



# On the 10-Year Privatization Scheme of MWSS

*Position Paper presented to the Committee on Natural Resources  
House of Representatives, 14th Congress*

**Freedom from Debt Coalition**

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The Freedom from Debt Coalition (FDC) urges the honorable members of the House of Representatives' Committee on Natural Resources to conduct a thorough review and investigation of the MWSS privatization, believing firmly that for the past ten years, impacts of the said privatization thus far run counter to the aims set forth in RA 8041 to "address the nationwide water crisis which adversely affects the health and well-being of the population, food production and industrialization process" and in turn defeats the people's right to water.

FDC's call for a thorough review and investigation of the MWSS privatization is based on the following issues that must be examined:

**1. Non-fulfillment and arbitrary amendments in the service targets set in the concessionaire's contract.** At the onset of the MWSS privatization, the following objectives had been set in the concessionaire's agreements: lowering water rates; extending uninterrupted, 24-hour water supply to all connected consumers by the year 2000; meeting the World Health Organization (WHO) water and effluent standards by the same year; providing universal water supply by 2006; and reducing NRW from 56% to 32% within a period of 10 years. An assessment of the progress and so-called development made in the past years show no set targets met by 2002. Water rates had increased ten-fold. The two concessionaires' service areas were only able to supply water for less than 21 hours a day. 212 communities in the Metro Manila area are presently classified as waterless with less than half of their households having access to safe water. And non-revenue water, the volume of water produced but not billed due to leaks and pilferage had actually gone up from 61% pre-privatization to 62% by 2002.

Within those ten years, MWSS had every opportunity to gather these data. In fact, the PAWS Pilot survey it completed in August 2002 drove the nail harder down. It reported that an overwhelming majority (55%) of respondent households saw no improvement in the water service sector and 12% even said it got worse. Armed with proof of failure, it proceeded to lower the bar by readjusting the targets in accordance with the dismal performance of the concessionaires. Furthermore, amendments were made to the agreement itself to allow the concessionaire's greater space for profit. Rather than providing penalties for the failure of the concessionaires to meet their targets, the set aims were instead compromised so as to make it easier for the concessionaires to pass in the coming years.

At the end of year 2005, for example, Manila Water boasted that it had exceeded performance targets in lowering the rate of non-revenue water in its area. NRW was at

35.47%, much better than the newly set target of 47%. When they won the bid for the concessionaire contract, they had promised low NRW at 16% by 2002.

**2. Ballooning Rates.** Water rates since 1997, which the concessionaires and MWSS promised would significantly decrease upon privatization have only ballooned by epic proportions. Whereas Manila Water and Maynilad won their concessions in the bidding process by putting forth initial rates at Php2.61 per cubic meter and Php4.96 per cubic meter respectively, these have grown by almost 1000% by 2006. By no stretch of the imagination could we possibly credit the size of these rate hikes to inflation and currency depreciation alone. The drastic increases were made possible with the following developments and maneuvers, the wisdom of which we persistently attack:

- Amendment No.1 to the concession contract which allowed the concessionaires to recover their FOREX losses through the following:
  - Foreign Currency Differential Adjustments (FCDA), a quarterly rate adjustment of Php4.07 per cubic meter meant to guarantee the recovery of part and present foreign exchange losses that arose from the servicing of foreign-denominated debts of MWSS, starting from 1 January 2001 until the expiration of the contract in 2021;
  - Accelerated Extraordinary Price Adjustment (AEPA), which is a rate adjustment of Php4.21 per cubic meter for Maynilad and Php1 per cubic meter for Manila Water to recover their FOREX losses from 1 August 1997 to 31 December 2000 that are to be collected from 15 October 2001 to 31 December 2002;
  - Special Transitory Mechanism (STM), for the recovery of FOREX losses incurred from 1 January-31 December 2001 that are not covered by the two previous mechanisms; and,
  - A mandatory rate re-basing by 2002, which would try to correct the flawed business assumptions of the concessionaires.

Immediately after Amendment 1, which was mutually agreed upon by MWSS and the concessionaires without prior public consultation, water rates rose by 60%. To add insult to injury, Maynilad even continued to charge consumers for the AEPA beyond the period provided in the amendment.

- NWRB Resolution 008-0605 dated 17 June 2005 which declared that Maynilad and Manila Water were not public utilities, thereby freeing them from the legal restrictions placed upon services imbued with public interest. The said resolution effectively gave the concessionaires license to:
  - exceed the 12% profit limitation set forth in the MWSS Charter, which, notably, these two concessionaires were already in the practice of exceeding at the time;
  - pass on their corporate income taxes to their customers, with Manila Water and Maynilad adding P1.55 and P5.15 per cubic meter respectively to unsuspecting water user;
  - refuse to extend their services to anyone within their service area, ergo, refuse to respect the right to safe and clean water; and,

- expand their foreign ownership beyond 40%, contrary to what is provided in Article XII, Section 11 of the 1987 Constitution, which limits foreign ownership of public utilities to at most 40%.

**3. Maynilad bail-out and rebidding.** In December 2002, despite the allowances it had won from government, Maynilad filed a Notice of Early Contract Termination, charging that it was no longer financially viable to run the water business in the West Zone. It also tried to put the blame on government so that it could be reimbursed of at least US\$303 million that it claimed to have invested in the concession area. This resulted in a short battle between MWSS and Maynilad, with the government and the Filipino people losing out in the end. Instead of drawing on Maynilad's US\$120 million performance bond, monetary payments specifically provided for in the contract to protect consumers against contract violations or the concessionaire's failure to fulfill performance obligations, the government opted to incur new loans in order to avoid defaulting on maturing loans of the MWSS which Maynilad had previously undertaken to service as agreed upon when it bid for the concession. Maynilad's non-payment of its long overdue concession fees, now amounting to more than PhP10 billion, has forced MWSS to incur more debts from bridge financiers to finance maturing obligations.

The said refusal of Maynilad to continue and abide with the concessionaire agreement also led to Contract Amendment 2, the final version of which provided for a debt-equity swap which would convert Php5 billion out of Maynilad's Php8 billion unpaid concession fees into 63% equity in the company which will then be assumed by the MWSS; while the remaining Php3 billion will be drawn from the water firm's \$120 million performance bond. By the end of 2006, MWSS began moves to relinquish its 84% ownership through a bidding process that delivered the east zone back into private hands with D.M. Consunji, Inc. and Metro Pacific Investments Corp. as the winning bidders.

All through-out the spectacle of the Maynilad bail-out, civil society groups such as the Freedom from Debt Coalition have called for transparency and clarifications for the compromises brokered between MWSS and Maynilad. We reiterate that call again.

**4. The plight of waterless communities.** After ten years of privatization, 2 years after the date set in the original concession bid for the concessionaires to achieve universal water supply in Metro Manila, there are still 212 waterless communities, 80% of whom belong to the service zone of Maynilad. Private communities such as those in BF Homes Paranaque and the Litex area are still calling for assistance from these concessionaires and MWSS to provide them with pipes and water connections. The number of communities without access to safe water belie deep-seated problems related to inefficient distribution of water supply with high wastage from pilfering and under-maintained pipes and prohibitive water connection costs that prevent poorer households from subscribing for their own connection.

Separate households from different communities outside of the 212 are refused as well of their right to safe and clean water due to prohibitive installation rates. With a residential connection pegged at more than half the minimum wage for one month, only 55% of water consumers in Metro Manila have household connections. Many resort to connection-sharing with as many as 6 households sharing a single connection, thereby rendering useless the progressive rate scheme that charges higher rates for water use in excess of 30 cu. meters.

It is imperative, if we are to recognize and respect the right to water of our people, that we look into the failure of the MWSS privatization scheme to address the plight of these communities and households.

**5. Debt-generation.** The concession agreement can essentially be described as a “cost reimbursement contract” via tariff adjustments, or a “cost of service contract.” Through the rate rebasing process by which new base rates are computed every 5 years based on operational and capital expenditure, actual billed water volume, and the approved discount rate, concessionaires are given the mechanism to recover the following:

- a. Its operating, capital maintenance and investment expenditures, “efficiently and prudently incurred”;
- b. Philippine business taxes;
- c. The company’s debt service payments on MWSS loans and Concession fees as required by the Concession Agreement ; and,
- d. A rate of return equal to the ADR on these expenditures for the remaining term of the Concession.

By the very design of the rate rebasing exercise and the privatization setup as a whole, profit could be maximized by bloating capital and operational expenditure under the pretext that it is required to meet its obligations and targets. This may be done through the application for unnecessary loans to be used in costly projects, which may not necessarily redound to much higher efficiency especially in the matter of non-revenue water. While the concessionaire agreement provides guidelines as to the filtering of capital and operational expenses submitted for rate-rebasing purposes, there is currently insufficient transparency beyond the MWSS and the concessionaires to ensure that only valid loans and projects are included. In last year’s rate-rebasing for Manila Water, for example, FDC and other water rights advocates were not properly informed of public consultations, except for the final rate rebasing consultation which was held in November 16, 2007. Furthermore, the documents provided for public perusal through these advocacy groups did not lend any insight into the actual projects and loans that the concessionaire managed to factor into its new rate base, thereby preempting any investigation into the legitimacy of such loans.

**6. Transparency, accountability and regulation (or the lack thereof).** The subsequent abuses and below-par performance of the two concessionaires accentuate the need for a truly functioning regulatory structure. While the Concession Agreement does include the establishment of an MWSS Regulatory Office (RO), the said body was not given the authority to impose sanctions against the two water operators, or to even set the rates for the concessionaires’ respective service areas. And contrary to what its name suggests, the RO’s basic functions were limited to monitoring the implementation of the contract and drafting recommendations when it comes to water tariff settings. The MWSS Board, however, can easily reject the proposals, and the RO itself may even be abolished if the parties to the CA so decide.

Because of its very vulnerable predicament, the RO has often been perceived as too subservient to the interests of the concessionaries. This was clearly noticeable during the events surrounding Amendment Nos. 1 and 2.

Interestingly, as well, the MWSS-RO shares the same roof with the offices of the concessionaires, despite the contract stipulation against such an arrangement. Also in the same building is the Office of the Government Corporate Counsel (OGCC), who acts as MWSS' lawyer and whose head is an ex-officio member of the MWSS-BOT. The conflict of interest represented by all these arrangements is immediately apparent.

### **Our calls**

As this year already marks the 11th year of the MWSS Privatization and the second rate-rebasing process for Maynilad (its first under new ownership), we believe it is imperative that the issues outlined above be properly addressed and assessed through an investigation into these matters. There must be a thorough and honest assessment of what we have come to gain or lose from these ten years. Under these grounds, we therefore call:

- for a comprehensive audit, accounting and evaluation of the concessionaires' finances and actual performance particularly in regards to incurred loans in the past 10 years;
- for clarifications and documents concerning the negotiations and compromises made in the Maynilad bail-out and rebidding;
- for a review of the MWSS privatization framework and the concession agreement between MWSS and its concessionaires; and,
- for a closer investigation into the NWRB resolution freeing the concessionaires from legal restrictions imposed on public utilities, and the concrete impacts of the said resolution.

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