RCAs:

9.4 General Rates Setting Policy/Rate Rebasing Determination

The maximum rates chargeable by the Concessionaire for water and sewage services hereunder applicable to the period through the Second Rate Rebasing Date (subject to interim adjustment's as described in this Article 9) are set out in Schedule 6 to this Agreement.

It is the intention of the parties that, from and after the Second Rate Rebasing Date, the rates for water and sewerage services provided by the Concessionaire shall be set at level that will permit the Concessionaire to recover over the term of the Concession (net of any grants from third parties and any possible Expiration Payment) Expenditures efficiently and prudently incurred and to earn a reasonable rate of return (referred to herein as the “Appropriate Discount Rate”).

⁷³ See MWSS Charter, sec. 1.

⁷⁴ *Id.*



The Expenditures are those connected with the provision of water and wastewater being provided by the Concessionaire.⁷⁵ (Emphasis supplied)

It is clear that the reasonable rate of return that the concessionaires are permitted to recover during the term of their concessions pertains solely to these concessionaires. No part of such return accrues in favor of MWSS.

The grant of Province of Bulacan's claim subverts the State's exclusive authority to regulate the use of surface water.

As stated, the water stored in Angat Dam consists of surface water that is owned by the State for the benefit of all its inhabitants. As owner of all surface water, the State, through the National Water Resources Board (NWRB) regulates its use through the grant of water rights, that is, the privilege to appropriate and use water.⁷⁶ No person, including government instrumentalities or GOCCs, shall appropriate water without a water right.⁷⁷

The issuance of a water right entitles the grantee to appropriate water, that is, to use, take, or divert water from a natural source in the manner and for any purpose allowed by law.⁷⁸ Once the grantee appropriates water pursuant to a water permit, either by the grantee's own acts or through the acts of another pursuant to an agreement approved by the NWRB, such water shall be subject to the control of the grantee "from the moment it reaches the [grantee's] canal or aqueduct leading to the place where the water will be used or stored and, thereafter, so long as it is being beneficially used for the purposes for which it was appropriated."⁷⁹

The water supplied by MWSS to Metro Manila is taken from the total 46 CMS⁸⁰ of raw water currently allocated by NWRB in its favor. The grant of the Province of Bulacan's alleged share in the proceeds derived by MWSS from its operations would therefore permit the former to profit from the water allocated by NWRB solely in favor of MWSS—water which the Province of Bulacan has no right to use under the explicit provisions of the Water Code. In my view, to grant the claim of the Province of Bulacan would effectively subvert the State's exclusive right to regulate the use of surface water, violate the exclusive right to the beneficial use of the water allocated in its favor, and render nugatory the prohibition against the appropriation and use of water without water rights.

⁷⁵ MWCI and Maynilad RCAs, *supra* notes 17 and 18, at 26–27.

⁷⁶ See WATER CODE, art. 13.

⁷⁷ *Id.*

⁷⁸ See WATER CODE, art. 9.

⁷⁹ WATER CODE, art. 8.

⁸⁰ Consisting of 31 CMS directly allocated to MWSS, and 15 CMS conditionally re-allocated to MWSS from NIA. See *MWSS, NIA team up to aid gov't infra projects*, December 24, 2018, citing NWRB Resolution No. 03-0188, available at <https://www.pna.gov.ph/articles/1057406> (last accessed on October 3, 2023).



Final Note

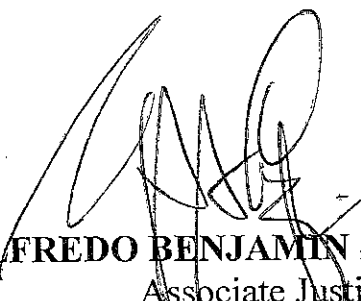
To close, I find it appropriate to stress that “legal issues are raised and decided not in a vacuum but within the context of existing social, economic, and political conditions, law being merely a brick in the up-building of the social edifice.”⁸¹ When the issues raised are imbued with public interest, the Court must necessarily resolve the case with the interest of the general public in mind.

On this note, in voting to grant the Petition and holding to dismiss the complaint of the Province of Bulacan, I do not propose that the Court negate the right of LGUs to share in the proceeds derived from the utilization and development of national wealth within their respective areas, as this right is clearly provided under Article X, Section 7 of the Constitution. I merely propose that the Court recognize the explicit limitations that the Constitution itself imposes upon this right.

The language of the Constitution is clear—the right of LGUs to their respective equitable shares arises only when there is utilization and development of national wealth within their respective areas. Thus, for this right to be recognized, the LGU must establish that: (i) the proceeds subject of the equitable share must be derived from **national wealth**; (ii) the national wealth from which the proceeds are derived must be situated **within the territory of the claimant-LGU**; and (iii) the proceeds must result from the **utilization and development, as contemplated under the Constitution**.

As exhaustively discussed, not one of these requisites was established by the Province of Bulacan. Accordingly, the Court is duty-bound to dismiss its claim against MWSS.

Based on these premises, I vote to **GRANT** the Petition and **REVERSE** the May 30, 2008 Decision and October 24, 2008 Resolution of the Court of Appeals in CA-G.R. CV No. 86701.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

⁸¹ See *Philippine National Bank v. Office of the President*, 322 Phil. 6, 20 (1996) [Per J. Panganiban, Third Division].