

**Reaction of Engr. Carlos Santos, general manager of Santa Maria (Bulacan) Water District and immediate past president of the Philippine Association of Water Districts during the PIDS Webinar on “Assessing National Government Support Programs for LGUs and Local Provision of Water Supply” held on April 22, 2021 via Cisco Webex.**

**Recommendation No. 1: Streamline and align various rules and regulations relating to the sector**

- *Provide a definitive streamlining of economic regulation for the sector*
- *Align the formulation of technical regulation and operating standards*

We all agree that NWRB and LWUA are frontrunners in economic regulation of water service providers in the country.

Local Water Districts (LWD), Rural Waterworks and Sanitation Associations (RWSA) are under LWUA’s supervision while the NWRB regulates Cooperative and Private Water Service Providers. LGU-run Water Utilities, on the other hand falls on the domain of local government units.

While the operational parameters maybe common to water service providers, the challenge is how to align regulatory parameters regardless of the mandate of the water supply providers/operators – for profit by the private operators and non-profit, like in the case of LWDs and LGU-run water utilities. An ROI of 10-12% is allowed for a private entity whereas for the LWDs, operation is on Full-cost recovery only.

For LWDs, disposition of income is specifically defined in its charter, Presidential Decree 198 as amended where section 41 states that the income of the District shall be disposed according to the following priorities:

1. To pay for its contractual and statutory obligations and to meet its essential current operating expenses
2. To allocate at least fifty percent (50%) of the balance 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

3. To allocate the residue as a reserve exclusively for expansion and improvements of its physical facilities

Unlike private entities who pays taxes and pays-off dividends to stockholders, LWDs as a GOCC does not remit revenues to the national treasury and are exempted from paying income taxes. A privilege granted as stated on section 46 of PD 198, as amended and further re-iterated in Republic Act 10026. This basic difference have a profound effect in the determination of water tariff and all its underlying parameters.

Approval of water tariff for those LWDs with private partner has drawn the issue of economic regulation further. OGCC opines that since the WD has assumed the function of regulator thru the Contract Monitoring Unit or CMU, the applicant for water tariff adjustment should be the private partner, hence, it should be with the NWRB. LWUA, as the regulator of water districts insists that it should be with LWUA. With this development, we could have LWDs whose water tariffs/rates are approved by LWUA with different parameters/formula versus the water rates of LWDs with private partners approved by NWRB. Among other things, this should be resolved soonest.

We fully agree that there should be uniform KPI's and Operational Standards for all water service providers regardless of the regulator. Harmonizing their standards may level the field of operations for all water service providers which may be helpful in realizing the goals and objectives of SDG No.6, Philippine Development Plan 2022 and the Philippine Water Supply and Sanitation Master Plan 2030.

As it is happening now, will LWUAs regulatory power over LWDs with private partners cover only the Water District with limited functions and not the private partner? Who would regulate the partner? Is it the Contract Monitoring Unit of the Water District? Or the NWRB? Nobody seems to assess the performance of the private partner. LWUA and the OGCC are in loggerhead on this matter. LWUA is invoking its power to regulation, audit and review under PD 198 but OGCC has opined that the partner is a private entity not under the jurisdiction of LWUAs supervisory power.

While LWUA's technical and operating standards do not consider customer feedback or satisfaction surveys, many LWDs have already acquired their individual ISO-QMS certification duly recognized by the Government Quality Management Committee where customer satisfaction is one of the KPI's for the LWD to consistently pass either the annual surveillance audit or ISO re-certification every three years.

Other than LWUA, LWDs are also subject to various regulations of the DOH – the Philippine National Standards for Drinking Water (PNSDW) and Water Safety Plan (WSP), the DBM – the Revised Local Water Districts Manual on Categorization, Re-categorization and Other Related Matters (LWD-MaCRO), the CSC – Omnibus Rules on Appointments and Other Human Resource Actions (ORAOHRA), the DENR – Environmental Compliance Certificate (ECC), the DPWH – Road Right of Way (RROW), the LGU – various municipal ordinances, the AO 25 @ DAP – Performance Based Bonus (PBB) and the COA – annual financial audit. The NWRB – Water Permit Application (WPA) only because the DOJ has ruled that LWDs are exempt from paying Annual Water Charges (AWC).

**Recommendation No. 2: Enhance investment coordination within the sector**

- *Empower a Central Coordinating Body to keep track of targets, investments, and funding needs regardless of water supply implementation entity*
- *Systematic planning and funding support for water utilities*
- *If any national government support program for local water service will be pursued post-Mandanas, there must also be integrated in the central coordinating body*

Funding for LWDs continuous demand for water source development, expansion and improvement of water supply facilities, investment requirements for sanitation projects and other improvement programs has been and still is the biggest concern of LWDs. Funding for these programs is not easy to acquire and takes time as well. LWDs can no longer solely rely on its annual revenues from operations to support these capital intensive activities.

Majority of funds for the development of LWDs generally comes from LWUA. For semi and credit worthy LWDs, funding may be sourced out from Government Financial Institutions (GFIs) such as the Land Bank of the Philippines and Development Bank of the Philippines subject to grant of waiver by LWUA. In both cases, a confirmation from the Department of Finance and a positive opinion from the Monetary Board of the Banko Sentral ng Pilipinas is necessary prior to grant, irrespective of the amount of loan.

The expectations for LWDs to attain the objectives of PDP 2022 and PWSSMP 2030 and the Manila Bay Mandamus are quite high and requires enormous amount of capital investments year on year. To attain these targets;

- 100% access to water supply by 2030
- 100% access to sanitation services by 2030

This shall require;

- Development of new water sources with preference to surface water because further utilization of groundwater has become critical and poses environmental and geological risks
- Expansion of water supply distribution system to provide level III water supply access to 100% of the population
- Develop and construct collection, treatment and disposal facilities for wastewater

In 2015, the Santa Maria Water District conducted a 15-year development plan with the objective of providing water supply security and providing access to potable and safe water supply for the entire municipality. The cost of realizing the objectives came out at around 700 million pesos, around 46 million per year. This is yet to include the investment cost for our sanitation program. The question is “where will SMWD get the necessary funds to be able to accomplish these targets and objectives?”

LWD are sometimes faced with un-programmed expenditures due to road and bridge widening projects of the DPWH where we were asked to move, remove or relocate pipeline facilities and infrastructures at the expense of the LWD. Not to mention the damages caused by their contractors during project implementation. We have long proposed to the DPWH that the cost of moving, removing or relocating LWD facilities be incorporated in the program of work and cost estimate of the project. Many, particularly the Category D and C LWDs

end up with damage pipelines, increased non-revenue water and incurred substantial financial loss. Internally generated funds is likely unavailable for this purpose resulting to LWDs unnecessary borrowing more just to address these DPWH projects and rehabilitation of pipeline facilities.

We are a bit envious to some LWD who gets grants (domestic or international), congressional funds and other GAA funds such as the SALINTUBIG, TouWa and NSSMP funds for the development of water supply and sanitation without interest and principal repayment. One LWD in Panay Island was able to construct a water impounding facility, pipelines and water treatment plant to provide additional water supply to the entire municipality fully funded by their congresswoman thru her Priority Development Assistance Funds or PDAF.

However, targeting where to put these funds which shall have substantial impact to the attainment of water supply goals is quite unclear. A classic example of this is the case of one duly established WD in Palawan with existing level III facilities on one side of the road. However, on the other side of the same road exist another level III facilities, funded by SALINTUBIG funds and operated by the LGU. The absence of coordination and cooperation is evident and the outcome, in any way does not contribute to the PDP and PWSSMP objectives.

At NEDA, a policy was proposed to address the financing gap in the water sector which may address the duplication of investments at the municipal or city level utilizing the SALINTUBIG funds from NAPC and DILG. The Unified Financing Framework or UFF. The framework involves SALINTUBIG funds to be earmarked to LWUA for the development of water supply when a duly established LWD exist in a municipality or city and in the absence of a water district, SALINTUBIG funds shall earmarked to DILG for the provision of water supply for the municipality or city. In recognition of the vital role of LWDs, the understanding is for the DILG to push for the creation of water district in these municipalities to assure continuity and viability of water supply services. Unfortunately it has not materialized yet perhaps due to the pandemic.

It would be music to the ears of LWDs to partake on the anticipated increase in internal revenue allotment of LGUs brought about by the Supreme Court ruling on the Mandanas case. It would definitely be beneficial to LWDs as this would a source of “free” funds. We hope and pray that this would materialize with no

strings and politics attached relative to the grant and with the sole objective of providing safe, potable, adequate and affordable water for the entire community.

**Recommendation No. 3: National government oversight agencies should strengthen efforts in political economy issues affecting water service provision**

- *DILG repeated reminder of operational autonomy of LWDs to improve water service delivery*

In 1988, then Secretary of the DILG, Luis T. Santos was the first to remind local officials that LWDs are autonomous agencies independent of local governments and encourage LGUs and LWDs to extend full cooperation in providing sufficient and safe water supply in areas within their respective jurisdiction. These statements were further re-iterated thru their respective memoranda in;

- 1997 by Secretary Robert Z. Barbers
- 2005 by Secretary Angelo T. Reyes
- 2013 by Secretary Mar Roxas
- 2016 by Secretary Ismael D. Sueno
- 2019 by Secretary Eduardo M. Ano

If the guiding principles contained in these various circulars were followed and observed, many LWDs would have been spared of political intervention in the local level. It would have prevented the conflict arising from misunderstandings between the Local Government Code and Presidential Decree 198. There were municipal mayors perpetually banned from holding public office because of nepotism in the appointment of Director/s in a LWD. There were also General Managers and Directors removed from LWDs due to political pressure by local officials. Some Local Chief Executives even presupposes that with the power to appoint, the power to unappoint is likewise given to them which is not congruent with the provisions of PD 198, as amended.

However, it is true that some LWDs are not actually performing well and fall short and wanting in its mandate to provide safe and potable water much less contribute

to the national targets in water supply and sanitation. This could partly be the reason why some local chief executives are not constrained by these memoranda to respect the autonomy and independence of LWDs. They simply cannot just do nothing hearing the complaints of the people.

A harmonious relationship, mutual respect, cooperation between LGUs and LWDs should be paramount. Likewise, understanding the key roles each other play in the development of water supply provision in the local level and the attainment of national goals and objectives should clearly be established. This may very well prove crucial to the effective utilization after more funds are infused post-Mandanas.

Perhaps, to add power to the context of these circulars, an Executive Order from the Office of the President is a sound prerogative.

Section 30 of PD 198, as amended states that a district shall have the power to enter into contracts with any person for the purpose of performing any functions 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 RA 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 the

final settlement of the consequences of MWSS involvement in the operation of the water system.

As mentioned in DILG Memorandum Circular No. 2019-03, the fifth paragraph reads:

Further, Water Districts have the autonomy to enter into Public-Private-Partnerships or Joint Venture Agreements with private water utility companies as stipulated in Section 6 of Presidential Decree No. 198 (PD 198), once formed, are not under the jurisdiction of any political subdivision. Moreover, LWDs are given by PD 198 the authority to enter into contracts.

Section 31, 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 power vested in the board by this Title.  
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Discretionary power. That seems to be the key word. It is very clear that the Board of Directors has this inherent power and limitation.

Section 17 – Performance of District Powers.

“All powers, privileges, and duties of the district shall be exercised and performed 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.”

Section 18 – Functions Limited to Policy Making.

“The function of the Board shall be establish policy. The board shall not engage in the detailed management of the district.”

What are the discretionary powers that the Board of Directors may not by contract delegate? Can the Board delegate by contract the very purpose for which the district was created?

Section 5 - Purpose – Local water districts 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 district
- 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

These questions gave rise to arguments about the 2013 NEDA Joint Venture Guidelines for GOCCs backed up by an Executive Order. Water is covered under the guidelines. Since LWDs are GOCCs and as opined by OGCC, can enter into a contract for the purpose of performing any of functions of the district except any of its discretionary power.

For some LWDs who has entered into a JV contract using the NEDA guideline, the Commission on Audit has issued audit findings unfavourable to the contract entered into with a private partner with recommendations to clarify the conflicts and inconsistencies noted on the provisions of the JVA and PD 198.

One COA finding in a LWD says that the JVA is prohibited under specified sections of PD 198.

And recently, House of Representative Committee on Government Enterprises and Privatization conducted series of hearings on the proposed privatization of a LWD asking to suspend all ongoing proposal for Joint Venture Agreement nationwide and referred the matter to the Committee on Good Government for further investigation.

Suffice say, with this development a review of the 2013 NEDA JV guidelines vis-à-vis PD 198 is in order.

