

SAFE AND CLEAN WATER FOR THE POOR AND BY THE POOR



MDG ACHIEVEMENT FUND IN THE PHILIPPINES



Analysis of Supreme Court – Water Related Cases from 1901 to 2010 and Policy Recommendations

under the

**MDG-F 1919: Enhancing Access to and
Provision of Water Services with the Active
Participation of the Poor for the Compilation
and Analysis of Jurisprudence on Water
Supply**

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EXECUTIVE SUMMARY

For most of the world's poor population, one of the greatest environmental threats to health remains the continued use of unsafe drinking water. While the percentage of people served with improved water supplies increased from 79 percent in 1990 to 82 percent in 2000, 1.1 billion people still lack access to safe drinking water and 2.4 billion lack access to improved sanitation. Most of them are found in Africa and Asia (WHO and UNICEF 2000). Lack of access to safe water supply and sanitation results in hundreds of millions of cases of water-related diseases, and more than 5 million deaths yearly. There are also large, but poorly quantified adverse impacts on economic productivity in many developing countries.

In the Philippines, the rapid increase in its population, urbanization, and industrialization, especially in densely populated areas and regions of industrial and agricultural activities, has greatly affected the quality of water supply. Access to clean and adequate water remains an acute seasonal problem in urban and coastal areas in the Philippines. The National Capital Region (Metro Manila), Central Luzon, Southern Tagalog, and Central Visayas are the four urban critical regions in terms of water quality and quantity.

To address this problem at the global level, sustainable access to safe drinking water has been identified as one of the targets under the Millennium Development Goals (MDGs) when world leaders adopted it in 2000 to address extreme poverty. In December 2002, the United Nations Committee on Economic, Cultural and Social Rights took an unprecedented step to declare water as a human right, categorically stating that *"Water is fundamental for life and health. The human right to water is indispensable for leading a healthy life in human dignity. It is a pre-requisite to the realization of all other human rights."*

For its part, the Philippine Government remains steadfast to providing water to all Filipinos with priority to those living in poor, waterless communities as encapsulated in its Medium-Term Philippine Development Plan (MTPDP). The MTPDP identifies and prioritizes the issues and challenges besetting the water sector.

Thereafter, in 2009, the Philippine Water Supply Sector Roadmap established that the soft aspects of water supply delivery, including the establishment of support mechanisms, would facilitate investments in water utility expansion and/or improvements that would allow for the sustainable provision of efficient, affordable and quality water services. Taking off from the Roadmap directions, the Government embarked on a 3-year Joint Programme (JP) entitled "Enhancing Access to and Provision of Water Services with the Active Participation of the Poor" which is funded by the Spanish Government and administered by the United Nations Development Programme (UNDP) through the Millennium Development Goal Fund (MDG-F). The JP aims at enhancing provision of and access to water services of poor communities by filling in the "soft"

component gap of existing national government programs, particularly for waterless communities.

This study was conducted in relation to the Request for Proposal (RFP) issued by the Programme Management Office (PMO) for the JP MDG-F 1919: Enhancing Access to and Provision of Water Services with the Active Participation of the Poor which aims to compile and analyze jurisprudence on water supply. The main output of this project is a digest on jurisprudence in the water supply sector which includes: (a) a compilation of relevant Supreme Court decisions from 1901 to 2010; and (b) a summary of the said Supreme Court decisions. The nature of the cases included involves aspects of the water supply sector, including but not limited to, source allocation, investment, operation and regulation, household wastewater and sanitation.

The cases were analyzed based on the following two categories, namely: (a) general themes provided by the National Economic and Development Authority (NEDA) Technical Working Group which include: Resource Regulation, Economic Regulation, Nature and Operations of Water Service Providers, Quality of Domestic Water Supply, Protection of the Resource, Exclusivity of Franchises and Other Related Business Operations and (b) According to Impact.

The study was conducted using a participatory approach at all levels. A Consultation Workshop was in January 2011 to get the perspectives of the various stakeholders on the draft analysis and recommendations. Specifically, the workshop was conducted to: (a) secure feedback on the result of the survey of cases; (b) consider the analysis of jurisprudence presented and identify issues from the concerned sector that affects the accessibility of water by the poor; and (c) determine the impact of these issues on the accessibility of water by the poor, including policy recommendations if there are any. A series of coordination meetings requested by NEDA were also participated by the Consultant

Of the cases identified, 62 were found to be relevant. Among these cases compiled and digested, 16 relate to the Nature and Operations of Water Service Providers, 15 relate to Resource Regulation, 15 relate to Economic Regulation, 6 relate to Protection of the Resource, 5 discuss other related Business Operations, 3 touched on Quality of Domestic Water Supply and 2 discussed Exclusivity of Franchises.

In terms of administration, the highest number of relevant cases was decided during the Marcos regime (1965-1986) covering 17 cases. This is followed by 16 cases resolved during the Pre-Marcos era (1901 to 1965). The Arroyo administration (2001 to 2010) comes in at third with 14 cases. The administrations of Aquino (1986 to 1992), Ramos (1992 to 1998), Estrada (1998 to 2001), follow with the total number of cases decided by the Supreme Court at 8, 3, and 4 respectively.

Eight of the cases decided during the Marcos era relate to Operations of Water Service Providers and five of the cases in the Arroyo administration were on Protection

of the Resource. In the earliest period, 4 cases discussed Resource Regulation and another 4 discussed Economic Regulation.

At the end of the study, it is concluded that the right to water is respected and recognized in the Philippine jurisdiction. A significant number of decided cases deals with the protection the country's water sources, ensure the effective supply and delivery of water, and encourage the investment of providing water as a service.

Nevertheless, there are critical issues in the enforcement of the right that need to be clarified and highlighted. *First* is the constant ruling of the Supreme Court respecting primary jurisdiction, exhaustion of administrative remedies or the hierarchy of courts and thereby emphasizing the immense power of line agencies in (i) determining policy directions of the water sector, and (ii) ruling on critical issues such as the facts of the conflict and tariff-setting.

Second is the rate of return that is acceptable in tariff-setting. In two sample decisions on public utilities the language of the Court implied acceptance on having at least 12% rate of return on investments as a jump-off point on whether or not tariff increases are justified. It must be stressed that the reason for its acceptance was its continued use and that it was not for the Court to decide its wisdom but that of the administrative agency, the supposed experts on the subject.

In a more recent decision, when one of the parties in the case mentioned 12% as a ceiling, the Court neither agreed nor rejected the contention. What the Court reiterated was the role of the administrative agency to determine the same. Thus, the Supreme Court does not have a hard and fast rule on the numerical rate of return. It is for the line agency to resolve and reexamine.

The *final* issue is that of jurisdiction. In accessing justice by the poor, it is critical to submit the dispute before the proper fora. The few cases that have been brought to the Supreme Court on the matter are insightful. When the dispute involves conflict on water rates and issues relating to appropriation, utilization, exploitation, development, control, conservation and protection of waters, the National Water Resources Board (NWRB) has jurisdiction. When the question deals with the formation and dissolution of water districts, enjoyment of the right to use water for which a permit was already granted, and those cases incapable of pecuniary estimation, jurisdiction is with the Regional Trial Court (RTC).

The appellate jurisdiction of decisions of the NWRB needs clarification. In a 2008 decision, the Supreme Court stated that NWRB decisions are appealable to the Office of the President. Then in a 2010 decision, the Court ruled that by virtue of the Judiciary Reorganization Act, all decisions of quasi-judicial agencies including the NWRB are now appealable to the Court of Appeals. With this new Rule in place, it is the opinion of this writer that the 2010 decision is controlling and not P.D. 1479 promulgated in 1978, which was the basis of the 2008 decision. Therefore, all decisions of the NWRB

in the exercise of its quasi-judicial functions should be appealed to the Court of Appeals and not to the Office of the President.

In this relation, one of the study's general recommendations is to conduct a similar research focused on decisions of the NWRB. It should serve as a ready reference on how the administrative agency has resolved water conflicts raised before it.

Finally, the following specific policy recommendations addressed to the three branches of government were crafted to ensure a complementary and seamless approach in addressing the problems of the sector.

For the Legislative branch, both at the Senate and House of Representatives to conduct a review of the laws and policies, from legislative issuances including the creation of administrative bodies to complement the project in terms of looking at how the laws were developed over time, and how Congress views these laws as necessitating review, repeal or even modified to harmonize with each other. The present review of jurisprudence is limited with respect to the Supreme Court's decisions, which, in turn, is restricted by the issues raised before it. A pending bill on the Water Regulatory Commission (WRC) should be considered as a priority legislative measure, which aims to strengthen the economic regulatory framework.

For the Executive branch to take the lead in setting forth a consistent and coherent policy on the water supply sector, including full and strict implementation of laws, harmonization of functions and reviewing the rate of returns for water service. While there are already efforts towards that end, such as the NEDA Sub-Committee on Water Resources, where different agencies involved in water supply sector meet to discuss issues and concerns of the sector, implementation of Executive Orders 123 and 279 would provide a significant direction towards harmonization of efforts.

For the Judicial branch to make justice more accessible to the poor and treating water supply issues as such public interest cases. While this research concluded that the right to water is recognized and respected in this jurisdiction, there is still the need for consistency in its decisions as well as allowing conflicts involving the water supply for the poor to be litigated before the courts of justice without any of the barriers facing them.

Likewise, the Supreme Court should continue its judicial activism by exercising its power to promulgate rules concerning the protection and enforcement of constitutional rights. Considered as the first in the world, the Court promulgated in 2009 the Rules of Procedure on Environmental Cases and the Writ of *Kalikasan*. The Writ is a legal remedy designed for the protection of an individual's constitutional right to a healthy environment. It draws its mandate from a state policy found in the 1987 Constitution, which guarantees to every citizen the "right to a balanced and healthful ecology."

ACRONYMS

AECFI	Asociacion de Empleados Civiles de Filipinos, Incorporada	DILG	Department of Interior and Local Government
AO	Administrative Order	DOE	Department of Energy
ADB	Asian Development Bank	DOF	Department of Finance
ARWR	Annual Renewable Water Resources	DOH	Department of Health
AUSAID	Australian Agency for International Development	DPWH	Department of Public Works and Highways
BCM	Billion Cubic Meters	ECC	Environmental Compliance Certificate
BFHI	BF Homes, Inc.	ECOSAN	Ecological Sanitation
BFPHAI	BF Paranaque Homeowners' Association, Inc.	EMB	Environmental Management Bureau
BOT	Built Operate Transfer	EO	Executive Order
BP	Batasang Pambansa	GAA	General Appropriations Act
BWSA	Barangay Water and Sanitation Association	GAO	General Auditing Office
CA	Court of Appeals	GDP	Gross Domestic Product
CBFMA	Community Based Forest Management Agreement	GEPA	Grounds for Extraordinary Price Adjustment
CBO	Community Based Organization	GFI	Government Financing Institution
CFI	Court of First Instance	GNP	Gross National Product
CDA	Cooperative Development Authority	GOCC	Government Owned and Controlled Corporation
CDO	Cease and Desist Order	GTZ	German Technical Cooperation Agency
CDP	Capacity Development Programs	HDI	Human Development Index
CSO	Civil Society Organizations	HIGC	Home Insurance and Guaranty Corporation
CWA	Clean Water Act	HSRC	Human Settlements Regulatory Commission
DANIDA	Danish International Development Assistance	HLURB	Housing and Land Use Regulatory Board
DBM	Department of Budget and Management	IASC	Inter-Agency Steering Committee
DENR	Department of Environment and Natural Resources	ICT	Information and Communications Technology

ICWE	International Conference on Water and the Environment	MERALCO	Manila Electric Company
IEC	Information, Education and Communication	MIS	Management Information System
IRA	Internal Revenue Allotment	MMDA	Metro Manila Development Authority
IRR	Implementing Rules and Regulations	MOA	Memorandum of Agreement
IRWR	Internal Renewable Water Resources	MSLT	Municipal Sector Liaison Team
ISA	Integrated Systems Analysis	MTC	Municipal Trial Court
ISP	Institutional Strengthening Program	MTCC	Municipal Trial Court in Cities
IWMI	International Water Management Institute	MTIP	Medium Term Investment Plan
IWRM	Integrated Water Resource Management	MTPDP	Medium Term Philippine Development Plan
JBIC	Japan Bank for International Cooperation	MWCI	Manila Water Company Inc.
JICA	Japan International Cooperation Agency	MWD	Metropolitan Water District
KMS	Knowledge Management System	MWLFI	Municipal Water Loan Financing Initiative
KPI	Key Performance Indicators	MWSI	Maynilad Water Services Incorporated
LLDA	Laguna Lake Development Authority	MWSS	Metropolitan Waterworks and Sewerage System
LGA	Local Government Agency	NAPC	National Anti-Poverty Commission
LGU	Local Government Unit	NAPOCOR	National Power Corporation
LWUA	Local Water Utilities Administration	NAWASA	National Water and Sewerage Authority
MBN	Minimum Basic Needs	NEDA	National Economic Development Authority
MCM	Million Cubic Meters	NEPA	Notice of Extraordinary Price Adjustment
MCWD	Metropolitan Cebu Water District	NGA	National Government Agency
MDFO	Municipal Development Fund Office	NGO	Non Government Organization
MDG	Millennium Development Goal		

NHA	National Housing Authority	PWSU	Provincial Water and Sanitation Unit
NIA	National Irrigation Administration	RA	Republic Act
NLRC	National Labor Relations Commission	RBO	River Basin Organization
NPCC	National Pollution Control Commission	RFP	Request for Proposal
NRW	Non-Revenue Water	ROI	Return on Investment
NSCB	National Statistical Coordination Board	RTC	Regional Trial Court
NWAPCC	National Water and Air Pollution Control Commission	RWDC	Rural Waterworks Development Corporation
NWRB	National Water Resources Board	RWSA	Rural Water and Sanitation Association
NWRC	National Water Resources Council	SABP	Strategic Alliance Building Program
ODA	Official Development Assistance	SEC	Securities and Exchange Commission
PAB	Pollution Adjudication Board	SC	Supreme Court
PAWD	Philippine Association of Water Districts	SPM	Strategic Planning and Management
PD	Presidential Decree	SSIP	Small Scale Independent Provider
PHDR	Philippine Human Development Report	SWMA	Solid Waste Management Act
PMO-RWS	Project Management Office for Rural Water Supply	TWG	Technical Working Group
PNOC	Philippine National Oil Company	UBFHAI	United BF Homeowners' Associations, Inc.
PSC	Public Service Commission	UNCED	United Nations Conference on Environment and Development
PSP	Private Sector Provider	UNDP	United Nations Development Program
PWCC	Philippine Waterworks and Construction Corporation	UNECOSOC	United Nations Economic and Social Council
PWRF	Philippine Water Revolving Fund	UNICEF	United Nations Children's Fund
PWSR	Philippine Water Situation Report	USAID	United States Agency for International Development
PWSSR	Philippine Water Supply Sector Roadmap	WASCO	Water Supply Coordinating Office
		WATSAN	Water and Sanitation

WB	World Bank	WRI	World Resources
WCC	Workmen's		Institute
	Compensation	WSPs	Water Supply
	Commission		Providers
WD	Water District	WSSPMO	Water Supply and
WEPA	Water and		Sanitation Program
	Environment		Management Office
	Partnership Asia	WSSWP	Water, Sanitation &
WSSPEHP	Water Supply and		Solid Waste Program
	Sanitation Performance		
	Enhancement Project		

DEFINITION OF TERMS¹

Acquisitive prescription is a mode of acquiring ownership of land and other real property through lapse of time in the manner and under the conditions laid down by law. (*Santiago, et al., v. CA, et al.*, G.R. No. 109111, June 28, 2000)

Ad hoc is a Latin phrase which means “for this special purpose.” (*Republic of the Philippines v. Enrique Medina*, G.R. No. L-32068, Oct. 4, 1971)

Appropriation of water is defined in the Water Code as “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.” (*Metro Iloilo Water District v. CA, et al.*, G.R. No. 122855, March 31, 2005)

Beneficial use is, according to the Philippine Bill of 1902, the basis, the measure, and the limit of all rights to water in the Philippines. In the Water Code of the Philippines, promulgated in 1976, beneficial use is the measure and limit of appropriation of water. (*Sideco v. Sarenas, et al.*, G.R. No. 15700, September 18, 1920; *Municipality of La Carlota v. NAWASA*, L-20232, Sept. 30, 1964; *Abe-abe, et al., v. Judge Manta and Romualdo*, G.R. No. L-4827, May 31, 1979; *Amistoso v. Ong, et al.*, G.R. No. L-60219, June 29, 1984)

Carriedo water system, or **Carriedo water supply**, or **Carriedo waterworks**, or **Carriedo canal**, in effect from 1878 to 1910, furnished water to the inhabitants of Manila from Santolan. The Carriedo water system was constructed by funds from a legacy established by General Francisco Carriedo y Peredo. General Carriedo provided that three or four public fountains must be constructed within the city and, at the expense of the Carriedo funds, water conduits must be laid to conduct the water to the convents of San Francisco, San Juan de Dios and Sta. Clara. Any convent that desires to enjoy the benefit granted to the previously mentioned convents shall contribute to the expenses of laying the water conduits. (*Orden de Predicadores v. Metropolitan Water District*, G.R. No. 18715, Jan. 8, 1923; *San Juan de Dios Hospital v. Metropolitan Water District*, G.R. No. 31508, Dec. 27, 1929)

Confirmation of an imperfect title is a mode of disposition of public agricultural lands either through judicial or administrative legalization. An applicant for confirmation of imperfect title bears the burden of proving that he meets the requirements of Section 48 of CA 141, as amended. He must overcome the presumption that the land he is applying for is part of the public domain and that he has an interest therein sufficient to

¹ The terms listed in this glossary are concepts that are mentioned, defined, discussed or otherwise referred to in the cases enumerated after it. The cases enumerated, however, do not necessarily define the term under which they are listed.

warrant registration in his name arising from an imperfect title. An imperfect title may have been derived from old Spanish grants such as a *titulo real* or royal grant, a *concession especial* or special grant, a *composition con el estado* or adjustment title, or a *titulo de compra* or title through purchase. Or, that he has had continuous, open and notorious possession and occupation of agricultural lands of the public domain under a bona fide claim of ownership for at least thirty years preceding the filing of his application as provided by Section 48 (b) CA 141. (*Collado, et al. v CA, et al.*, G.R. 107764, October 4, 2002)

Damages is a term used to refer to a remedy against a person who, contrary to law, willfully or negligently causes harm to another, and shall indemnify the latter for the same. Damages may be actual or compensatory, moral, nominal, temperate or moderate, liquidated or exemplary or corrective. (*MWSS v. Act Theater, Inc.*, G.R. No. 147076, June 17, 2004)

The **doctrine of primary jurisdiction** is upheld by the Supreme Court in deference to the specialized expertise of administrative agencies to act in certain matters. If the case is such that its determination requires the expertise, specialized skills and knowledge of the proper administrative bodies because technical matters or intricate questions of facts are involved, then relief must first be obtained in an administrative proceeding before a remedy will be supplied by the courts even though the matter is within the proper jurisdiction of a court. (*LLDA v. CA, et al.*, G.R. No. 110120, Mar. 16, 1994; *Buendia v. City of Iligan*, G.R. No. 132209, April 29, 2005)

The **doctrine of prior appropriation** is recognized in the Philippines as the fundamental principle which must primarily determine the vital industrial question of what constitutes a valid appropriation of waters for irrigation purposes. In this country, there must be an intention to use the waters for a beneficial purpose. The precise point of time when the right attempted to be asserted began is regarded as commencing when the claimant started to construct his dam, ditch, flume, or other appliance, by means of which his appropriation is effected, provided he prosecutes his enterprise to success and with reasonable diligence. (*Sideco v. Sarenas, et al.*, G.R. No. 15700, September 18, 1920)

In *Case* and *Sideco*, **estero** is a Spanish word that referred to an estuary. An estuary, according to the Merriam Webster dictionary, is a tidal channel which is used as a drainage canal in populated districts. Indeed, in *MMDA*, **esteros** referred to drainages or canals that discharge their waters, with all the accompanying filth, dirt, and garbage, into the major rivers and eventually the Manila Bay. (*Case, et al. v. La Junta de Sanidad de Manila, et al.*, G.R. No. 7595, Feb. 4, 1913; *Sideco v. Sarenas, et al.*, G.R. No. 15700, September 18, 1920; *MMDA, et al., v. Concerned Residents of Manila Bay*, G.R. Nos. 171947-48, Dec. 18, 2008)

The rule on **exhaustion of administrative remedies** before resorting to the court means that there should be an "orderly procedure which favors a preliminary administrative sifting process, particularly with respect to matters peculiarly within the competence of the administrative agency, avoidance of interference with functions of the

administrative agency by withholding judicial action until the administrative process has run its course, and prevention of attempts 'to swamp the courts by a resort to them in the first instance."

Under the doctrine of **exhaustion of administrative remedies**, the judiciary is enjoined from interfering with matters coming primarily, but not exclusively, within the competence of other departments. Administrative authorities are in a better position to resolve questions addressed to their particular expertise and their superiors if given a chance to do so may rectify errors committed by subordinates in their resolution. Strict enforcement of the rule could also relieve the courts of a considerable number of avoidable cases which otherwise would burden their heavily loaded dockets. (*Abe-abe, et al., v. Judge Manta and Romualdo*, G.R. No. L-4827, May 31, 1979; *Metro Iloilo Water District v. CA, et al.*, G.R. No. 122855, March 31, 2005; *Merida Water District v. Bacarro, et al.*, G.R. No. 165993, Sept. 30, 2008)

An **express warranty** is any affirmation of fact or any promise by the seller relating to the thing if the natural tendency of such affirmation or promise is to induce the buyer to purchase the same, and if the buyer purchases the thing relying thereon. (*Villostas v. CA, et al.*, G.R. No. 96271, June 26, 1992)

A **fideicommissary** is the person to whom the inheritance is to be delivered, or the beneficiary. (*Orden de Predicadores v. Metropolitan Water District*, G.R. No. 18715, Jan. 8, 1923)

A **fiduciary** is the person who is charged with the execution of the will of the testator. (*Orden de Predicadores v. Metropolitan Water District*, G.R. No. 18715, Jan. 8, 1923)

The term of **franchise** includes, not only authorizations issuing directly from Congress in the form of statute, but also those granted by administrative agencies to which the power to grant franchises has been delegated by Congress. (*City of Baguio v. NAWASA*, G.R. No. L-12032, Aug. 31, 1959; *MERALCO v. Public Service Commission*, G.R. No. L-24762, Nov. 14, 1966; *BF Homes, Inc. and Philippine Waterworks and Construction Corporation v. NWRC and CA*, G.R. No. 78529, Sept. 17, 1987; *Nasser v. CA, et al.*, G.R. No. 115829, June 5, 1995; *MCWD vs. Margarita A. Adala*, G.R. No. 168914, July 14, 2007; *Freedom from Debt Coalition, et al., v. MWSS, et al.*, G.R. No. 173044, Dec. 10, 2007)

Grounds for Extraordinary Price Adjustment, or GEPA, consist of a change in law, government regulation, rule or order or interpretation thereof, that affects or is likely to affect the Cash Flow of the concessionaires. One such example is Supreme Court Resolution dated April 9, 2003 in *Republic v. Manila Electric Company* (G.R. Nos. 141314 and 141369) which held that "income tax payments of a utility are not expenses which contribute to or are incurred in connection with the production of profit of a public utility." (*Freedom from Debt Coalition, et al v. MWSS & MWSS Regulatory Office*, G.R. No. 173044, Dec. 10, 2007)

Indispensable parties are those which have such interest in the controversy that a final adjudication of the case would certainly affect their rights, so that the court cannot proceed without their presence. (*BF Northwest Homeowners Association, Inc., v. IAC and BF Homes, Inc.*, G.R. No. L-72370, May 29, 1979; *Freedom from Debt Coalition, et al v. MWSS & MWSS Regulatory Office*, G.R. No. 173044, Dec. 10, 2007)

A **judicial question** is raised when the determination of the question involves the exercise of a judicial function, i.e., the question involves the determination of what the law is and what the legal rights of the parties are with respect to the matter in controversy. (*Metro Iloilo Water District v. CA, et al.*, G.R. No. 122855, March 31, 2005)

Jurisdiction is the authority to hear and determine a cause — the right to act in a case. It is conferred by law and not by mere administrative policy of any court or tribunal. Jurisdiction is determined by the averments of the complaint and not by the defense contained in the answer. (*Rivera v. Campbell*, G.R. No. 1119, March 23, 1916; *Municipality of Mangaldan v. Municipality of Manaoag*, G.R. No. 11627, Aug. 10, 1918; *Metropolitan Water District v. The Public Utility Commission*, G.R. No. 22318, Oct. 15, 1924; *City of Cebu v. NAWASA*, G.R. No. L-12892, Apr. 30, 1960; *Municipality of La Carlota v. NAWASA*, G.R. No. L-20232, Sept. 30, 1964; *NAWASA v. Sec. of Public Works and Communications*, G.R. No. L-20928, March 31, 1966; *MERALCO v. Public Service Commission*, G.R. No. L-24762, Nov. 14, 1966; *Duterte, etc., et al., v. Moreno, et al.*, G.R. No. L-151142, Nov. 29, 1966; *Municipality of Compostela, Cebu v. NAWASA*, G.R. No. L-21763, Dec. 17, 1966; *Republic v. Hon. De La Cruz, et al.*, G.R. No. L-35644, Sept. 30, 1975; *Abe-abe, et al., v. Judge Manta and Romualdo*, G.R. No. L-4827, May 31, 1979; *Mead v. Hon. Argel and People*, G.R. No. L-41958, July 20, 1982; *Amistoso v. Ong, et al.*, G.R. No. L-60219, June 29, 1984; *BF Northwest Homeowners Association, Inc., v. IAC and BF Homes, Inc.*, G.R. No. L-72370, May 29, 1987; *Hagonoy Water District v. NLRC, et al.*, G.R. No. 81490, Aug. 31, 1988; *Tanjay Water District v. Hon. Gabaton, et al.*, G.R. No. L-63742, April 17, 1989; *Marilao Water Consumers Asso., Inc. v. IAC, et al.*, G.R. No. 72807, Sept. 9, 1991; *Concerned Officials of the MWSS v. Hon. Vasquez, et al.*, G.R. No. 10911, Jan. 25, 1995; *Arranza, et al. v. BF Homes, Inc., et al.*, G.R. No. 131683, June 19, 2000; *Bacolod City Water District v. Hon. Labayen*, G.R. No. 157494, Dec. 10, 2004; *Metro Iloilo Water District v. CA, et al.*, G.R. No. 122855, March 31, 2005; *Buendia v. City of Iligan*, G.R. No. 132209, April 29, 2005; *Polomolok Water District v. Polomolok General Consumers Association*, G.R. No. 162124, Oct. 18, 2007; *Freedom from Debt Coalition, et al., v. MWSS, et al.*, G.R. No. 173044, Dec. 10, 2007; *Merida Water District v. Bacarro, et al.*, G.R. No. 165993, Sept. 30, 2008; *NWRB v. A.L. Ang Network, Inc.*, G.R. No. 186450, April 8, 2010)

Just compensation is the fair and full equivalent for the loss sustained. It refers to the fair market value of the land at the time of its taking. **Just compensation** is the market value of property. It is the price that the property will bring when it is offered for sale by one who desires, but is not obliged to sell it, and is bought by one who is under no necessity of having it. (*Metropolitan Water District v. Director of Lands, et al.*, G.R. No. 35490, Oct. 12, 1932; *Metropolitan Water District v. Public Service Commission, et al.*,

G.R. No. 38814, Sept. 15, 1933; *City of Baguio v. NAWASA*, G.R. No. L-12032, Aug. 31, 1959; *City of Cebu v. NAWASA*, G.R. No. L-12892, April 30, 1960; *Municipality of Lucban v. NAWASA*, G.R. No. L-15525, Oct. 11, 1961; *Municipality of Naguilian v. NAWASA*, G.R. No. L-18540, Nov. 29, 1963; *Municipality of La Carlota v. NAWASA*, G.R. No. L-20232, Sept. 30, 1964; *NAWASA v. Hon. Catolico*, G.R. No. L-21705, April 27, 1967; *Province of Bohol v. NAWASA*, G.R. No. L-30856, Feb. 27, 1970; *Municipality of Paete v. NAWASA*, G.R. No. L-21576, March 29, 1970; *Republic v. Hon. Medina, et al.*, G.R. No. L-32068, Oct. 4, 1971)

Around 1910, the **Montalban water system** replaced the Carriedo water system. Long before World War II, MWSS buried a 42-inch diameter steel aqueduct pipeline under eleven parcels of land in San Mateo, Rizal. The pipeline drew water from the Wawa Dam in Montalban, Rizal to the Balara Filters in Quezon City. 15 kilometers long, it ran through the municipalities of Montalban, San Mateo and Marikina. (*Orden de Predicadores v. Metropolitan Water District*, G.R. No. 18715, Jan. 8, 1923; *Santiago v. CA, et al.*, G.R. No. 109111, June 28, 2000)

The term **natural resource** includes not only timber, gas, oil coal, minerals, lakes, and submerged lands, but also, features which supply a human need and contribute to the health, welfare, and benefit of a community, and are essential to the well-being thereof and proper enjoyment of property devoted to park and recreational purposes. (*Collado, et al. v CA, et al.*, G.R. 107764, Oct. 4, 2002)

The ordinary meaning of **passage** is that it is the act or action of passing; movement or transference from one place or point to another; the act of passing; transit; transition. (*Prosperity Credit Resources, Inc. v. CA, et al.*, G.R. No. 114170, Jan. 15, 1999)

Per Curiam is a Latin phrase which means “by the Court.” It refers to a decision whose *ponente*, or writer, is not named. (*Homeowners Association of El Deposito, et al v. Hon. Lood*, G.R. No. L-31864, Sept. 29, 1972)

Section 19 of Batas Pambansa Blg. 129 provides that the Regional Trial Courts shall exercise exclusive original jurisdiction in “all civil actions in which the subject of the litigation is incapable of incapable of **pecuniary estimation**.” In determining whether the subject matter of an action is not capable of **pecuniary estimation**, the criterion is the nature of the principal action or remedy sought. If the action is primarily for the recovery of a sum of money, the claim is considered capable of **pecuniary estimation**, and whether jurisdiction is in the MTC or in the RTC would depend on the amount of the claim. However, where the basic issue is something other than the right to recover a sum of money, or where the money claim is purely incidental to, or a consequence of, the principal relief sought, the subject of the litigation may not be estimated in terms of money, and are cognizable exclusively by the RTC. (*Polomolok Water District v. Polomolok General Consumers Association, Inc.*, G.R. No. 162124, Oct. 18, 2007)

Police power is the power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the Commonwealth, and of the subjects of the same. It is much easier to perceive and realize the existence and sources of this power than to mark its boundaries, or prescribe limits to its exercise. **Police power** extends to the protection of the lives, limbs, health, comfort, and quiet of all persons, and the protection of all property within the State. (*Case, et al. v. La Junta de Sanidad de Manila, et al.*, G.R. No. 7595, Feb. 4, 1913; *Rivera v. Campbell*, G.R. No. 11119, March 23, 1916; *City of Baguio v. NAWASA*, G.R. No. L-12032, Aug. 31, 1959; *City of Cebu v. NAWASA*, G.R. No. L-12892, April 30, 1960; *The Municipality of Lucban v. National Waterworks and Sewerage Authority*, G.R. No. L-15525, October 11, 1961; *The Municipality of Naguilian v. The National Waterworks and Sewerage Authority*, G.R. No. L-18540, November 29, 1963; *Municipality of Paete v. NAWASA*, G.R. No. L-21576, March 29, 1970; *LLDA v. CA, et al.*, G.R. No. 110120, March 16, 1994; *Province of Rizal, et al., v. Executive Secretary*, G.R. No. 129546, Dec. 13, 2005)

Pollution means such alteration of the physical, chemical and/or biological properties of any water and/or atmospheric air of the Philippines, or any such discharge of any liquid, gaseous or solid substance into any of the waters and/or atmospheric air of the country as will or is likely to create or render such waters and/or atmospheric air harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate uses, or to livestock, wild animals, birds, fish or other aquatic life. (*Mead v. Hon. Argel*, G.R. No. L-41958, July 20, 1982; *LLDA v. CA, et al.*, G.R. No. 110120, March 16, 1994; *Province of Rizal, et al., v. Executive Secretary*, G.R. No. 129546, Dec. 13, 2005; *MMDA, et al., v. Concerned Residents of Manila Bay*, G.R. Nos. 171947-48, Dec. 18, 2008)

The **power of eminent domain** is a right reserved to the people or Government to take property for public use. It is the right of the state, through its regular organization, to reassert either temporarily or permanently its dominion over any portion of the soil of the state on account of public necessity and for the public good. The right of eminent domain is the right which the Government or the people retains over the estates of individuals to resume them for public use. It is the right of the people, or the sovereign, to dispose, in case of public necessity and for the public safety, of all the wealth contained in the state. (*Metropolitan Water District v. Director of Lands, et al.*, G.R. No. 35490, Oct. 12, 1932)

The term **public corporation** refers to a juridical entity created by the legislature which represents public interests and deals with public property. The Metropolitan Water District and NAWASA are examples of public corporations. (*Orden de Predicadores v. Metropolitan Water District*, G.R. No. 18715, Jan. 8, 1923; *Metropolitan Water District v. Public Utility Commission*, G.R. No. 22318, Oct. 15, 1924)

All lands of the **public domain** belong to the State. A positive act of government is needed to declassify a public land and to convert it into alienable or disposable land for agricultural or other purposes. Stated under the Laws of the Indies and the Royal Cédulas,

“all lands that were not acquired from the Government, either by purchase or by grant, belong to the public domain.” The 1935, 1973, and 1987 Constitutions adopted the Regalian doctrine and substituted the state, in lieu of the King, as owner of all lands and waters of the public domain. (*Municipality of Mangaldan v. Municipality of Manaoag*, G.R. No. 11627, August 10, 1918; *Collado, et al., v. CA, et al.*, G.R. No. 107764, Oct. 4, 2002)

Per se is a Latin phrase which means “by itself.” A **public nuisance per se** refers to an activity which violates a law and makes the actor automatically liable. The police power of the state justifies the abatement or destruction by summary proceedings of public nuisances *per se*. (*The Homeowners Association of El Deposito, et al v. Hon. Lood, et al.*, G.R. No. L-31864, September 29, 1972)

Public Utility is a business or service engaged in regularly supplying the public with some commodity or service of public consequence such as electricity, gas, water, transportation, telephone or telegraph service. (*Metropolitan Water District v. Public Utility Commission*, G.R. No. 22318, Oct. 15, 1924; *MCWD vs. Margarita A. Adala*, G.R. No. 168914, July 14, 2007)

Local water districts, like Hagonoy Water District and Baguio Water District, are **quasi-public corporations** in the nature of private corporations since they perform proprietary functions for the government. Employees of **quasi-public corporations** belong to the civil service, hence civil service laws, rules and regulations govern the dismissal of these employees. The juridical entities known as water districts created by PD 198, although considered as **quasi-public corporations** and authorized to exercise the powers, rights and privileges given to private corporations under existing laws, are entirely distinct from corporations organized under the Corporation Code, PD 902-A, as amended. The Corporation Code has nothing whatever to do with their formation and organization, all the terms and conditions for their organization and operation being particularly spelled out in PD 198. The resolutions creating them, their charters, in other words, are filed not with the Securities and Exchange Commission but with the LWUA. (*Hagonoy Water District v. NLRC*, G.R. No. 81940, Aug. 31, 1988; *Tanjay Water District v. Hon. Gabaton, et al.*, G.R. No. L-63742, April 17, 1989; *Marilao Water Consumers Asso., Inc. v. IAC, et al.*, G.R. No. 72807, Sept. 9, 1991; *MCWD v. Adala*, G.R. No. 168914, July 4, 2007)

A **reasonable rate** is a rate that gives a fair return on the fair value of the property being used for public convenience. (*Republic v. Hon. Medina, et al.*, G.R. No. L-32068, Oct. 4, 1971)

A **receiver** is a person appointed by the court, or in this instance, by a quasi-judicial administrative agency, in behalf of all the parties for the purpose of preserving and conserving the property and preventing its possible destruction or dissipation, if it were left in the possession of any of the parties. (*Arranza, et al. v. BF Homes, Inc., et al.*, G.R. No. 131683, June 19, 2000)

The **Regalian doctrine** declares that all lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources belong to the State. The Regalian doctrine was embodied in the 1935 Constitution, in Section 1 of Article XIII on "Conservation and Utilization of Natural Resources." This was reiterated in the 1973 Constitution under Article XIV on the "National Economy and the Patrimony of the Nation," and reaffirmed in the 1987 Constitution in Section 2 of Article XII on "National Economy and Patrimony." (*Collado, et al. v CA, et al.*, G.R. 107764, October 4, 2002)

Res judicata is a Latin phrase which means bar by prior judgment. (*Nasser v. CA, et al.*, G.R. No. 115829, June 5, 1995)

Stipulation pour autrui refers to a stipulation in favor of a third person conferring a clear and deliberate favor upon him, which stipulation is found in a contract entered into by parties neither of whom acted as agent of the beneficiary. (*Marmont Resort Hotel Enterprises v. Guiang, et al.*, G.R. No. 79734, Dec. 8, 1988)

Unjust vexation refers to any act committed without violence but which unjustifiably annoys or vexes an innocent person. (*Ong Chiu Kwan v. CA*, G.R. No. 113006, Nov. 23, 2000)

Void ab initio is a Latin phrase which means void from the beginning. (*Republic v. Hon. Cruz, et al.*, G.R. L-35644, September 30, 1975)

A **watershed** is an area drained by a river and its tributaries and enclosed by a boundary or divide which separates it from adjacent watersheds. (*Collado, et al. v CA, et al.*, G.R. 107764, Oct. 4, 2002)

A **Writ of Continuing Mandamus** refers to a writ which the Court may, under extraordinary circumstances, issue directives with the end in view of ensuring that its decision would not be set to naught by administrative inaction or indifference. In India, the doctrine of continuing mandamus was used to enforce directives of the court to clean up the length of the Ganges River from industrial and municipal pollution. (*MMDA, et al., v. Concerned Residents of Manila Bay, et al.*, G.R. No. 171947-48, Dec. 18, 2008)

CHAPTER I. INTRODUCTION

A. Project Background

Access to potable water is a basic human right that is universally recognized. Towards this end, the Philippine government remains steadfast to providing water to all Filipinos with priority to those living in poor, waterless communities as encapsulated in the Medium-Term Philippine Development Plan (MTPDP).

Government programs for waterless municipalities outside of Metro Manila have always focused on the provision of the water supply infrastructure, or the hard component. Recent reports, however, stress that soft components of water supply provision are equally important to ensure that the benefits from these programs are actually derived, optimized and sustained.

The Philippine Water Supply Sector Roadmap established that the soft aspects of water supply delivery, including the establishment of support mechanisms, would facilitate investments in water utility expansion and/or improvements that would allow for the sustainable provision of efficient, affordable and quality water services.²

Taking off from the Roadmap directions, the Philippine Government embarked on a 3-year Joint Programme (JP) entitled “Enhancing Access to and Provision of Water Services with the Active Participation of the Poor” which is funded by the Spanish Government and administered by the United Nations Development Programme (UNDP) through the Millennium Development Goal Fund (MDG-F). The JP aims at enhancing provision of and access to water services of poor communities by filling in the “soft” component gap of existing national government programs, particularly for waterless communities.

This project is in relation to the Request for Proposal (RFP) issued by the Programme Management Office (PMO) for the JP MDG-F 1919: Enhancing Access to and Provision of Water Services with the Active Participation of the Poor (**Annex 1**). It aims to undertake a compilation and analysis of jurisprudence on water supply. The overall objective of the project is to inform policymaking in the sector towards good water governance. Specifically, the project aims to: (1) assess the legal foundation of the water supply sector; (2) develop a ready reference on water jurisprudence for policy makers and decision makers in the sector at both the national and local level; and (3) draft a menu of policy recommendations.

² The MTPDP identifies and prioritizes the issues and challenges besetting the sector. This includes the disparities in water supply coverage across regions, depletion of groundwater especially in Metro Manila and Metro Cebu, lack of cost recovery on investments, institutional weaknesses and low willingness of consumers to pay. Pollution of water sources poses an additional threat to the sustainability of water supply systems and exposes the population to the environmentally-related diseases (The Philippine Water Supply Sector Roadmap).

The main output of this project is a digest on jurisprudence in the water supply sector which includes: (a) a compilation of relevant Supreme Court decisions from 1901 to 2010; and (b) a summary of the said Supreme Court decisions. The nature of the cases included involves aspects of the water supply sector, including but not limited to, source allocation, investment, operation and regulation, household wastewater and sanitation.

The output also includes a socio-economic development impact assessment of the Supreme Court's decisions in the water supply sector in both the national and local level which includes: (a) identification and analysis of recurring water supply sector issues and conflicting Supreme Court decisions; and (b) analysis of existing water supply sector policies that are referred to in the cases. An inventory of water supply sector policies is included in the study.

Reference to the regulation of other public utilities is made, but only as far as they are referred to in the cases. Policy recommendations are drafted, both short term and long term, and addressed to the executive, legislative and judicial branches of government for their consideration. To aid policy makers, a timeline illustrating significant policy triggers or effects of policies on jurisprudence are also included.

Lastly, maximizing available technologies, a database driven and user friendly water governance website containing all the expected outputs of this engagement is developed.

B. Contents

This study begins with a list of acronyms and definition of terms used for easy reference. The four main chapters of the report follow. Chapter 1 provides a background of study under the JP MDG-F 1919: Enhancing Access to and Provision of Water Services with the Active Participation of the Poor. This is followed by a walk-through of the contents of the study. The scope, limitations and methodology used by the Consultant are presented at the end of the chapter. Chapter 2 details the quantitative and qualitative analyses of the reviewed jurisprudence in accordance to the identified water supply sector themes followed by its impact on socio-economic development. Chapter 3 integrates the overall findings of the study while Chapter 4 provides specific recommendations to the three branches of government, namely the: (a) executive, (b) legislative and the (c) judiciary.

Subsequently, references are catalogued. The case digests and the compendium of all the cases in their entirety is reproduced. Also annexed to the report are all previous submissions to NEDA.

C. Scope, Limitations and Methodology

Within the parameters of the RFP, the Consultant to the extent reasonably possible, utilized a participatory approach to: (a) further improve the quality of the program; (b) bring more gains for all stakeholders; and to (c) encourage the embodiment of the principles of environmental justice and water governance. A Consultation Workshop was held last January 11, 2011 to get the perspectives of the various stakeholders on the analysis of the compendium of jurisprudence on water supply. Specifically, the workshop was conducted to: (a) secure feedback on the result of the survey of cases; (b) consider the analysis of jurisprudence presented and identify issues from the concerned sector that affects the accessibility of water by the poor; and (c) determine the impact of these issues on the accessibility of water by the poor, including policy recommendations if there are any. A series of coordination meetings requested by NEDA were also participated by the Consultant. Specific discussion of this section is provided in the following:

1. Compendium and Digest of Supreme Court decided cases from 1901 to 2010

1.1. The Compendium is the compilation of the cases in full text relating to the project while the Digest is the summary of the cases. In legal research, reading the full text of Supreme Court decisions is an imperative. The nuances of the judicial reasoning can never be fully encapsulated by mere summaries. This is not to say, however, that case digests serve no purpose at all. On the contrary, digests provide a summary of relevant legal aspects discussed in a case. Case digests provide a guide to a court's rulings, but are not substitutes for it.

1.2. At the trial court level, judges provide a summary of the facts as presented by the contending parties, identify the issues, determine the applicable law to the presented facts, and decide the result.

1.3. At the appellate court level, a judge or justices review the decision of the trial court. Appeals to the Court of Appeals may be made by ordinary appeal, petition for review, or appeal by certiorari (Section 2, Rule 41, 1997 Rules of Civil Procedure). An issue of fact may be raised in an ordinary appeal (Section 6, Rule 41, 1997 Rules of Civil Procedure). A petition is given due course when the Court of Appeals makes a prima facie finding that the lower court made an error in fact or law that will warrant a modification or reversal of the appealed decision (Section 6, Rule 42, 1997 Rules of Civil Procedure). A petitioner before the Court of Appeals should set forth concisely a statement of the matters involved, the issues raised, the specification of errors of fact or law, or both, allegedly committed by Regional Trial Court, and the reasons or arguments relied upon for the allowance of the appeal (Section 2(c), Rule 42, 1997 Rules of Civil Procedure).

1.4. In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on certiorari (Section 2(c), Rule 41, 1997 Rules of Civil Procedure). A verified petition for certiorari filed with the Supreme Court shall

raise only questions of law which must be distinctly set forth (Section 1, Rule 45, 1997 Rules of Civil Procedure). A review is not a matter of right, but of sound judicial discretion, and will be granted only when there are special and important reasons therefore. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of the reasons which will be considered: (a) When the court a quo has decided a question of substance, not theretofore determined by the Supreme Court, or has decided it in a way probably not in accord with law or with the applicable decisions of the Supreme Court; or (b) When the court a quo has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such departure by a lower court, as to call for an exercise of the power of supervision. (Section 6, Rule 45, 1997 Rules of Civil Procedure).

1.5. When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered (a) annulling or modifying the proceedings or such tribunal, board or officer and granting such incidental reliefs as law and justice may require; or (b) commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require; or (c) commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent (Sections 1-3, Rule 65, 1997 Rules of Civil Procedure).

1.6. Given the length of discussion in any given case decided by the Supreme Court, case digests identify relevant facts, submissions and findings. Only facts that are relevant and necessary to understand the issues in a case are included in the digest. A summary of the ruling of the lower courts is also made. Issues of the case, on the other hand, are written either according to the decision or, if not explicitly stated in the decision, according to the digest writer's understanding of the relevant issues. The disposition of the petition states if the petition is granted, denied or dismissed, and if the court a quo's decision is affirmed, reversed, or modified. The reasons for the Supreme Court's decision are provided as answers to the issues raised. Reference to laws is included in the digest only insofar as the decision provides substantive discussion. Where deemed appropriate, portions of the Supreme Court's decision are directly quoted.

1.7. The scope of the project is also its limitation. As far as this study is concerned, it merely focused on decisions that reached the Supreme Court, whether in the exercise of its original jurisdiction or those that reached any of its divisions or *en banc* through its appellate jurisdiction over questions of law. Similarly, the discussion of the laws related to the water supply sector is discussed and made part of the analysis insofar as they were discussed in these cases. Also, jurisprudence on other public utility cases were only tackled when such as aspect related to water supply sector issue have been raised in

the specific jurisprudence on water, otherwise, a similar public utility jurisprudence did not make it to the compendium, and hence, even in the analysis of the jurisprudence.

1.8. *Obiter dicta*, or a judge's incidental expression of opinion, not essential to the decision and not establishing precedent, are not part of the digest of the cases, but were noted by the Consultant to indicate relevant *obiters*, or other relevant facts or discussions that were not part of the main issue decided by the Court, but would be helpful in the analysis for this project.

2. Analysis of the Cases based on the identified Water Supply Sector themes

The analysis follows the themes identified by the NEDA Technical Team in terms of how the cases should be grouped with each other pertaining to the relevant issues that are prevalent within the water supply sector. Below are the themes as suggested with illustrations of the issues covered under such themes, modified only insofar as including under one heading the topic on Water Service Providers:

- A. **Resource Regulation** - which refers to issues on water rights, control of extraction and use of water, and jurisdiction of water sources.
- B. **Economic Regulation** - which refers to regulation of water utilities, consumer rights and protection, and service delivery including water rates issues.
- C. **Water Service Providers: Nature and Operations** - which refers to the legal personality of water districts, among others, and the details and components involving the operation of water service utilities.
- D. **Quality of the Domestic Water Supply** - which refers to ensuring safety of domestic water supply or that water quality standards for domestic consumption are met.
- E. **Protection of the Resource** - which refers to wastewater and indiscriminate disposal of other wastes into water sources.
- F. **Non-exclusivity of franchises and jurisdictions** - which refers to the area of coverage of the water service provider.
- G. **Other Related Business Operations** - which refers to water refilling stations and other business-related operations issues and concerns.

Further investigation have been undertaken to provide relevant inferences or conclusions as a result of the decisions made by the Court. These can be found in the Socio-Economic Implications where the cases were analyzed based on the role of Water Supply Sector Agencies and Water Service Providers in terms of providing or enhancing access to and provision of water services. And while prospective investors might be encouraged in terms of allowing a liberalized water supply industry, the analysis will also

point out the disparity of participation of the poor in the cases brought before the Supreme Court.

CHAPTER II. ANALYSIS

From the year 1901 up to 2010, there are a total of 62 cases that were found to be relevant to the study. Among these cases compiled and digested, 16 relate to the Nature and Operations of Water Service Providers, 15 relate to Resource Regulation, 15 relate to Economic Regulation, 6 relate to Protection of the Resource, 5 discuss Other Related Business Operations, 3 on Quality of Domestic Water Supply and 2 discuss Exclusivity of Franchises.

Total no. of relevant cases from 1901 to 2010	62
<i>Breakdown of cases:</i>	
• Nature and Operations of Water Service Providers	16
• Resource Regulation	15
• Economic Regulation	15
• Protection of the Resource	6
• Other related Business Operations	5
• Quality of Domestic Water Supply	3
• Exclusivity of Franchises	2

In terms of periods according to administration, the highest number of relevant cases was decided during the Marcos regime from 1965-1986 which were 17 cases. In close second were 16 cases resolved during the Pre-Marcos era from 1901 up to 1965. The third was during the Arroyo administration, from 2001-2010 with 14 cases. In the other three periods, namely: Aquino presidency (1986-1992), Ramos presidency (1992-1998), Estrada presidency (1998-2001), the number of cases decided are 8, 3, and 4 respectively.

Eight of the cases decided during the Marcos era relate to Operations of Water Service Providers and five of the cases in the Arroyo administration were on Protection of the Resource. In the earliest period, 4 cases discussed Resource Regulation and another 4 discussed Economic Regulation.

In addition to the quantitative analysis above, the cases relating to water are qualitatively analyzed in two categories, namely: (a) According to seven general themes which include: Resource Regulation, Economic Regulation, Nature and Operations of Water Service Providers, Quality of Domestic Water Supply, Protection of the Resource, Exclusivity of Franchises and Other Related Business Operations and (b) According to Impact.

A. Thematic Analysis

1. Resource Regulation

1.1. Water sources as inalienable public property

Philippine laws and jurisprudence have been consistent about the issue on water rights and the control of extraction and use of water. Three Supreme Court cases decided in various periods of our history held that our Civil Code and Constitutions dictate that water sources such as rivers,³ forest lands⁴ and watershed reservations⁵ are inalienable public property. Through the years our Constitutions – 1935, 1973 and 1987 – provide that forest lands are excluded from private occupation. Reserving the supply of water from these sources to the public domain assures the public that water is for everyone. In doing so, this may allow better regulation and preservation of water supply as opposed to giving unbridled private access to profit-oriented private individuals or groups. As far back as 1920, water has been recognized as a subject of legislation and consequent regulation since the establishment of the Philippine government. From the Philippine Bill of 1902, “[b]eneficial use shall be the basis, the measure, and the limit of all rights to water in said islands.”⁶

1.2. Acquisition by prescription: Water rights and Land ownership

Before P.D. 1067 (Water Code) took effect, the right to use public waters can be acquired by prescription. In a 1966 decision, the Supreme Court observed that the Civil Code of 1889 (Art. 409) and the Law of Waters of 1866 (Art. 194) recognized two different ways of acquiring the right to the use of public waters: (1) by administrative concession and (2) by prescription for 20 years. By applying these laws and harmonizing all other relevant laws around that period, NAWASA was declared to have acquired by prescription the rights to using the water of the Angat River.⁷ But this is no longer controlling. In 1976, Articles 3 and 100 of the Water Code specifically repealed the provisions on the acquisitive prescription on the use of waters. All waters that belong to the State can no longer be subject to acquisitive prescription. What applies at present is that the right to use of development of waters may be allowed by the State by administrative concession.

Meanwhile, in an alienable and disposable public agricultural land, laying pipes underground are considered material occupation and public, hence such act can be considered basis for acquisitive prescription. In a land dispute involving claim of ownership through acquisitive prescription, the Court held that placing pipelines under the land is considered as material occupation of the land and thus subject the land to its

³ *Municipality of Mangaldan v. Municipality of Manaoag*, G.R. No. 11627, Aug. 10, 1918.

⁴ *Republic v. Hon. Cruz, et al.*, G.R. L-35644, Sept. 30, 1975.

⁵ *Collado, et al., v CA, et al.*, G.R. No. 107764, Oct. 4, 2002.

⁶ *Sideco v. Sarenas, et al.*, G.R. No. 15700, Sept. 18, 1920.

⁷ *NAWASA v. Secretary of Public Works and Communications*, G.R. L-20928, March 31, 1966.

will and control. This became the basis for MWSS to acquire ownership by prescription and even if such pipes were “hidden” from sight, these are still considered public.⁸

1.3. Jurisdiction over Disputes involving Water Rights

The Supreme Court had several occasions to rule on the jurisdiction over settlement of disputes involving water rights.

1.3.1. The doctrine of primary jurisdiction

The doctrine of primary jurisdiction where the Court gives deference to the special expertise of administrative agencies on certain matters is applicable to controversies involving water. In a case where the question of who between the parties had the better right to the water source, the Supreme Court held that it should have been left to the determination of the NWRB via a timely protest filed during the pendency of the water permit applications. Absent such protest, no water rights controversy arose wherein NWRB can properly discuss the substantial issues raised. Because there was no such discussion, the trial court should have refrained from resolving the question raised before it.⁹

1.3.2. Jurisdiction of the National Water Resources Council, now the National Water Resources Board

1.3.2.1. Conflicts on Water Rights

In 1979, The Supreme Court ruled that under the Water Code and Presidential Decree No. 424, conflicts on water rights should first be lodged with the National Water Resources Council before a case is filed in court. Administrative remedies should first be exhausted. The NWRC therefore, plays a central role in the adjudication of water rights and the access to potable water.¹⁰

1.3.2.2. Issues relating to appropriation, utilization, exploitation, development, control, conservation and protection of waters

The Supreme Court has held that P.D. 1067 confers upon the NWRC jurisdiction on issues relating to appropriation, utilization, exploitation, development, control, conservation and protection of waters, and that the regular courts only have appellate jurisdiction over the same.¹¹

⁸ *Santiago, et al., v. CA, et al.*, G.R. No. 109111, June 28, 2000.

⁹ *Buendia v. City of Iligan*, G.R. No. 132209, April 29, 2005.

¹⁰ *Abe-abe, et al., v. Judge Manta and Romualdo*, G.R. No. L-4827, May 31, 1979.

¹¹ *Tanjay Water District v. Gabaton*, G.R. No. L-63742, April 17, 1989.

At this point it is important to note that actions of the NWRC can be compelled by mandamus, such as cases where the NWRC is only asked to consider and deliberate upon the applications before it and not to approve pending applications.¹²

1.3.3. Jurisdiction of the Regional Trial Court

1.3.3.1. Formation and dissolution of water districts

Jurisdiction over questions involving formation and dissolution of a water district is before the RTC, and not the SEC, being a corporation established under P.D. 198, not the Corporation Code.¹³

1.3.3.2. Enjoyment of the right to use water for which a permit was already granted

Where the case involved is not the settlement of a water rights dispute, but the enjoyment of a right to water use for which a permit was already granted, the RTCs have jurisdiction to hear the case.¹⁴ The case holding this ruling found no dispute regarding a water district's right to ground water within its service area. What was at issue was the enjoyment of its rights as a water district which it sought to assert against private respondents for their alleged unauthorized extraction and selling of ground water within the district's approved water permit.

Water permits already granted and vested by other authorities should be respected. Hence, trial courts have jurisdiction since it is not being asked to grant such right, but only to recognize such valid and vested existing right. What is involved here is not the right to use, exploit or convey water, but such right already given through an approved water rights grant, partaking of a nature like a water permit.¹⁵

1.3.4. Appellate jurisdiction of the Court of Appeals

At present, the Court of Appeals has exclusive appellate jurisdiction over decisions of the NWRB, being a quasi-judicial agency.¹⁶ The prevailing law on the matter are B.P. 129 (Judiciary Reorganization Act) granting the Court of Appeals original jurisdiction to issue writs of mandamus, prohibition, certiorari, and other auxiliary writs or processes, whether or not in aid of its appellate jurisdiction and Rule 43 of the Rules of Court giving the Court of Appeals exclusive jurisdiction over quasi-judicial agencies.¹⁷

This is in contrast to a prior doctrine that NWRC decisions are appealable to the RTC.¹⁸ Reference to RTC having appellate jurisdiction over NWRB decisions under the

¹² *BF Homes, Inc. and Phil. Waterworks and Construction Corp. v. NWRC and CA*, G.R. No. 78529, Sept. 17, 1987.

¹³ *Marilao Water Consumers Asso., Inc. v. IAC, et al.*, G.R. No. 72807, Sept. 9, 1991.

¹⁴ *Metro Iloilo Water District v. CA, et al.*, G.R. No. 122855, March 31, 2005.

¹⁵ *Amistoso v. Ong*, G.R. No. L-60219, June 29, 1984.

¹⁶ *National Water Resources Board (NWRB) v. A.L. Ang Network, Inc.*, G.R. No. 186450, April 14, 2010.

¹⁷ *Id.*

¹⁸ *BF Northwest Homeowners Asso. Inc. v. IAC and BF Homes, Inc.*, G.R. No. L-72370, May 29, 1987.

Water Code have already been rendered inoperative by the passage of the Judiciary Reorganization Act.

2. Economic Regulation

2.1. Consumer Rights and Protection

The Supreme Court has ruled in favor of protecting the rights of consumers. In a 1979 decision, the Court ruled that water utilities cannot just (a) harass consumers when they complain about increase of water rates, (b) cut off their water supply without due process and (c) not inform the consumers the specifications of the billing cost.¹⁹ While a water service provider has the right to exclude any person from the enjoyment and disposal of water supply to certain consumers, in accordance with Art. 19 of the New Civil Code, it should act with justice and give its consumers its due. Thus, in a case, MWSS was held liable for damages in cutting off the water service connection of an establishment whose employees were apprehended for allegedly tampering a water meter.²⁰ Moreover, private individuals cannot also just cut off someone else's water and utility lines without the necessary permit or authorization. To violate the same subjects a person to a charge of unjust vexation.²¹

With regard to jurisdiction, E.O. 90 vests the HLURB with the power to hear complaints of subdivision homeowners against a subdivision developer under receivership involving basic homeowner's rights such as water. However, any and all monetary claims established shall be referred to the Board of Receivers, and thereafter to SEC, if necessary.²² Receivership is aimed at the preservation of, and at making more secure, existing rights; it cannot be used as an instrument for the destruction of those rights. In this case, all that petitioners' claims entail is the exercise of proper subdivision management on the part of the SEC-appointed Board of Receivers towards the end that homeowners enjoy ideal community living.

2.2. Supply and delivery

When it comes to directly ensuring the supply and delivery of water to the consuming public, the Supreme Court went so far as to uphold a will that provided a grant to religious corporations giving them free water in exchange for land to be used by a waterworks system.²³ Legislative or contractual concessions can be made to grant free access to water. Also in 1933, to avoid conflicts that would arise between two feuding municipal entities and thereby ensure the water service to the public is uninterrupted, the

¹⁹ *Borje v. CFI, et al.*, G.R. No. L-48315, Feb. 27, 1979.

²⁰ *MWSS v. Act Theater*, G.R. No. 147076, June 17, 2004.

²¹ *Ong Chiu Kwan v. CA*, G.R. No. 113006, Nov. 23, 2000.

²² *Arranza, et al. v. BF Homes, Inc., et al.*, G.R. No. 131683, June 19, 2000.

²³ *Orden de Predicadores v. Metropolitan Water District*, G.R. No. 18715, Jan. 8, 1923; *San Juan De Dios Hospital v. Metropolitan Water District*, G.R. No. 31508, Dec. 27, 1929.

Supreme Court in a case ruled that the province should administer the combined waterworks system.²⁴

2.3. Tariff-Setting

2.3.1. Procedural and Review Standards

In tariff-setting the Supreme Court has set standards as to its process and review. The imposition of increases in water rates by Water Districts should follow the procedure set by regulations, and in so doing conduct public hearings in compliance with the due process requirements.²⁵ Its review should be within the grounds of reasonableness.²⁶

Also, in questioning tariff rates increases, petitioners should resort to the proper recourse. Thus, even in a case where substantial issues over consumer rights and access of the poor to water were raised as grounds for opposition to water rate adjustments, the case was still dismissed by the Court on the ground that the petition failed to resort to the appropriate remedy. It was deemed that there was failure to implead the indispensable parties and the action was barred under the doctrine of hierarchy of courts. The Court also noted that while the claim that the MWSS resolutions regarding price adjustments on water rates by private concessionaires are violative of the Constitution, the petition has failed to cite any Constitutional provision being violated. Further the Court observed that there were issues that are beyond the Court's function as it is not a trier of facts.²⁷ Although the technical grounds cited by the Court were justifiable, it has in some other cases relaxed these procedural imperfections to dispose of the substantial matters raised before it. In this case, the Court could have at least relaxed the technicalities and decided on the substantial issue of whether the MWSS resolution treated the concessionaires as granting power to issue rates beyond what the law provides.

2.3.2. Jurisdiction

2.3.2.1. Jurisdiction of the Regional Trial Court

The RTC has exclusive jurisdiction over cases involving issues that are incapable of pecuniary estimation like that involving the validity of the water district's resolution imposing new and higher water rates. Jurisdiction is determined on the basis of the material allegation of the complaint and the character of the relief prayed for irrespective of whether plaintiff is entitled to such relief.²⁸

²⁴ *Municipality of Majayjay v. Dizon, et al.*, G.R. No. 35838, Feb. 9, 1933.

²⁵ *Bacolod City Water District v. Hon. Labayan*, G.R. No. 157494, Dec. 10, 2004.

²⁶ *Metropolitan Water District v. Public Utility Commission*, G.R. No. 22318, Oct. 15, 1924; *Metropolitan Water District v. Public Service Commission, et al.*, G.R. No. 38814, Sept. 15, 1933.

²⁷ *Freedom from Debt Coalition, et al., v. MWSS and the MWSS Regulatory Office*, G.R. No. 173044, Dec. 10, 2007.

²⁸ *Polomolok Water District v. Polomolok General Consumers Association, Inc.*, G.R. No. 162124, Oct. 18, 2007.

2.3.2.2. Appellate jurisdiction of the NWRB

After a review of water rate increases by the LWUA, a water concessionaire may appeal not to the court but to the NWRB, and the NWRB's decision may then be appealed to the Office of the President. It is incumbent upon the party who has an administrative remedy to pursue the same to its appropriate conclusion before seeking judicial intervention.²⁹

2.3.3. Rate of earnings

In the '60s and early '70s, two³⁰ consolidated *Meralco* cases discussed tariff setting by public utilities. The cases illustrate instances where the Supreme Court believes tariffs may be increased, how properties should be valued to serve as bases for the increase, and what rate of earnings should be used. Both cases recognize the need of public utilities to reach a rate of earnings determined at 12% in order to effectively continue its operations and attract the needed investments.

In arriving at this decision, the Supreme Court justified this rate by saying that what the PSC determined is an adherence to established jurisprudence consistently adopting the 12 per cent rate for public utilities, indicating that it is not a proper occasion to inquire into the wisdom of such jurisprudence. The wisdom of tariff setting was given to the Public Service Commission who, the Supreme Court ruled, was the proper agency to fix the tariffs since tariff setting (or rate fixing) involved "a series of technical operations into the details of which the Supreme Court is ill-equipped to enter." While this may be true, it is expected that people appointed to the PSC are indeed experts and capable of setting rates intelligently, taking into consideration not only the interest of the investors and the public utility but also the interest of the public and the common good.

In the first consolidated *Meralco* case³¹ decided in 1966 the present market value method was used in determining the value of the properties to determine the proper rate of increase in the cost of utility service. On the other hand, the other consolidated cases³² decided on October 4, 1971 ruled that property valuation would depend on the facts and circumstances affecting such utility. The suggestion found in the concurring opinion of Justice Castro in this case is helpful. We should heed Justice Castro's opinion, which stated that it is time for the Philippines to follow a standard in property valuation.

In addition, the concurring opinion's discussion on who can go back to the Commission and question the tariffs is note-worthy. Indeed, the local government authorities directly affected by a previous adjudication should be able to initiate action for tariff revision before the Commission and should not be relegated only to the Solicitor General.

²⁹ *Merida Water District, et al v. Francisco Bacarro, et al.*, G.R. No. 165993, Sept. 30, 2008.

³⁰ *Manila Electric Company v. Public Service Commission*, G.R. No. L-24762, etc., Nov. 14, 1966, and *Republic of the Philippines v. Medina*, G.R. No. L-32068, etc., Oct. 4, 1971.

³¹ *Manila Electric Company v. Public Service Commission*, G.R. No. L-24762, etc., Nov. 14, 1966.

³² *Republic of the Philippines v. Medina*, G.R. No. L-32068, etc., Oct. 4, 1971.

3. Water Service Providers: Nature and Operations

3.1 Nature of Water Service Providers

Water districts are government-owned and -controlled corporations.³³ A waterworks system is patrimonial in character. In seven decided cases, the Supreme Court reaffirmed the unconstitutionality of R.A. 1383 in so far as it vests ownership, supervision and control of waterworks systems to the NAWASA without just compensation. Although a waterworks system may be subjected to police power, the power of eminent domain and its corresponding doctrine of just compensation protect the waterworks system from unnecessary and unjust taking of private property.³⁴ Organizations planning to invest in waterworks systems ought not be discouraged by the prospect of government taking their property in the exercise of its police power. When the Court determined the amount of just compensation it considered the following to arrive at an equitable valuation: an expert's report, the offer of the seller, and the cost of land in the immediate vicinity was used.³⁵

3.2. Employees of Waterworks Systems

The power to appoint employees of a waterworks system differs upon the applicable law creating such. For instance, the Supreme Court held that under the law creating the Osmeña waterworks system, the Secretary of Public Works and Communication had the power to appoint the employees of the waterworks system. The high tribunal ruled that the Revised Administrative Code and the Cebu City Charter does not apply to the case.³⁶ It is essential that capable individuals manage waterworks systems. Therefore, knowing who has the power to appoint the employees of these systems matter to the efficient delivery of water to the people. Moreover, the Board of Directors of waterworks systems provides the over-all direction of the organization and set its policies. It is then very important to have members of the board that are considerate of the welfare of the people.

Employees of water districts are subject to the provisions of Civil Service Law, and not the Labor Code.³⁷ They are then expected to perform at a standard in keeping with the principle that public service is a public trust. This does not mean however that employees of private organizations should also be subjected to less stringent criteria. In 2010, the Court affirmed the dismissal of a General Manager of a cooperative, which was primarily engaged in water and sanitation service, for his failure to closely monitor the contamination of water supply. His work required a substantial amount of trust and

³³ *Hagonoy Water District v. NLRC*, G.R. No. 81490, Aug. 31, 1988.

³⁴ *City of Cebu v. NAWASA*, G.R. No. L-12892, Apr. 30, 1960; *Municipality of Lucban v. NAWASA*, G.R. No. L-15525, Oct. 11, 1961; *Municipality of Naguilian v. NAWASA*, G.R. No. L-18540, Nov. 29, 1963; *Municipality of La Carlota v. NAWASA*, G.R. No. L-20232, Sept. 30, 1964; *NAWASA v. Hon Catolico*, G.R. L-21705, Apr. 27, 1966; *Municipality of Compostela, Cebu v. NAWASA*, G.R. No. L-21763, Dec. 17, 1966; *Municipality of Paete v. NAWASA*, G.R. No. L-21576, Mar. 29, 1970.

³⁵ *Metropolitan Water District v. Director of Lands, et al.*, G.R. No. 35490, Oct. 12, 1932.

³⁶ *Duterte, et al., v. Moreno, et al.*, G.R. No. L-15142, Nov. 29, 1966.

³⁷ *Hagonoy Water District v. NLRC*, G.R. No. 81490, Aug. 31, 1988.

confidence reposed on him by his employer as he occupied a highly sensitive and critical position which involved a high degree of responsibility.³⁸

3.3. Utility Expansion

The jurisprudence pertaining to water utility expansion show how some of our laws ensure the quality of the facilities and equipment of waterworks systems by quality assurance and regulation of companies that can bid in government projects. Section 1 of R.A. 912 requires the certification by the Director of the Bureau of Public Works and/or his assistants on the availability, practicability, usability and durability of waterworks system materials before any construction and repair thereof is made. This condition is crucial in having well-equipped utilities that can efficiently deliver and supply potable water.³⁹

A.O. 66 issued by the President of the Philippines on June 26, 1967, guarantees the quality of materials used by water utilities not only in the certification of their quality but in letting only reputable and responsible companies participate in public biddings. Thus, a company having cases regarding its tax liabilities with the government disqualified it from participating in the biddings to supply waterworks system materials.⁴⁰

Additionally in public biddings, the Supreme Court favors giving the discretion to the agency best suited to decide on the issue. Thus in a case, the Court sided with MWSS with respect to an Ombudsman decision setting aside the recommendation of its bid committee. As a GOCC created by law through R.A. 6234 and charged with the construction, maintenance and operation of waterworks system to insure an uninterrupted and adequate supply and distribution of potable water, the Supreme Court deemed the MWSS in the best position to evaluate the feasibility of the projection of the bidders and to decide which bid is compatible with its development plans.⁴¹

3.4 Authority of Municipalities to collect fees

When a municipality operates and runs a waterworks system, it has the corresponding authority to fix and collect fees for the provision of water services. This authority is found under Sections 2308 (F) and 2317 of the Revised Administrative Code, as well as under Sec. 2 of R.A. 2264.⁴² Absent these express provisions, the authority of the municipality to fix and collect fees is justified by its inherent power to administer what it owns privately; with ownership comes the inherent rights of possession, control and enjoyment.⁴³

³⁸ *Rubia v. NLRC*, G.R. No. 178621, July 26, 2010.

³⁹ *C & C Commercial Corporation v. NAWASA*, G.R. No. L-27275, Nov. 18, 1967.

⁴⁰ *NAWASA v. Hon. Andres Reyes and C & C Commercial Corporation*, G.R. No. L-28597, Feb. 29, 1968.

⁴¹ *Concerned Officials of the MWSS v. Hon. Vasquez, et al.*, G.R. No. 109113, Jan. 25, 1995.

⁴² *Municipality of Compostela, Cebu v. NAWASA*, G.R. No. L-21763, Dec. 17, 1966.

⁴³ *NAWASA v. Dator*, G.R. No. L-21911, Sept. 29, 1967.

4. Quality of Domestic Water Supply

The Supreme Court highlights the value of ensuring the quality of domestic water supply in two cases. First, it said that people should be aware of the necessity of water sanitation. The health and convenience of all other residents should far outweigh the expense incurred to remedy an insanitary condition.⁴⁴ In this instance, a resident of Manila was ordered to follow a city ordinance requiring him to connect to a new sewer system since the existing system polluted surface water courses. Second, the Supreme Court protected the possible pollution of water pipelines that supply potable water to Manila by ruling that under our Civil Code, public nuisance *per se* could be abated without judicial proceeding. This case involved illegal constructions without provision for accumulation or disposal of waste matters and constructed without building permits that were said to pollute the supply of water.⁴⁵

Amidst this backdrop of jurisprudence espousing the significance of clean water, it is common knowledge that lack of access to potable water in certain areas of the country persists. For instance, a government employee in the course of campaigning for the payment of taxes in remote barrios, contracted schistosomiasis (an illness caused by eating and/or drinking water from unfiltered water) and later died of the same.⁴⁶ Even though there are no recent Supreme Court cases stating a similar circumstance, there is still a need for government to address this problem.

5. Protection of the Resource

The pursuit of protecting our water resource is in place in Philippine laws and jurisprudence. As early as 1916, the Supreme Court has acknowledged that an act, like that of washing clothes in the river, may be viewed as harmless or ordinary but can have a larger impact on health and environment.⁴⁷

5.1. Water pollution as an offense

On paper, around the 1980s the seriousness of protecting our resource can be found in R.A. 3931, which penalizes any person who causes air or water pollution. Worth noting though is that before a fiscal can prosecute violations under RA 3931 there must be a prior determination by the National Pollution Control Commission that the act of the accused had caused pollution in any water or atmospheric air of the Philippines.⁴⁸ The defense of lack of jurisdiction is observed to be a usual strategy in pollution cases. The provision on prior determination itself presents circumvention of the criminal case filed by prosecutors; hence, polluters get away based on technicalities of the law.

⁴⁴ *Case, et al., v. La Junta de Sanidad de Manila, et al.*, G.R. No. 7595, Feb. 4, 1913.

⁴⁵ *The Homeowners Association of El Deposito, et al., v. Hon. Lood*, G.R. No. L-31864, Sept. 29, 1972.

⁴⁶ *Vda. De Macanip, et al., v. Workmen's Compensation Commission and the Municipality of Jaro, Leyte*, G.R. No. L-43223, May 31, 1979.

⁴⁷ *Rivera v. Campbell*, G.R. No. 11119, Mar. 23, 1916.

⁴⁸ *Mead v. Hon. Argel*, G.R. No. L-41958 July 20, 1982.

At present, while the principle of prior administrative determination of the existence of pollution is still controlling, R.A. 3931 as basis is no longer controlling. P.D. 985, the Pollution Control Law has authorized NPCC, now Pollution Adjudication Board, such authority. However, under the new Rules of Procedure for Environmental Cases, the standing of parties as well as the rules on evidence has already been liberalized. Whether the determination of pollution and prosecution of the case has also been included in the liberalization of the Rules is yet to be tested in Court.

5.2. Power to issue cease and desist orders

The PAB has the power to issue *ex-parte* cease-and-desist orders whenever the wastes discharged by an establishment pose an immediate threat to life, safety or welfare, or to plant or animal life, or whenever such wastes or discharges exceed the allowable standards set.⁴⁹ *Ex parte* cease and desist orders are permitted by law and regulations for the reason that stopping the continuous discharge of pollutive and untreated effluents into the rivers and other inland waters of the Philippines cannot be made to wait until protracted litigation over the ultimate correctness or propriety of such orders has run its full course, including multiple and sequential appeals, which may take several years.

An exception to the general rule that the adjudication of pollution cases pertains to the PAB are in cases where a special law provides for another forum. The Laguna Lake Development Authority has the power to issue cease and desist orders to prohibit a local government unit from dumping its garbage in an open dumpsite.⁵⁰ Laws creating the LLDA and subsequent orders authorize the LLDA to make, alter or modify orders requiring the discontinuance of pollution.

5.3 Protecting water at all costs

As early as 1916, the Supreme Court recognized the significance of protecting the water sources when it granted police power to a municipality beyond its boundaries when it is essential to the statutory performance of police functions, and especially for the preservation of the public health.⁵¹

Protecting a water resource trumps creating a sanitary landfill. Thus, a Presidential proclamation declaring parts of the Marikina Watershed Reservation for use as a sanitary landfill and similar waste disposal was declared unconstitutional. In this case the Court further ordered the permanent closure of the San Mateo Landfill as it has adversely affected its environment and that sources of water should always be protected. The Court succinctly put it as, "Water is life, and must be saved at all costs."⁵² Laws pertaining to the protection of the environment were not drafted in a vacuum. Congress passed these laws fully aware of the perilous state of both our economic and natural

⁴⁹ *PAB v. CA and Solar Textile Finishing Corp.*, G.R. No. 93891, March 11, 1991.

⁵⁰ *LLDA v. CA, et al.*, G.R. No. 110120, March 16, 1994.

⁵¹ *Rivera v. Campbell*, G.R. No. 11119, March 23, 1916.

⁵² *Province of Rizal, et al., v. Executive Secretary, et al.*, G.R. No. 129546, Dec. 13, 2005.

wealth. It was precisely to minimize the adverse impact humanity's actions on all aspects of the natural world, at the same time maintaining and ensuring an environment under which man and nature can thrive in productive and enjoyable harmony with each other, that these legal safeguards were put in place. They should thus not be so lightly cast aside in the face of what is easy and expedient.

In a recent ruling, the Court proactively pronounced that the cleaning or rehabilitation of Manila Bay can be compelled by mandamus and government agencies are enjoined, as a matter of statutory obligation, to perform certain functions relating directly or indirectly to the cleanup, rehabilitation, protection, and preservation of the Manila Bay. The Court ordered government agencies in line with the principle of "continuing mandamus" to each submit a quarterly progressive report of the activities undertaken in accordance with the Decision. The bases from which the decision was made are the Philippine Environment Code (P.D. 1152), the Clean Water Act (R.A. 9275) and other laws governing the charters of the different relevant government agencies. The cleanup and restoration of the Manila Bay is only an aspect and the initial stage of the long-term solution. The preservation of the water quality of the bay after the rehabilitation process is as important as the cleaning phase. It is imperative then that the wastes and contaminants found in the rivers, inland bays, and other bodies of water be stopped from reaching the Manila Bay. It thus behooves the Court to put the heads of the petitioner-department-agencies and the bureaus and offices under them on continuing notice about, and to enjoin them to perform, their mandates and duties towards cleaning up the Manila Bay and preserving the quality of its water to the ideal level.⁵³

6. Non-exclusivity of Franchises

The operation of a public utility is not subject to exclusive franchise. Section 47 of P.D. 198 granting exclusive franchises to water districts has been declared as unconstitutional.⁵⁴ The case that contained the aforementioned ruling is observed to be "solomonic" in a sense that the Court decision resulted in favoring the MCWD position that franchises included CPCs, but at the same time it favored the contending party's position relative to the non-exclusivity of franchises. While rule of law is applied, the result was not what the parties hoped for.

While it is the duty of the Government as far as possible to protect public utility operators against unfair competition, it is nevertheless obvious that public convenience must have the first consideration. Ruinous competition ought to be avoided, but constructive and well-regulated competition makes for the progress and development of the ice industry for the benefit of the community.⁵⁵

⁵³ *MMDA, et al., v. Concerned Residents of Manila Bay, et al.*, G.R. No. 171947-48, Dec. 18, 2008.

⁵⁴ *MCWD v. Adala*, G.R. No. 168914, July 14, 2007.

⁵⁵ *Cebu Ice & Cold Stores Corporation v. Velez*, G.R. No. 35705, Oct. 17, 1932.

7. Other Related Business Operations and Private Dealings

There are cases involving private contracts that reflect the bias of the Court toward continuous supply and delivery of water services, in terms of the infrastructure for these waterworks systems. However, the Court still desires that these contracts are free from any doubt or ambiguity in terms of the meaning of the terms stated in the contracts.⁵⁶

In a case where a corporation filed an injunctive suit in the RTC Quezon City alleging respondent's refusal to allow it to make excavations on one side of the access road for the installation of water pipes, the writ was not granted. The Court ruled that the term "passage" which was mentioned in their private contract does not include a right to install water pipes on the access road.⁵⁷ Consequently, contracts or other documents relating to access should clearly indicate the allowance for the installation of water pipes or even the excavations on the side of the access road in order to install a network of water pipes.

Companies selling water purifiers are expected to deliver and provide safe drinking water. The warranty certificate attached to a water purifier is an express warranty regarding the efficiency of the product and can be the basis of a claim. When a consumer buys a water purifier and after using it, impurities, dirtiness and bad odor comes out of it even with replacement of a filter, the contract of sale for the same could be rescinded in accordance with Art. 1389 of the New Civil Code.⁵⁸

Where another has paid for water consumption, the one who paid is entitled to reimbursement under Art. 1236 of the New Civil Code. A 12% interest shall be imposed on the amount upon finality of decision until payment thereof.⁵⁹

An action for damages may be brought against any one who refuses another access to a water facility to inspect and repair the same thereafter forcing the latter to locate an alternative source of water on the basis of the Civil Code provisions on stipulation *pour autrui*. The act is regarded as contrary to the principles of honesty, good faith and fair dealing embodied in Articles 19 and 21 of the Civil Code.⁶⁰

⁵⁶ *Marmont Resort Hotel Enterprises v. Guiang, et al.*, G.R. No. 79734, Dec. 8, 1988; *Nasser v. CA, et al.*, G.R. No. 115829, June 5, 1995.

⁵⁷ *Prosperity Credit Resources, Inc. v. CA, et al.*, G.R. No. 114170, Jan. 15, 1999.

⁵⁸ *Villostas v. CA, et al.*, G.R. No. 96271, June 26, 1992.

⁵⁹ *Spouses Lantin v. CA, et al.*, G.R. No. 127141, April 30, 2003.

⁶⁰ *Marmont Resort Hotel Enterprises v. Guiang, et al.*, G.R. No. 79734, Dec. 8, 1988.

B. Socio-economic Impact Analysis

1. Water Supply Sector Agencies

The Supreme Court has in a number of cases invoked the doctrine of exhaustion of administrative remedies and doctrine of primary jurisdiction. In effect, for being given a wide range of decision-making powers, the water supply sector agencies are in a vital position to influence the landscape of the water sector. Some of these judgments left to the discretion of the administrative agencies could be life-changing and affect the very core of people's lives. Examples of the matters left to the wisdom of the administrative agencies include tariff-setting, prior determination of acts resulting to water pollution and issuance of cease and desist orders. These issues are not ordinary and more often very controversial.

While given extensive policy-setting, rule-making and implementing powers, the clear delineation of the jurisdiction of the different water supply sector agencies have not been exhaustively taken up in the Supreme Court considering the limitation that the high tribunal could only decide cases and issues which are brought before them.

2. Water Service Providers

Aside from water districts, there are a number of other water service providers in the country. The cases that have been brought to the Supreme Court, however, have mostly been involving water districts. As to why this is the phenomenon, there may exist several reasons which the writer finds no need to second-guess.

What can be extrapolated from the cases involving water service providers are that: (a) the determination of who will appoint and who are appointed as managers or employees of water service organizations, whether government or private, are central to the effective management and control of the provider and efficient water supply and delivery; (b) the MWSS Resolutions treating the concessionaires as mere agents and contractors have implications with respect to how their operations would be managed;⁶¹ (c) the quality of equipment for utility expansion by quasi-public corporations are ensured by law and jurisprudence; and (d) the business of water service supply and delivery is now open to the public with the ruling of non-exclusivity of franchise.

3. Prospective Investors

Philippine jurisprudence acknowledges the need for investors of public utilities to expect a reasonable rate of return. Two cases affecting public utilities recognize the

⁶¹ *Freedom from Debt Coalition, et al v. MWSS and the MWSS Regulatory Office*, G.R. No. 173044, Dec. 10, 2007.

practicability of a rate of return of at least 12% for investors to continue putting in their money with public utilities and not invest elsewhere instead.

The business of supply and delivery of water is a public service. Water service providers run by private companies are then susceptible of public taking through the doctrine of police power. Investors need not be wary about this fact because principles of law, as well as jurisprudence, provide the protection from unjust taking through the doctrine of just compensation.

4. Consumers, With Particular Attention To The Poor

4.1. Substantive

The cases espousing protection of the consumers abound, whether they be in interpreting contracts, ensuring that the rights of the consumers are safeguarded, or guaranteeing the supply and delivery of potable water.

4.2. Procedural

The rule on having decisions of quasi-judicial agencies to be appealed directly to the Court of Appeals is a welcome development in terms of access to justice by the poor. The streamlining of the procedural process avoids unnecessary judicial expenses and delay. The issue of delay in the disposition of cases is apparent in some of the cases reviewed. For example, in one case, the application for registration of title was filed in 1980 and the Supreme Court resolved the issue in 2000. The case languished for 20 years in the courts.⁶²

On the other hand, when the Supreme Court requires a strict adherence to the procedural rules, it places a lot of burden on the poor and marginalized.⁶³ Hence it is favorable for the interest of the poor when the Supreme Court recognized recourse to the extraordinary legal remedies of certiorari in the interest of “more enlightened and substantial justice.”⁶⁴ In the same way, it is helpful for the poor when the Supreme Court exercised an extraordinary remedy through the issuance of a writ of execution *motu proprio* to avoid any more unnecessarily delay in the execution of a contract.⁶⁵ Of course, the constitutional right to due process should still and always be respected. And, over and above every *desideratum* in litigation is fairness. All doubts should be resolved in favor of fairness.⁶⁶

It is also advantageous in terms of access to justice by the poor when the Supreme Court stressed the duty of lower courts to make full findings of fact and conclusion of law

⁶² *Santiago, et al., v. CA, et al.*, G.R. No. 109111, June 28, 2000.

⁶³ *Freedom from Debt Coalition, et al v. MWSS and the MWSS Regulatory Office*, G.R. No. 173044, Dec. 10, 2007,

⁶⁴ *Mead v. Hon. Argel*, G.R. No. L-41958, July 20, 1982.

⁶⁵ *Nasser v. CA, et al.*, G.R. No. 115829, June 5, 1995.

⁶⁶ *Bacolod City Water District v. Hon. Labayen*, G.R. No. 157494, Dec. 10, 2004.

of their own.⁶⁷ This assures the indigent litigant that his or her case was fully considered before a decision has been made. But it may be disadvantageous to require a posting of a bond before actions could be taken in certain instances by homeowners against subdivision developers because it may restrict their access to justice.⁶⁸

4.3. Participation by the Poor

None of the cases involving water that were reviewed involved a litigant that could be classified as poor. The litigants were either public entities, private corporations, individuals considered to have privileged positions in society, and groups with resources. There was only one case where the interest of the poor was expressly mentioned, and yet was dismissed on the basis of technicality.

⁶⁷ *Ong Chiu Kwan v. CA*, G.R. No. 113006, Nov. 23, 2000.

⁶⁸ *Arranza, et al., v. BF Homes, Inc., et al.*, G.R. No. 131683, June 19, 2000.

CHAPTER III. CONCLUSION

The main conclusion that can be drawn after the review and analysis of jurisprudence on water is that the right to water is respected and recognized in our jurisdiction. A large number of cases protect our water sources, ensure the effective supply and delivery of water, and encourage the investment of providing water as a service. Although there are cases when it would have been best for the Supreme Court to relax its rule on technicalities, there is strong evidence of its being consistent in its application of the laws. There is also immense data showing the Supreme Court's zeal on guarding and regarding water as life that should be saved at all costs.

While it is true that Philippine jurisprudence show evidence of respecting the right to water, there are certain critical issues in the enforcement of the right that need to be clarified and highlighted. First is the constant ruling of the Supreme Court respecting primary jurisdiction, exhaustion of administrative remedies or the hierarchy of courts and thereby emphasizing the immense power of line agencies in (i) determining policy directions of the water sector, and (ii) ruling on critical issues such as the facts of the conflict and tariff-setting.

Second is the rate of return that is acceptable in tariff-setting. In two sample decisions on public utilities the language of the Court implied acceptance on having at least 12% rate of return on investments as a jump-off point on whether or not tariff increases are justified. It must be stressed that the reason for its acceptance was its continued use and that it was not for the Court to decide its wisdom but that of the administrative agency, the supposed experts on the subject.

In a more recent decision, when one of the parties in the case mentioned 12% as a ceiling, the Court neither agreed nor rejected the contention. What the Court reiterated was the role of the administrative agency to determine the same. Thus, the Supreme Court does not have a hard and fast rule on the numerical rate of return. It is for the line agency to resolve and reexamine.

The final issue is that of jurisdiction. In accessing justice by the poor, it is critical to submit the dispute before the proper fora. The few cases that have been brought to the Supreme Court on the matter are insightful. When the dispute involves conflict on water rates and issues relating to appropriation, utilization, exploitation, development, control, conservation and protection of waters, the NWRB has jurisdiction. When the question deals with the formation and dissolution of water districts, enjoyment of the right to use water for which a permit was already granted, and those cases incapable of pecuniary estimation, jurisdiction is with the RTC.

The appellate jurisdiction of decisions of the NWRB needs clarification. In a 2008 decision, the Supreme Court stated that NWRB decisions are appealable to the Office of the President. Then in a 2010 decision, the Court ruled that by virtue of the Judiciary Reorganization Act, all decisions of quasi-judicial agencies including the

NWRB are now appealable to the Court of Appeals. With this new Rule in place, it is the opinion of this writer that the 2010 decision is controlling and not P.D. 1479 promulgated in 1978, which was the basis of the 2008 decision. Therefore, all decisions of the NWRB in the exercise of its quasi-judicial functions should be appealed to the Court of Appeals and not to the Office of the President.

CHAPTER IV. RECOMMENDATIONS

With the analysis of the socio-economic implications of the jurisprudence and its effects to the water supply sector, the following recommendations to the three branches of government, the Legislative, the Executive and the Judiciary, are laid down as follows:

A. Policy Recommendations

1. Legislative. The proposals for both Senate and House of Representatives involve an examination of how Congress formulates laws emanating from its halls. These include review of laws, creation of a single water authority and participation of the poor in the formulation of laws, particularly on those involving the water supply.

1.1. As part of the Congressional oversight functions over implementation of all laws, Congress, with the invaluable assistance from offices from the Executive, should review all laws related to water resources and supply. A comprehensive review of the laws and policies, from legislative issuances and even of administrative bodies, would complement the present project in terms of looking at how the laws were developed over time, and how Congress views these laws as necessitating review, repeal or even modified to harmonize with each other. The present review of jurisprudence is limited with respect to the Supreme Court's decisions, which, in turn, is restricted by the issues raised before it.

1.2. With such review, focusing mainly on the Water Code, there is a need to create a single water authority to respond to issues of conflicting jurisdictions of different agencies with respect to water supply and delivery. A pending bill on the Water Regulatory Commission (WRC) should be considered as a priority legislative measure, which aims to strengthen the economic regulatory framework.

1.3. Nevertheless, while concerns of the water supply sector should be addressed, Congress should also consider the active participation of the poor in its legislative work. While party-list organizations may provide representation to the poor and marginalized sectors, direct consultations with the poor themselves, affected by access to water, and other issues involving the poor, should be its guiding posts in its legislative agenda and formulations.

2. Executive. This branch of government implements the laws of the land, and it is necessary that it takes the lead in setting forth a consistent and coherent policy on the water supply sector, including full and strict implementation of laws, harmonization of functions and reviewing the rate of returns for water service.

2.1. There is a need for the concerned agencies under the executive department to work together in terms of harmonizing its functions and jurisdictions over the water supply sector. While awaiting and advocating with Congress to enact a law on these issues, critical government agencies have to resolve their issues and come up with clear policy direction. A corresponding Executive Order or an Inter-Agency memorandum can result in terms of working together as one, to facilitate reduction of jurisdictional conflicts. Delineation of roles may also result in such dialogue. At present, the Sub-Committee on Water Resources (SCWR) of the NEDA Infrastructure Committee (INFRACOM) is an effort toward that end.

2.2. To enhance access to and provision for water service, rate of returns should be reviewed in terms of how water service providers can still be encouraged to invest in these endeavors, but at the same time, allowing the poor to still have access to an effective and efficient water service. Whether such rate of return is dependent on the nature of the water service providers, as a private water concessionaire, a water district, a local government unit owner and operated WSP, or a water service cooperative or association, the end goal should be addressing the access of the poor to such water service.

2.3. There is really a need for strict enforcement of laws and to follow the rule of law in terms of protection of the water sources. Implementation should also include a review of its policies in terms of environmental policy and natural resource management. This also includes going back to the policy formulations aimed at setting forth the functions of the Local Water Utilities Administration (LWUA) under Executive Order 123 and powers of the National Water Resources Board under E.O. 279.

3. Judiciary. As the branch of government that is considered as the final arbiter of disputes and questions involving the interpretation of law, the Judiciary is sought to make justice more accessible to the poor and treating water supply issues as public interest cases.

3.1. While the Supreme Court has liberalized standing of the poor in accessing justice, and opened up the door of the courts to those without fewer resources, especially when issues of the right to water, health and environment are concerned, it should be consistent with its decisions, and turn around unreasonably on certain cases. While the cases reviewed have been consistent in the sense that the Supreme Court acknowledges that a law or jurisprudence has already been overturned or is already inapplicable, this should be the rule than an exception. Strategic in the rule of law is its uniform application, no matter who are the parties involved, and what are the issues raised.

3.2. The Court should always consider that water issues are substantial issues as it involves a basic right to water, and as such, any technical infirmities should be excused as these affect substantial justice. An application of the Rules of Procedure for Environmental Case for water issues in terms liberality in standing and application of precautionary principle should guide all courts. A Supreme Court circular on that regard is a welcome approach to this issue.

3.3. A more active participation of the Judiciary on issues involving the poor and their access to basic rights is again another welcome development. This could further be strengthened with the Courts educating the members of the Judiciary on water issues, and involve other sectors in their access to justice initiatives.

B. General Recommendations

The following general recommendations are being proposed as further studies on the water supply sector in terms of next steps to be conducted to fully resolve any doubt or ambiguity in the policy or seeming conflict in jurisprudence:

1. A similar study focused on decisions of the NWRB should be made as a guiding document or reference on how the administrative agency has resolved on water conflicts raised before it. This shall serve as a reference material to how cases have evolved or been decided for future cases of the same nature;
2. With the recommendations on a comprehensive review of all laws and regulations on water, there shall be a study conducted in conjunction with the review to be made by Congress in the exercise of its oversight function over implementation of laws.
3. Study the proposed Water Regulatory Commission (WRC) vis-à-vis the proposed study on laws and the present water supply jurisprudence study. The WRC is claimed to be the solution for what ails the sector, hence the bill shall be reviewed with the end goal of measuring the issues and concerns raised in both legislative and jurisprudential review, and including any recommendation from such research to the appropriate Committee in the Senate and the House of Representatives for their consideration.

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