

# THE LAW THAT GIVETH LIFE TO A WATERSHED: DEFENDING THE MARIKINA WATERSHED RESERVATION

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## INTRODUCTION

Survival is an imperative in life. Even for Man, it is not a function of higher thought or morality; it is simply beyond choice. Thus, governments have no choice but to protect and conserve watersheds, special geologic features from which the essential natural resource of fresh water is drawn.

Like the capricious gods of myth, these watersheds are both necessary yet possibly detrimental to survival. Humans dare not risk incurring their ire, especially those at elevations higher than the human settlements they serve.

The succeeding pages tell the tale of the Marikina Watershed Reservation, a potential Poseidon in the Philippine pantheon, and its fate in the hands of the Chief Executives tasked to harness its blessings, from Governor-Generals and Civil Governors to the Presidents of the Republic. The story reveals how the law upheld perceived goods that, in the light of the ultimate necessity that is human survival, appear ill-advised or even detrimental.

This paper, however, maintains that the law is nevertheless the Reservation's best hope for salvation, as well as the best hope of the former Filipino supplicants who have spurned it. If, as Saint Thomas Aquinas says, law is "an ordinance of reason for the common good,"<sup>1</sup> then the good most valuable to society must be given priority among many conflicting ends.

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<sup>1</sup> I-II SUMMA THEOLOGICA, Question XC, Article 4 ("Whether Promulgation is Essential to a Law?"), in 20 GREAT BOOKS OF THE WESTERN WORLD 208 (Encyclopedia Britannica, Maynard Hutchins ed. 1952)

A satisfactory prioritization appears with a simple application of the hierarchy of laws.<sup>2</sup> While the special importance of watersheds is not express in the laws at different levels of primacy, a holistic view shows how the many laws already passed successfully interact to serve the necessities of survival.

The Reservation was established as the City of Manila's water source a hundred years ago by an executive act. The latter defined the Reservation's boundaries in accordance with the natural physical boundaries of the watershed where it was situated. In the last century, from 1904 to 1996, twelve succeeding presidential issuances altered the Reservation's bounds, in almost every case removing considerable portions from it. Such exclusions created an opening for both conservative and exploitative human activity within the watershed. Amidst this, the government grew paralyzed, unable to manage the Reservation, leaving it to the mercy of invading masses of informal settlers, land speculators, and enterprising local politicians who sought direct control of the watershed sections within their jurisdiction.

In seeming surrender, the government stopped drawing water from the Reservation in 1965, apparently due to the water's deteriorating quality, and the operation of the Angat Dam in Norzagaray, Bulacan.<sup>3</sup>

In 1992, Rep. Act No. 7586 established the National Integrated Protected Areas System (NIPAS), initially composed of the areas previously reserved as watersheds, forest preserves, wildlife preserves, and other similar reservations throughout the country. It aimed to revive government conservation efforts,<sup>4</sup> and specifically mandated the Department of Environment and Natural Resources to make an accounting of all these previously established reservations.<sup>5</sup>

A critical provision tasked the DENR to study each area and determine its suitability for continued protection. Based on its determination, the DENR may then recommend an area's reclassification to the President, and Congress may then pass a law to disestablish it.<sup>6</sup> While Rep. Act. No. 7586 and its implementing regulations provide guidelines on how these studies are to be made, they do not establish the actual criteria by which to judge category of protected area.

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<sup>2</sup> This largely corresponds to Hans Kelsen's "Pure Theory of Law," which posits a legal system is composed of a "hierarchy of norms." This is a series of norms laid out at various levels of generality and subordination, with a higher norm as a standard of validity for the ones below it. Arguably, the fundamental norm is the Constitution, followed by statutes, and then executive issuances, and so on. *See* DENNIS LLOYD, *THE IDEA OF LAW* 193-195 (1987).

<sup>3</sup> MANILA WATER CO., DEVELOPMENT OF NEW WATER SOURCES 8 (2003) (report on file with the author).

<sup>4</sup> Rep. Act. No. 7856, § 2. "[I]t is hereby declared the policy of the State to secure for the Filipino people of present and future generations the perpetual existence of all native plants and animals through the establishment of a comprehensive system of integrated protected areas within the classification of national park as provided for in the Constitution."

<sup>5</sup> Specifically, within one year after the law takes effect, the DENR is to submit a map and legal description of each protected area, subject to such changes as deemed necessary by Congress. *Id.* § 5

<sup>6</sup> *Id.* § 5(d), 7.

The Marikina Watershed Reservation, specifically, has growing settlements within its boundaries, much like the other watershed reservations in the country today. At present, an estimated 50,000 individuals have settled within the Reservation.<sup>7</sup> Further, more and more people now see the Reservation as a piece of real estate rather than a watershed. Politicians, in particular, eye the Reservation as a possible resettlement area for the inexhaustible supply of informal settlers from Metro Manila, and as a base for development sites, such as schools and resorts, sometimes intended as for show prior to elections. Finally, the watershed area is seen as the next frontier of prime realty in Luzon. All these mire policy regarding the Reservation in a complex, tangled web of vested interests.

Beyond the political forces acting on the Reservation, natural, physical forces are also taking their toll. *Kaingin* farming<sup>8</sup> has rendered most of the watershed's land bare,<sup>9</sup> and agricultural activity has halted the natural forest cover's regeneration. Even without mining activity, the quality of the water flowing into Wawa Dam, the sole opening of the watershed, has deteriorated.

Nevertheless, while the DENR now has the discretion to disestablish the Marikina Watershed Reservation and formally open it to residential and commercial use, this author asserts that the only rational choice is to step up conservation efforts in the name of national survival.

## I. THE HISTORY OF THE RESERVATION

As discussed, thirteen executive acts from 1904 to 1996 defined and then altered the Reservation's boundaries. Almost all the succeeding laws excluded large areas of the original Reservation. This gave rise to confusion regarding its actual, present boundaries, which in turn resulted in land-use conflicts at the watershed's boundaries, and uncertainty as to the applicable regulations and management policies in various areas.

Before one formulates the future policy for the Marikina Watershed Reservation, one must first unravel the Gordian Knot formed by a century of tangled issuances, and form a clear picture of the Reservation's actual bounds.

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<sup>7</sup> Records from the Planning and Development Office of the Rizal Provincial Government show that the seven baranggays of Antipolo City, Montalban and San Mateo, which comprise the Reservation, have a total population of 83,661. However, not all these people are actually living within the watershed. For example, only an estimated half of the population of San Jose in Antipolo and San Rafael in Montalban actually live within the watershed. The Study Team thus arrived at a very rough estimate of 48,675.

In 1904, the original area of the Reservation was one hundred square miles, or 25,913.1469 hectares (259,131,469 square meters). These figures yield a population density of two or three persons per hectare.

<sup>8</sup> Shifting cultivation or a slash-and-burn method of farming.

<sup>9</sup> As of 1994, virgin forest was restricted to the upper and middle reaches of the Montalban tributary basin which comprises most of the Reservation's northern portion. This area covers roughly 5,253 hectares, or about a fifth of the Reservation's original area. JAPAN OVERSEAS FORESTRY CONSULTANTS ASS'N, JAPAN INTERNATIONAL COOPERATION AGENCY, FINAL REPORT ON THE STUDY OF THE MARIKINA WATERSHED DEVELOPMENT PROJECT IN THE PHILIPPINES, 114-116 (August 1994).

### A. THE MARIKINA WATERSHED RESERVATION'S ORIGINAL BOUNDARIES

Pursuant to the Philippine Commission's Act No. 648,<sup>10</sup> Civil Governor Luke Wright promulgated Executive Order No. 33 on July 26, 1904, creating the "Mariquina Reserve":

"In the Province of Rizal: Beginning on the summit of Mount Cayabasan, on the northern boundary line of Rizal Province, and running in a southerly direction along the summit of the range of mountains to a point on the summit of the mountains about five miles northeast of the town of Varas; thence westerly along the summit or ridge to a point halfway between Antipolo and Boso-Boso, where the trail crosses said ridge, thence northerly along said ridge or summit to Mount Bantay, where the northern boundary line of Rizal Province crosses Mount Bantay; thence easterly along said northern boundary line of Rizal Province to the place of beginning, containing one hundred square miles, more or less."<sup>11</sup>

The Order withdrew the parcel from settlement, entry, sale, or other disposition under public land laws, to safeguard the City of Manila's water source. Although it provided an estimated land area of a hundred square miles,<sup>12</sup> it established the Reservation's original bounds in accordance with the ridges or physical boundaries of the watershed. Thus, in delimiting the Reservation's area, these natural boundaries appear to be controlling, not the area provided. The significance of this point will be revealed as the discussion regarding the Reservation's boundaries progresses.

From March to July 1909, R.A. Wells and J.R. Waldroop surveyed the Reservation's boundaries pursuant to Act No. 926.<sup>13</sup> Their map covered 27,980.2221 hectares, and was approved by the Director of the Bureau of Lands on August 24, 1909, also pursuant to Act No. 926.<sup>14</sup>

### B. AMENDMENTS TO BOUNDARIES AND EXCLUSIONS OF CERTAIN AREAS

In 1915, Governor-General Francis B. Harrison issued Executive Order No. 4, enlarging the Reservation by 188.406 hectares, adding the following:

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<sup>10</sup> This was enacted on March 3, 1903, and entitled, "An Act authorizing the Civil Governor to reserve for civil public purposes, and from sale or settlement, any part of the public domain not appropriated by law for special public purposes, *until otherwise directed by law*, and extending the provisions of Act Numbered Six Hundred and twenty seven so that public lands desired to be reserved by the Insular Government for public uses, or private lands desired to be purchased by the Insular Government for such uses, may be brought under the operation of the Land Registration Act" (emphasis added).

<sup>11</sup> Exec. Ord. No. 33 (1903), § 2.

<sup>12</sup> 25,913.1469 hectares or 259,131,469 square meters. One hectare is equal to 1,000 square meters, and all succeeding figures will be expressed in hectares.

<sup>13</sup> Act No. 926, § 70. "While title to public lands in the Philippine Islands remains in the Government, the Chief of the Bureau of Public Lands, under the Secretary of the Secretary of Interior, shall be charged with the immediate executive control of the survey, classification, lease, sale, and other disposition and management thereof, and *the decisions of the Bureau as to questions of fact relating to such lands shall be conclusive* when approved by the Secretary of the Interior." (emphasis added).

<sup>14</sup> *Id.*; Annex "A-1" of the Study Team Report. This is the Map prepared by NAMRIA, with an accompanying description of the computer program used and how the plotting was done.

"Bounded on north by Payatas Estate; on east, by Marikina Watershed, on southwest, by public land and homestead applications of Melecio Infante and Pantaleon dela Cruz; on west by property of Isabel Manahan et al and Montalban River."<sup>15</sup>

However, when the National Mapping Resource and Information Agency (NAMRIA) plotted the technical description contained in Harrison's order, it showed that the above parcel shares no boundary with the original Reservation as established by Executive Order No. 33.<sup>16</sup> Four days later, Harrison promulgated a second order, which amended the description to read:

"Containing an area of 248,202,356 square meters approximately and bounded on the north and west by public lands, on the south by property claimed by heirs of Wilson (II-1395) and on the east by public lands."<sup>17</sup>

Plotting by NAMRIA showed that these new boundaries closely follow the original ones, except that some southern and eastern areas were excluded,<sup>18</sup> and the Reservation's area was reduced by 1,092.9113 hectares.<sup>19</sup> These exclusions were mostly located towards the watershed's southernmost part, where the property "claimed by heirs of Wilson" is located. Thus, Executive Order No. 16 was the first executive act to contract the watershed's boundaries in favor of private entities, heralding the land-use conflict that now paralyzes government efforts to manage the Reservation. Parenthetically, the total combined area of Exec. Orders No. 14 and 16 is 25,008.6416 hectares, which is still less than both the 25,913.1469 hectares originally established by Exec. Orders No. 33, and the 27,980.2221 hectares mapped by the official survey under Act No. 926.

On October 18, 1935, Governor General Frank Murphy's Proclamation No. 854 further removed three lots with a combined area of 12.22 hectares from the area delimited in Executive Order No. 14 for the purpose of disposing these to private individuals.<sup>20</sup>

Almost forty years later, on October 29, 1973, President Ferdinand Marcos's Presidential Decree No. 324 removed a further 1,728.746 hectares for disposition under the provisions of the Public Land Act.<sup>21</sup> It must be noted that although some maps place these exclusions at the Reservation's southeastern part, plotting by NAMRIA places them outside the Reservation, along its western edge.<sup>22</sup>

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<sup>15</sup> Exec. Order No. 14, February 20, 1915.

<sup>16</sup> Study Team Report, Annex "A-2"

<sup>17</sup> Exec. Order No. 16, February 24, 1915. This amended Paragraph 2 of Exec. Order No. 33

<sup>18</sup> Study Team Report, Annex "A-3"

<sup>19</sup> The parcel described in Exec. Order 16 has an area of 24,820.2356 hectares.

<sup>20</sup> Lot A covered 1.4332 hectares, Lot B-2 covered 2.5851 hectares, and Lot B-3 covered 8.2007 hectares.

<sup>21</sup> According to the Decree's Whereas clauses, an investigation by the Bureau of Lands concluded that the parcels in the municipalities of Teresa and Baras in Rizal could be removed without impairing the watershed's effectiveness, and resolved to release them for disposition "in the best interest of the agricultural economy of the country."

<sup>22</sup> Study Team Report, Annex "A-5"

Further, the plotted polygon also does not close to a significant degree, and there appear to be errors in the Decree's technical description.

On June 21, 1974, President Marcos's Proclamation No. 1283 established the Boso-boso Townsite Reservation within the Marikina Watershed Reservation, and intended to make still more exclusions from the latter. This was later rendered irrelevant by Proclamation No. 1637 on April 18, 1977, as this transferred the new reservation outside the Marikina Reservation and renamed it the Lungsod Silangan Townsite Reservation.

Subsequently, on April 18, 1977, Proclamation No. 1636 established a National Park, Wildlife and Game Preserve over the provinces of Bulacan, Rizal, Laguna and Quezon. DENR maps commonly place the Reservation within this 46,310 hectare tract. However, the proclamation explicitly stated it was "subject to private rights, if any there be, and to the operation of previous proclamations reserving portions thereof for specific purposes." It may be argued, therefore, that the Reservation is itself excluded from the Wildlife Preserve.<sup>23</sup>

On January 29, 1986, Proclamation No. 2480 excluded a further 4,424.3808 hectares in five parcels for resettlement purposes,<sup>24</sup> and arguably, implied that these would be disposed in accordance with the Public Land Act. Unlike in Pres. Decree No. 324, the new proclamation did not affirm that the considerable exclusion would not adversely affect the watershed. At this point, the land use conflict fully bloomed.

On June 5, 1990, President Corazon Aquino's Proclamation No. 585 segregated 1,430 hectares from the Reservation for the DENR's Social Forestry Program.<sup>25</sup> Plotting by NAMRIA shows that this new exclusion is near the watershed's center,<sup>26</sup> in the Boso-boso area and within the territorial limits of the City of Antipolo. It must be pointed out, however, that a social forestry program need not be inconsistent with a watershed reservation. Thus, it may be argued that this Proclamation created no land use conflict.

Finally, President Fidel Ramos made four more issuances that resulted in still more exclusions. On August 28, 1995, Proclamation No. 635 removed two parcels to establish a landfill for Metro Manila. It also recognized that while the Reservation provided water for Metro Manila, the latter's rapidly increasing population created competing needs, one of which was a solution to the worsening waste disposal problem. It may be suggested, at this point, the government viewed the Reservation as established not just for watershed purposes, even for uses

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<sup>23</sup> *Id.*, Annex "A-6"

<sup>24</sup> The San Isidro Valley covered 1,507.1451 hectares, Parcel I covered 886.7922 hectares, Parcel II covered 360.1903 hectares, Parcel III covered 379.5825 hectares, and Parcel IV covered 1,290.6707 hectares.

<sup>25</sup> This land was situated in Sitios Bosoboso, Veterans, and Kilingan, and in Barangays San Joseph and Pagnaan of Antipolo, Rizal.

<sup>26</sup> Study Team Report, Annex "A-8"

essentially in conflict with these. However, the proclamation excluded only “peripheral” areas,<sup>27</sup> “after due consideration and study.”

On April 2, 1996, Proclamation No. 776 reserved a further 130 740.3 hectares for government employees’ housing.<sup>28</sup> Two months later, on June 3, Proclamation No. 799 established the 750-hectare Freedom Valley Resettlement near the Reservation’s center. This was to be a “resettlement site for the landless and homeless residents of Metro Manila,” but expressly excluded the land already dedicated to the Social Forestry Program under President Aquino’s Proclamation No. 585.<sup>29</sup>

On October 10, Proclamation No. 901 established the 600-hectare Pamitinan Protected Landscape in Rodriguez, Rizal. This included the Paminitinan cave and its surroundings, “in order to protect and preserve its historical significance as well as its recreational, educational and ecotourism value,” subject to existing private rights. This author again argues that this last proclamation is readily harmonized with the Reservation’s original purpose.

In summary, this author concludes that all but three of these issuances over the last century contracted the Reservation. However, it must be emphasized that a watershed is traditionally a single functional unit. This is especially true with respect to the watershed where the Reservation is situated because its river systems all drain at a single opening, at the Wawa Dam. Therefore, traditional watershed management, not to mention common sense, dictate that areas within the watershed must not be dedicated to inconsistent uses.

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<sup>27</sup> *Id.*, Annex “A-9”

<sup>28</sup> This was in Barangay Cuyambay in Tanay, Rizal, and was for the benefit of employees from the Departments of Environment and Natural Resources, Interior and Local Government, National Defense, Education, Culture and Sports, and Transportation and Communication. The reservation was made subject to private rights. A special patent was to be issued to the DENR for disposition purposes, and the Secretary was tasked with surveying the land for these ends.

<sup>29</sup> Study Team Report, Annex “A-11”





The conclusion, then, is that the boundaries set out in Executive Order No. 33 may only be modified by a law. This order was made under the Philippine Bill of 1902, which designated the Philippine Commission as the legislature.<sup>30</sup> The Civil Governor exercised executive powers.<sup>31</sup> Of the issuances discussed in the preceding section, one notes that only Pres. Decree 324, passed when President Marcos was exercising legislative powers,<sup>32</sup> is a legislative act.

Thus, at the outset, this author asserts the legal infirmity of all the subsequent executive issuances, excepting only the above decree. The succeeding sections, further, point to particular infirmities in each.

#### A. EXECUTIVE ORDERS NO. 14 AND 16 (1916)

Under this author's general proposition, Executive Order No. 16 contravened Act No. 648 when it attempted to free certain areas of the Reservation for sale by virtue of a mere executive issuance. Executive Order No. 14, however, appeared to expand the Reservation instead of contracting it, which does not run counter against Act No. 648. However, plotting by NAMRIA showed that the area it described was outside the original boundaries. This author argues that it may not be properly implemented as the purported expansion is completely detached from the Reservation's bounds; hence, it cannot be an expansion.

#### B. PROCLAMATION NO. 854 (1935)

Proclamation No. 854, which amended Executive Order No. 14, was promulgated pursuant to Act No. 2874, which provides:

*"Sec. 86. The tract or tracts of land reserved under the provisions of chapter twelve shall be nonalienable and shall not be subject to occupation, entry, sale, lease, or other disposition until again declared alienable under the provisions of this Act or by proclamation of the Governor-General."* (emphasis added)

Note that unlike Act No. 648, on which Executive Order No. 33 was founded, Act No. 2874 expressly provides that the reserved land is subject to mere

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<sup>30</sup> Section 7 provided that two years after the census' completion, the President of the United States would call a general election in the Philippines for the Philippine Assembly, which would become a second house of the legislature. Until then, this section implied that legislative power was vested solely in the Philippine Commission.

<sup>31</sup> Authorized by the Spooner Amendment, the President created the office of Civil Governor in June 1901, to take effect on July 4 of the same year. The President then created four executive departments on September 1 and the office of Vice Governor on October 29. He continued the administration of civil affairs until Congress took charge on July 1, 1902. The office of Military Governor was abolished and the Civil Governor became the Executive. *Severino v. Governor-General*, 16 Phil 365 (1910).

<sup>32</sup> *Aquino v. Comm'n on Elections*, G.R. No. 40004, 62 SCRA 275, 298, January 31, 1975

proclamation of the Governor-General.<sup>33</sup> However, a holistic reading of Act No. 2874's Chapter XII shows that the above provision referred only to reservations established by proclamations under Act No. 2874. Thus, Proclamation No. 854 could not have validly amended Executive Order No. 14, assuming the latter was valid in the first place, as it was made under Act No. 648.

However, Section 81 of Act No. 2874 authorized the Governor-General to designate by proclamation *any* tract of public land as reservations for government use or "for quasi-public uses or purposes when the public interest requires it," apparently including those previously reserved that remained part of the public domain.<sup>34</sup> Section 81 is in turn subject to Section 86. Thus, although it would have been necessary to bring the area covered by Executive Order No. 14 under the provisions of Act No. 2874, it may be conceded that Proclamation No. 854 itself did so, and then amended it accordingly by excluding three parcels of land with a combined area of 12.22 hectares.

Assuming that Executive Order No. 14 was valid, plotting by NAMRIA shows that the area it originally described does not fall within or even adjacent to the Reservation. Therefore, its exclusions do not appear to affect Executive Order No. 33. Further, three exclusions made by Proclamation No. 854 to the area in Executive Order No. 14 affect areas outside the boundaries originally described in the latter, while a fourth affects an area within the boundaries described by Exec. Order Nos. 33 and 16.

Considering that Proclamation No. 854 intended to amend Executive Order No. 14 while making no mention of Executive Order No. 33, this author asserts that the proclamation's descriptions of boundaries were mistaken, and that it cannot be implemented because its true intent cannot be ascertained. He further asserts that any land title issued pursuant to Proclamation No. 854 may be questioned.

In any event, further proclamations are now governed by Republic Act No. 7586, under which a reduction of the Reservation's land area may only be effected by Congress.<sup>35</sup> This newer law also empowers the DENR to advise Congress

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<sup>33</sup> The change, this author argues, bolsters the conclusion that the original applicable law, Act No. 648, could not have been basis for Exec. Order No. 16 to convert areas of the original Reservation to other uses.

<sup>34</sup> Later, the Public Land Act maintained the President's power to modify reservations through mere proclamation. Com. Act No. 141, § 88. The Constitution, however, modifies this, as discussed later.

<sup>35</sup> Rep. Act No. 7586, § 7; DENR Adm. Order No. 92-25, § 3(j), 5. However, if public lands are to be added into existing protected areas, DENR Memo. Order No. 08, April 4, 1995, provides in its entirety:

"Pursuant to Section 7 of the NIPAS Act and Section 5 of DAO 25, Series of 1992, the boundaries of a protected area can be modified in accordance with the set procedures. In cases where additional public lands are recommended by the people for inclusion in a protected area or its buffer zone, any proposed DENR project or processing of application for lease/license/permit pertaining to the use of the land must be held in abeyance until such time that the area has been established as protected area or buffer zone through Presidential Proclamation.

regarding modifications to already protected areas, but in this case, this cannot be done considering that the area covered by Proclamation No. 854 itself is in doubt

### C. PRESIDENTIAL DECREE NO. 324 (1973)

Presidential Decree No. 324 is a law, unlike the other issuances discussed, and may thus legally modify the Reservation's boundaries. However, as discussed, plotting by NAMRIA shows that the area it describes lies outside the Reservation, and the polygon it describes does not close in a significant manner. Again, this author argues that its technical description is erroneous and cannot be validly implemented. Moreover, the opportunity to enact an amending law has passed, with the advent of the NIPAS. Rep. Act. No. 7586 states:

"SECTION 5. Establishment and Extent of the System. — The establishment and operationalization of the System shall involve the following:

"(a) All areas or islands in the Philippine proclaimed, designated or set aside, pursuant to a law, presidential decree, *presidential proclamation or executive order* as national park, game refuge, bird and wildlife sanctuary, wilderness area, strict nature reserve, *watershed*, mangrove reserve, fish sanctuary, natural and historical landmark, protected and managed landscape/seascapes as well as identified virgin forests before the effectivity of this Act are hereby designated as initial components of the System. The initial components of the System shall be governed by existing laws, rules and regulations, not inconsistent with this Act;" (emphasis added)

More significantly, one must also consider Art. XII of the Constitution:

"Section 4. The Congress shall, as soon as possible, determine, by law, the specific limits of forest lands and national parks, marking clearly their boundaries on the ground. Thereafter, such forest lands and national parks shall be conserved and may not be increased nor diminished, except by law. The Congress shall provide for such period as it may determine, measures to prohibit logging in endangered forests and watershed areas."

Again, the Reservation is now a protected area governed by Republic Act No. 7586, and forms part of the national park established under the 1987 Constitution. It thus forms part of the inalienable lands of the public domain,<sup>36</sup> since only agricultural lands may be declared alienable and disposable. Thus, this author further argues that Presidential Decree No. 324 has been superseded by Rep. Act. No. 7586 and by the Constitution. Corollarily, land titles granted pursuant to the decree may likewise be questioned.

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"Thereafter the use of the land shall be governed by the relevant provisions of the NIPAS law, its implementing rules and regulations and other related support policies."

<sup>36</sup> CONST. art. XII, § 3.

Finally, even assuming that Presidential Decree No. 324 may be properly implemented despite its unclear specifications, private land whose titles were issued pursuant to it may still be expropriated under Presidential Decree No. 705, on mountain ridges and plateaus, as discussed below.

#### D. PROCLAMATION NO. 2480 (1986)

Proclamation No. 2480 removed 4,424.3808 hectares of the watershed's elevated eastern portion from the Reservation, an area that is a ridge top and plateau.<sup>37</sup> Its stated purpose was resettlement, and it is implied that the land would be disposed pursuant to the Public Land Act. However, Presidential Decree No. 705, §16 provides that ridge tops and plateaus found within, or surrounded wholly or partly by, forest lands where headwaters emanate are needed for forest purposes and may not be classified as alienable and disposable land. Thus, Proclamation No. 2480 contravenes Section 16 of Presidential Decree No. 705, and its last paragraph provides that even if such ridge tops or plateaus were titled, steps shall be taken to have the title cancelled or amended, or the area expropriated.

In addition, Section 3 of Presidential Decree No. 705, as amended by Presidential Decree No. 1559, defines:

“l) Watershed reservation is a forest land reservation established to protect or improve the conditions of the water yield thereof or reduce sedimentation.

“m) Watershed is a land area drained by a stream or fixed body of water and its tributaries having a common outlet for surface run-off.

“n) Critical watershed is a drainage area of a river system supporting existing and proposed hydro-electric power, irrigation works or domestic water facilities needing immediate protection or rehabilitation.”

The first two definitions indisputably apply to the Reservation. The third does as well because it supports domestic water facilities needing immediate protection or rehabilitation, particularly that of the Wawa Dam<sup>38</sup> within the Municipality of Rodriguez, which the Metropolitan Waterworks and Sewerage System intends to rehabilitate and utilize within the next two years.<sup>39</sup>

One must ask, however, if Proclamation No. 2480 amended Presidential Decree No. 705, or ultimately whether Proclamation No. 2480 emanated from President Marcos' legislative powers at the time. This contention is not supported, however. First of all, Proclamation No. 2480 contained no repealing or amendatory

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<sup>37</sup> Certain maps produced by the DENR indicate that the area indicated by Pres. Dec. No. 324 is composed of ridges and plateaus.

<sup>38</sup> MWSS records show that the dam was built at the time Exec. Order No. 33 was promulgated.

<sup>39</sup> This was the statement of an MWSS representative during a meeting with the Study Teams held on October 9, 2003 at the EMB Conference Room, DENR, Visayas Ave., Diliman, Quezon City.

clause. One may argue that, despite the lack of an express repeal, there is an irreconcilable inconsistency, although implied repeals are disfavored.<sup>40</sup> One may also assert a partial repeal, treating Proclamation No. 2480 as the more specific issuance on the subject.<sup>41</sup> However, it would have been simple enough for President Marcos to issue another Decree to amend Presidential Decree No. 324. Rather, Proclamation No. 2480 was arguably promulgated using his executive power, and its opening paragraph was that of a standard presidential proclamation.

### E. PROCLAMATION NO. 585 (1990)

Proclamation No. 585 placed 1,430 hectares under the DENR's Integrated Social Forestry (ISF) program. This was done under the Public Land Act,<sup>42</sup> which still allowed the President to modify the Reservation by executive proclamation, and before Rep. Act. No. 7586 established it as part of NIPAS pursuant to the 1987 Constitution. The ISF program itself was established by Letter of Ins. No. 1260 dated July 28, 1982, for "*kaingeros* and occupants and communities dependent on areas classified as forest lands for their livelihood." The issuance gives these beneficiaries support in terms of education, health, and livelihood programs in agro-forestry, including livestock raising.

In order to establish the ISF's context, one must also note Letter of Ins. No. 917, dated August 22, 1979, which declares proclaimed watershed areas and critical watersheds as Wilderness Areas and prohibits "exploitation of whatever nature,"<sup>43</sup> including occupancy,<sup>44</sup> excepting only the construction of foot trails and pathways "intended to make these areas accessible to the public for recreation and similar purposes."<sup>45</sup> Letter of Ins. No. 917 was addressed to the then Minister of Natural Resources and Human Settlements, intended to close certain areas of the public domain for national security purposes, to maintain the water supply, and to prevent floods and droughts.<sup>46</sup>

The two letters of instruction appear to conflict, as Letters of Instruction No. 1260 effectively legalizes the possession of forest Wilderness Areas by *kaingeros* and other occupants. However, it is the more specific directive compared to Letters of Instruction No. 917,<sup>47</sup> and the former referred specifically to watersheds. Moreover, the intent of both issuances must be seen in the context of Presidential Decree No. 705, which sets multiple use as the guiding principle in utilizing forest land, such that only uses that "will produce optimum benefits to the development

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<sup>40</sup> RUBEN AGPALO, STATUTORY CONSTRUCTION 403 (4th ed. 1998).

<sup>41</sup> *Id.* at 425, citing *Lagman v. City of Manila*, G.R. No. 23305, 17 SCRA 579, 585, June 30, 1966, *Corona v. Court of Appeals*, G.R. No. 97356, 214 SCRA 378, 391, September 30, 1992.

<sup>42</sup> Com. Act No. 141, § 88.

<sup>43</sup> Letter of Ins. No. 917, § 1 (1979).

<sup>44</sup> *Id.*, § 8.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*, Whereas clauses.

<sup>47</sup> *Manzano v. Valera*, G.R. No. 122068, 292 SCRA 66, 74, July 8, 1998.

and progress of the country and the public welfare, without impairment or with the least injury to its other resources, shall be allowed.”<sup>48</sup> The Decree allows the opening of forest reservations not inconsistent with its objectives, and emphasizes only that watersheds shall not be subject to logging.

Thus, Presidential Decree No. 705 itself does not prohibit the non-commercial occupation of watersheds allowed by Letters of Instruction No. 1260. Provided this constitutes the best use of forest land, which is a policy judgment left to the discretion of the implementing authority, it is legal. Further, Section 52 of the Decree does not absolutely prohibit entry into forest land, but provides that “no person shall enter into forest lands and cultivate the same without lease or permit.” This author would interpret Letters of Instruction No. 1260 as permission pursuant to this provision.

Consistent with Presidential Decree No. 705, Letters of Instruction No. 1260 gave the Ministry of Natural Resources, now the DENR, the discretion to determine where to establish forest settlements the best uses for specific forest areas. It also allowed the agency the gauge the necessity of relocating “deserving forest occupants,”<sup>49</sup> and identifying *kaingin* areas that could be developed into settlements. This appears to be valid under Presidential Decree No. 705, and the broad prohibitions in Letters of Instruction No. 917 cannot be read as absolute statements. Parenthetically, while Letters of Instruction No. allows the construction of only foot trails and pathways, for example, Presidential Decree No. 705 allows the construction of roads so long as injury to forest resources is minimized.<sup>50</sup>

Proclamation No. 585 expressly states it was issued pursuant to the recommendation of the Secretary of Environment and Natural Resources, and one presumes it reflects the best use determined by the DENR. It is thus validly issued pursuant to Presidential Decree No. 705 and Letters of Instruction No. 1260. Hence, it validly excluded the areas it specified from the Reservation, and reduced its total area by 26,550.2221 hectares, to 27,980.2221 hectares.

Finally, although Executive Order No. 33 prohibited entry into the Reservation, this was overridden by Presidential Decree No. 705, as implemented by Letters of Instruction No. 1260.

#### F. PROCLAMATION NOS. 635, 776, AND 799 (1995-1996)

Proc. Nos. 635, 776, and 799 were promulgated after Republic Act No. 7586 took effect, and after the Reservation became an initial component of the NIPAS. The establishment of landfills, residential and resettlement areas are anathema to protected areas, and Rep. Act. No. 7586 explicitly provides:

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<sup>48</sup> Pres. Decree No. 705, § 19.

<sup>49</sup> Letter of Ins. No. 917, § 5 (1979).

<sup>50</sup> Pres. Decree No. 705, § 49.

"SECTION 20. Prohibited Acts. — Except as may be allowed by the nature of their categories and pursuant to rules and regulations governing the same, the following acts are prohibited within protected areas:

...

(b) Dumping of any waste products detrimental to the protected area, or to the plants and animals or inhabitants therein;

...

(f) Squatting, mineral locating, or otherwise occupying any land;"

Further, with respect to resettlement and residential areas, Republic Act No. 7586 allows only indigenous peoples and tenured migrants to stay within protected areas.<sup>51</sup> Hence, Proclamations Nos. 635, 776 and 799 are contrary to law. Moreover, the dispositions in Proc. Nos. 776 and 799 are proscribed by the Comprehensive Agrarian Reform Law, which prohibits reclassification of forest and mineral lands into agricultural lands until after Congress itself, through a law, fixes the extent of the public domain.<sup>52</sup> Finally, the three proclamations are contrary to the Administrative Code of 1987, which only granted the President "the power to reserve for settlement or public use, and for specific public purposes, any of the lands of the public domain, the use of which is not otherwise directed by law."<sup>53</sup>

Again, the Reservation is a protected area under Republic Act No. 7586, and is situated within a critical watershed protected by Presidential Decree No. 705. Thus, not only are the three proclamations invalid, but land titles granted pursuant to Proc. Nos. 776 and 799 may be declared invalid.

### G. PROCLAMATION NO. 901 (1996)

Finally, Proclamation No. 901 expressly states that it was issued pursuant to Republic Act No. 7586. Thus, it is valid, although plotting by NAMRIA shows that there is a partial overlap of the resulting Protected Landscape with the Reservation. Nevertheless, since both are protected by Republic Act No. 7586, and there appears to be no significant change that can be introduced to the area for purposes of recreation and eco-tourism, the establishment of the Protected Landscape should not adversely affect the watershed, and the DENR has the power to monitor this

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<sup>51</sup> Rep. Act No. 7586, § 9. "Tenured migrant communities' are communities within protected areas which have actually and continuously occupied such areas for five (5) years before the designation of the same as protected areas in accordance with this Act and are solely dependent thereon for subsistence." Rep. Act No. 7586, § 4(l). "Ancestral lands and customary rights and interest arising shall be accorded due recognition. The DENR shall prescribe rules and regulations to govern ancestral lands within protected areas: Provided, *That the DENR shall have no power to evict indigenous communities from their present occupancy nor resettle them to another area without their consent*: Provided, however, That all rules and regulations, whether adversely affecting said communities or not, shall be subjected to notice and hearing to be participated in by members of concerned indigenous community." (emphasis added). Rep. Act No. 7586, § 13.

<sup>52</sup> Rep. Act No. 6657, § 4(a). Further, based on NAMRIA plotting, the area covered by Proc. No. 776 is within the bounds originally set by Exec. Order No. 33 but outside those of Exec. Order No. 16. However, even granting that the latter is valid, the area still falls within inalienable public forest land, the reclassification of which is prohibited by Rep. Act No. 6657.

<sup>53</sup> REV. ADM. CODE, § 14 (Exec. Order No. 292).

### III. THE RESULT OF APPLYING THE HIERARCHY OF LAWS

Despite the many issuances that have been passed, this author concludes that only Proclamation No. 585 establishing the ISF program and Proclamation No. 901 establishing the Pamintan Protected Landscape have validly altered the Reservation's boundaries. Thus, the present Reservation that has become an initial component of the NIPAS<sup>54</sup> has an area of 26,550.2221 hectares.<sup>55</sup>

The integrity of the original boundaries established by Executive Order No. 33 was maintained by Act No. 648, which required that modifications to the Reservation's boundaries should be done by law; Presidential Decree No. 705, which prohibits the disposition of public lands in the ridges and plateaus from which the watershed's headwaters emanate; Republic Act No. 7586, which makes the Reservation a protected area not open for disposition to private entities and other inconsistent uses; and the Administrative Code of 1987, which limits the power of the President to reserve public lands only to those whose purposes have not yet been specified by law.<sup>56</sup> Thus, this author further argues that private titles issued pursuant to Exec.

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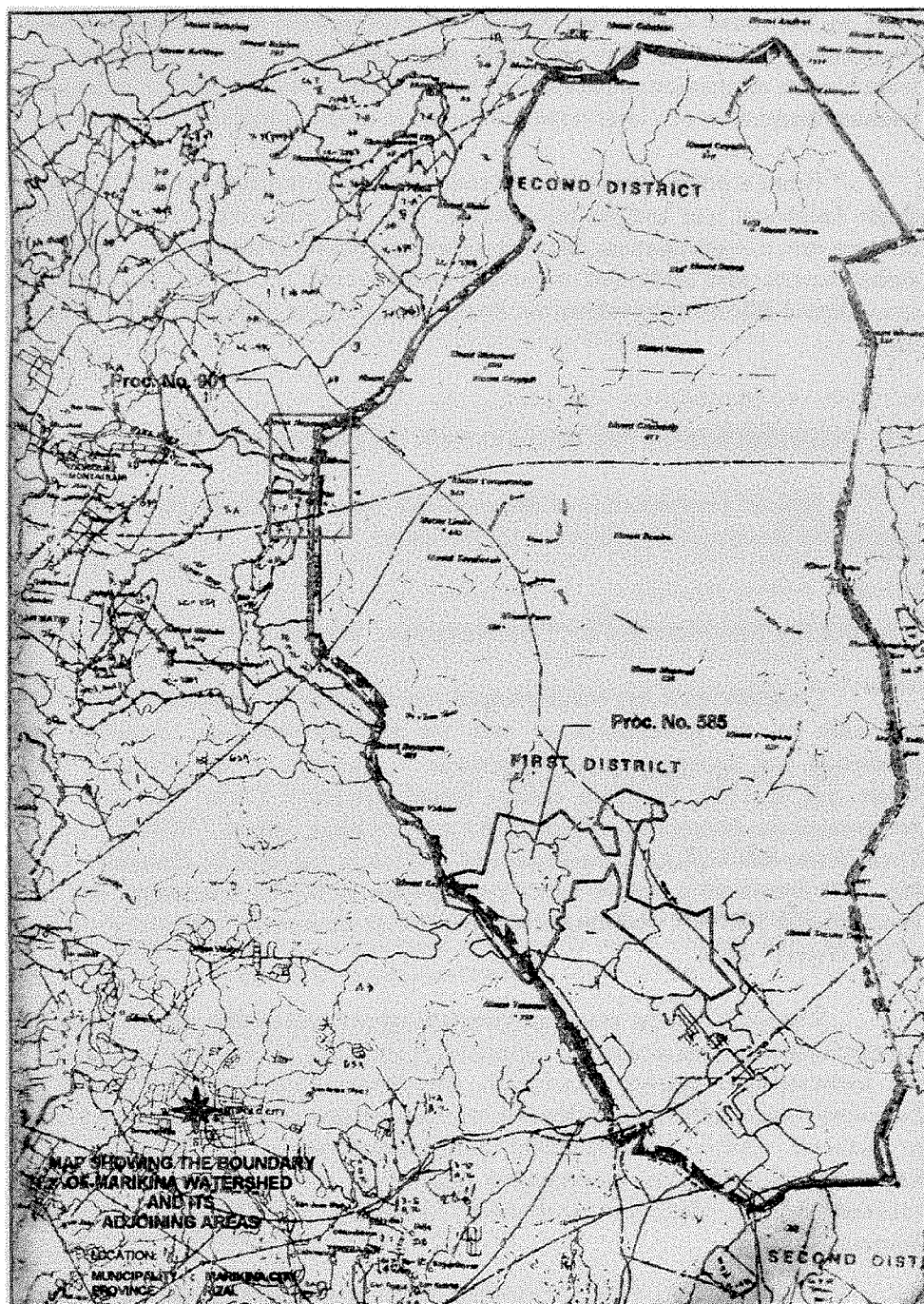
<sup>54</sup> Rep. Act No. 7586, § 5(a).

<sup>55</sup> 27,980.2221 hectares, less the 1,430 hectares removed by Proc. No. 585.

<sup>56</sup> Further, because Pres. Decree No. 705 mandates the expropriation of private lands in such ridges or plateaus of the watershed, beyond consideration of the actual boundaries of the Reservation, and accordingly, the provisions of RA 7586, PD 705 views the watershed, together with its natural boundaries, as the unit of management and protection. It is because of such an effect that the area covered by Proclamation No. 585, although officially outside the boundaries of the Reservation, should be managed as part of the watershed. In this regard, the applicability of PD 705 remains because there is no reason to regard it as inconsistent with the provisions of RA 7586, under the circumstances of the instant case.



Figure 2: Areas covered by Proclamations No. 585 and 901



Order No. 16, Presidential Decree No. 324, Proc. Nos. 776, 799, 854, and 2480 may be nullified in appropriate judicial proceedings. Further, lands privately titled prior to Executive Order No. 33 may be expropriated when warranted under Presidential Decree No. 705 and other applicable laws. These conclusions arise from a mere mechanical application of basic statutory construction doctrines, in a seeming vindication of a legal system maligned as overly complex and convoluted.

From a policy viewpoint, the result is ideal, given that the watershed is a single functional unit and geologic feature, with its entire river system ultimately draining into a single opening, the point where the Wawa Dam now lies. Again, this author asserts that traditional watershed management not to mention common sense dictate that no areas within the Reservation must be subjected to inconsistent uses.

#### **IV. DISESTABLISHING THE RESERVATION IS CONTRARY TO PUBLIC POLICY**

Beyond a construction of the applicable laws, compelling reasons of policy counsel the Reservation's continued conservation.

##### **A. POLICY ENUNCIATED BY THE NATIONAL WATER CRISIS COMMISSION**

Congress itself has acknowledged the existence of a national water crisis, and calls on the government to take the relevant measures, including "the protection and conservation of watersheds."<sup>57</sup> Pursuant to the National Water Crisis Act of 1995, President Ramos issued Executive Order No. 286 which reorganized the Metropolitan Waterworks and Sewerage System ("MWSS") and the Local Water and Utilities Administration ("LWUA"); followed by Executive Order No. 311, encouraging private sector participation in MWSS operations; and then Proclamation No. 925, declaring December 2-8 as an annual "National Protection of the Waters" week.

The DENR is the major government agency responsible for managing the country's environment and natural resources,<sup>58</sup> and plays the lead role in addressing the water crisis. However, in addition, The Water Crisis Act also created the Executive-Legislative National Water Crisis Commission, and it directed the DENR to suspend adverse developmental undertakings within the Reservation. In Resolution No. 08,<sup>59</sup> the Commission pointed to the following developmental activities within identified watersheds, including the Marikina Watershed Reservation:

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<sup>57</sup> Rep. Act No. 8041, § 2 ("The National Water Crisis Act of 1995").

<sup>58</sup> Exec Order No. 292, § 2.

<sup>59</sup> "Designating Watershed Areas Where Adverse Developmental Undertakings are to be Suspended" February 22, 1996.

"1. Road construction, except access roads necessary for the efficient surveillance of the watershed area and farm to market roads which provide lifeline support for the people in the community.

2. Residential, commercial and industrial subdivision.

3. Garbage dumpsites

4. Logging

5. Farming utilizing inorganic fertilizers

6. All other land and resources uses/infrastructure projects which are found to be incompatible with the uses of the area as watershed."

In addition, the DENR was specifically directed not to issue any environmental clearance certificates with respect to the foregoing activities.

Resolution No. 08 was passed more than eight years ago, and the Commission itself legally became *functus officio* after it submitted its recommendations to the President and Congress.<sup>60</sup> This author argues, however, that despite the recommendatory character of the Commission's powers in general, the Commission was specifically delegated the task of designating watershed areas where developmental activities are to be suspended, and its resolution that did so must be given effect. One scrutinizes the Commission's composition and explicit powers:

"Sec. 3 Organization of Joint Executive-Legislative Water Crisis Commission Within thirty (30) days after the effectivity of this Act, there shall be organized a Joint Executive -Legislative Water Crisis Commission. *The Commission shall be chaired by the Executive Secretary, with the secretaries of the Department of Public Works and Highways and the Department of Environment and Natural Resources, and the chairmen of the appropriate Senate and House committees, as designated by the leaders of both Houses of Congress, as well as a representative of the minority from each House , as members.*

There shall be a technical staff constituted by representatives of the National Water Resources Board (NWRB), the Metropolitan Waterworks and Sewerage System (MWSS), the Local Water Utilities Administration (LWUA), the appropriate committees of the Senate and the House, and the certified workers' union in the affected water institutions.

Sec. 4. Purposes and Objectives. The Commission shall have the following purposes and objectives;

a. to undertake nationwide consultations on the water crisis and in depth and detailed study and review of the entire water supply and distribution structure;

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<sup>60</sup> Rep. Act No. 8041, § 14.

*b. To enhance and facilitate cooperation and coordination between Congress and the executive department in formulating and implementing the government's water crisis management policy and strategy;*

c. To recommend measures that will ensure continuous and effective monitoring of the entire water supply and distribution system of the country; and

d. To conduct continuing studies and researches on policy options, strategies and approaches to the water crisis including experiences of other countries similarly situated, and to recommend such remedial and legislative measures as may be required to address the problem.

Sec. 5 Powers and Functions. To carry out the aforementioned purposes and objectives, the Commission is hereby authorized:

a. To secure from any department, bureau, office, agency or instrumentality of the government such assistance as may be needed, such as technical information, the preparation of reports, and the submission of recommendations or plans, as it may require;

*b. To designate by resolution the watershed areas in which developmental undertakings are to be suspended; and*

c. Generally, to exercise all the powers necessary, relevant and incidental to attain the purposes and objectives for which it is organized.” (emphasis added)<sup>61</sup>

This author draws attention to the fact that the Resolution was signed by then-DENR Secretary Victor Ramos himself. Nevertheless, it appears that the DENR has not seriously acted upon it, as evidenced by the number of recently constructed concrete roads within the Reservation. This author proposes that fulfilling this resolution’s mandate remains imperative, and has not been revoked by any executive or legislative act to date.

Even assuming that Resolution No. 08 is merely recommendatory and downplaying the details that it was signed by a DENR Secretary, this author further notes that other departmental issuances exhibit a policy consistent with Resolution No. 08. DENR Adm. Order No. 99-01, dated January 11, 1999, adopted the Watershed and Ecosystems Planning Framework, which “refers to the holistic, multiple-use and sustainable management of all the resources within a spatial unit known as the watershed.” All DENR offices were instructed “to review and realign all programs and projects, including their budget, in accordance with the priority watershed areas of the regions.” Hence, the DENR itself has made it policy to place watershed management as the overriding “national framework for the sustainable management of the country’s natural resources.” Again, the Reservation’s purpose has been to provide water for Metro Manila for over a hundred years – not to be

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<sup>61</sup> *Id.*, § 3-5.

developed as real estate – and this author argues that the DENR should have no reason to recommend its disestablishment.<sup>62</sup>

### B. FLOODING AND CONTINUED DETERIORATION OF WATER QUALITY

Non-use of the Marikina Watershed's water does not make the water disappear, nor is its water completely harmless. During the rainy season, this water flows downstream, and environmental managers have two options. First, they may attempt to harness the water for productive uses, such as for irrigation and proactive control of flooding. Second, they may ignore the water, deriving no benefit from it and leaving its quality to deteriorate, and face the further risk of flooding. If resources are allocated elsewhere, decision makers must be aware of the opportunity cost of ignoring the water, and economic losses due to flooding.

From 1912 to 1991, MWSS records show that the Wawa Dam had an annual average discharge of was 18.3 cubic meters per second, or 1,581,120 cubic meters per day. The Montalban River originates mainly from Mt. Palagyo and lies 1,405 meters above sea level in the watershed's northeast, and it remains clear and carries little suspended load. However, the Boso-boso River in the southwest is now muddy and brown because of the rice fields along it and the pig farm in the upper reaches, Foremost Farms of about 100,000 heads in the upper reaches.<sup>63</sup>

Further, the watershed's clayish soil requires trees in order to develop waterways for ground infiltration. As of 1994, only a few primeval forests remained watershed's northern part. Other areas are covered with residual natural forests which have undergone secondary and tertiary cutting, fields under shifting cultivation, grassy plains, and plantations with a low survival ratio. Careless agriculture and forestry use has rendered the watershed unable to perform its water conserving function.<sup>64</sup>

Opening the Reservation for real-estate development will indubitably exacerbate this deterioration, and run-off, erosion, and the risk of flooding would dramatically increase. The resulting siltation will eventually find its way into the Manila Bay and eventually the South China Sea, simply due to the law of gravity.

It must be emphasized that in order to cope with the projected increased demand for water in Metro Manila and its surrounding environs for 2003 to 2006, the MWSS has programmed the rehabilitation of the Wawa Dam and limited portions of the Reservation and is presently searching for a consultant for the

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<sup>62</sup> Rep. Act No. 7586, § 7.

<sup>63</sup> JAPAN OVERSEAS FORESTRY CONSULTANTS ASS'N, *supra* note 9, at 45-50.

<sup>64</sup> *Id.* at 97.

project.<sup>65</sup> Thus, this author reiterates that it is utterly unwise to disestablish critical watersheds such as the Marikina Reservation.

## V. CONCERNS AND APPREHENSIONS IN MANAGING THE RESERVATION

Having provided a legal and policy foundation to defend the Reservation's maintenance as a protected area, this author now answers the question: Is it feasible to do so?

### A. THE PROBLEM OF INVADING INFORMAL SETTLERS

The Constitution provides that all natural resources are owned by the State.<sup>66</sup> However, it is practically impossible for the State to fence-off and protect a 26,000-hectare Reservation. The DENR faces the overwhelming task of policing a watershed with sections of deep forests and high mountains, and with the remaining major areas of flat, slightly elevated, and hilly areas populated by informal settlers. This is compounded by the presence of insurgents who directly challenge State control in some areas, and the need to deal with local politicians, many of whom retain the trappings of ancient feudal lords.

While the government may not be able to do everything, it can certainly do something. Indeed, the environmental administrator cannot solve problems of insurgency and local politics, but he may search for solutions to smaller problems and then hope that more powerful elements within society, including the government hierarchy, take action or allocate more resources. Specifically, the DENR should set goals to first solve the most immediate problems concerning the adverse developmental activities within the Reservation. As time passes and more permanent structures are erected, reversing these developments will entail greater costs, not to mention political will.

### B. POPULATION GROWTH AND POVERTY

The primary cause of environmental degradation in the Philippines is actually population growth. In any natural ecosystem with physical features conducive to biological activity such as seasonal temperature, geologic suitability, and the availability of sunlight, the populations of most species, especially the dominant ones, naturally experience unprecedented growth, until competition and environmental degradation force their numbers to recede, either through death or migration. In the Philippines, compared to the colder and drier regions of the world, human beings know no other competition than themselves.

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<sup>65</sup> MANILA WATER CO., *supra* note 3, at 8.

<sup>66</sup> CONST. art. XII, § 2.

While human populations can survive, subsist and even grow dramatically in tropical ecosystems with only a combination of gathering, hunting, livestock raising, and shifting cultivation, present Western-based standards of human development would regard them as poor. Thus, while many particularly indigenous peoples could choose to live their traditional way of life, they would not escape social categorization as poor.

The government views commercial exploitation of the same ecosystems as the only means of attaining progress and development. Hence, the concept of sustainable development pervades environmental laws such as the NIPAS Act and the DENR Rules and Regulations on Protected Area Community Based Resource Management Agreement. However, the government must carefully set the form and degree of commercial exploitation it allows.

However, other interest groups are not motivated by a goal of progress and development. Politicians practically cuddle vote-rich slums, unduly emboldening informal settlers. Distribution of public lands is hastened, and billions of pesos are channeled for livelihood projects and increased food production.

Such is the state of affairs evident within the Reservation. Settlers expect that government leaders will soon grant them titles to the lands they presently occupy and utilize.<sup>67</sup> This mentality encourages them to remain, and their numbers swell with new births,<sup>68</sup> and as relatives from other areas of the country are encouraged to settle with them. With an estimated 50,000 people in the Reservation today, this author estimates that there was a 500% increase in its population since 1994.<sup>69</sup>

The political consensus appears to be that resettling them is now inconceivable, and the active intercession of local and national politicians has even resulted in the construction of concrete roads leading into the Reservation's center,<sup>70</sup> and multipurpose halls and covered sports arenas. Such development only encourages greater migration, which was precisely what the Water Commission's Resolution No. 08 sought to prevent.

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<sup>67</sup> Study Team random interviews in Barangay Boso-boso and Sitio Calawis in Antipolo during a field visit on October 15, 2003.

<sup>68</sup> JAPAN OVERSEAS FORESTRY CONSULTANTS ASS'N, *supra* note 9, at 51. Settlers themselves reveal during random interviews conducted on 15 October 2003 that there is a very high birth rate, with the average family having about six (6) children. Some families have fifteen (15) to seventeen (17) children.

<sup>69</sup> Most settlers appear to be from the Province of Aklan in the Visayas region, mainly rely on *kumgu* for subsistence, for purposes of producing charcoal. However, large groups from the Ilocos region and from the nearby island of Marinduque are also emerging.

<sup>70</sup> These are in the Boso-boso area and in the proposed Freedom Valley Settlement managed by the National Housing Authority.

### C. SOCIAL JUSTICE AND THE POLICE POWER

The 1935 Constitution provided for social justice, and the concept was expanded into the 1987 Constitution's Article XIII. Under its aegis, politicians can take pride in bringing "rural development" to those living within the Reservation. Nevertheless, Justice Jose Laurel's classic *ponencia* states that social justice is not achieved "through a mistaken sympathy towards any given group."<sup>71</sup> Rather:

"Social justice, therefore, must be founded on the recognition of the necessity of interdependence among diverse units of a society and of the protection that should be equally and evenly extended to all groups as a combined force in our social and economic life, consistent with the fundamental and paramount objective of the state of promoting the health, comfort, and quiet of all persons, and *of bringing about 'the greatest good to the greatest number.'*" (emphasis added)<sup>72</sup>

The same decision likewise cites the expanding scope of the police power. Legislative policy for the last hundred years has maintained a goal of conserving the Reservation to serve as water source for Metro Manila. Politicians must respect this, and realize that social justice may be best served by trading the occupancy of 50,000 settlers for the water needs of twelve million city residents. If suitable agricultural lands are provided for them outside the Reservation in accordance with the Comprehensive Agrarian Reform Law, then this author submits that they would not be treated unjustly or inhumanely. In the first place, most of them know that they have no ownership rights over the lands they occupy.<sup>73</sup> If the government can be troubled to relocate informal settlers in Metro Manila itself to clear and beautify its streets, with more reason can they take the expense and effort of relocating the Reservation's informal settlers to safeguard the cities' water supply.

### D. MULTIPLE USE POLICY

Although Executive Order No. 33 withdrew the Reservation "from settlement, entry, sale or other disposition under the public land laws," Presidential Decree No. 705 provides for multiple use of public forests, including critical watersheds. This is consistent with the multiple use policy for protected areas under Republic Act No. 7586, and allows flexibility in managing the Reservation.

It must be noted that multiple use is not prohibited, not even by the Water Commission's Resolution No. 08, which merely prohibits adverse developmental activities such as subdivision and infrastructure projects. Commercial and income-generating activities such as eco-tourism, sustainable harvesting of secondary forest products, and agricultural activities that do not employ inorganic fertilizers are

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<sup>71</sup> *Calalang v. Williams*, 70 Phil. 726, 733 (1940).

<sup>72</sup> *Id.*

<sup>73</sup> Random interviews conducted by the Study Team revealed an overwhelming awareness of this fact among settlers.



therefore allowable. It thus falls to the DENR and the Protected Area Management Board to be constituted for the Reservation to fashion an effective management plan that incorporates such activities.<sup>74</sup>

### E. PRIVATE PROPERTY RIGHTS TO AREAS WITHIN THE RESERVATION

With respect to private lands within the Reservation boundaries, one's attention naturally focuses on large privately titled lands and the old, well-settled and well cultivated Boso-boso area. These are noticeable kilometers away due to extensive use and development.<sup>75</sup> The creation of any management plan is complicated by these.

Existing titles today were issued are mostly under Executive Order No. 16 in 1915, which excluded considerable portions in the Reservation's south. It must be noted that DENR regional offices have no record of any land title issued to any individual in the old Boso-boso settlement, which dates back to the Spanish period. Although local folklore maintains that the area was the original center of Antipolo, as evidenced by the presence of an old church, the fact that the town's new center was relocated outside the watershed renders the demand for respect of a historical settlement claim untenable. It has to be presumed that, following Executive Order No. 33, the government no longer intended to build a town site there. In any event, any titled land, although there appears to be none, remains subject to expropriation.<sup>76</sup>

The Philippine Bill of 1902 allowed the government to dispose of only public agricultural lands as homesteads,<sup>77</sup> and allowed Filipinos to receive free patents for land not larger than 16 hectares that they actually occupied prior before August 13, 1898:

"SEC. 14. That the Government of the Philippine Islands is hereby authorized and empowered to enact rules and regulations and to prescribe terms and conditions to enable persons to perfect their title to public lands in said Islands, who, prior to the transfer of sovereignty from Spain to the United States, had fulfilled all or some of the conditions required by the Spanish laws and royal decrees of the Kingdom of Spain for the acquisition of legal title thereto, yet failed to secure conveyance of title; and the Philippine Commission is authorized to issue patents, without compensation, to any native of said Islands, conveying any title to any tract of land not more

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<sup>74</sup> See OVERSEAS FORESTRY CONSULTANTS ASS'N, *supra* note 9. The JICA study contains recommendations on how to rehabilitate and manage the Reservation based on a scientific zoning of the watershed. However, they must be modified to take present budget constraints into account.

<sup>75</sup> The strong odor emanating from Foremost Farms, said to be one of the largest livestock farms in the country, is likewise noticeable from a distance.

<sup>76</sup> The power of expropriation was provided for even in President William McKinley's Instructions to the Second Philippine Commission, dated April 7, 1900, that constituted the first organic act of the Philippine Islands. See VICENTE V. MENDOZA, FROM MCKINLEY'S INSTRUCTIONS TO THE NEW CONSTITUTION DOCUMENTS ON THE PHILIPPINE CONSTITUTIONAL SYSTEM (1978).

<sup>77</sup> § 13, 15.

than sixteen hectares in extent, which were public lands and had been actually occupied by such native or his ancestors prior to and on the thirteenth of August, eighteen hundred and ninety-eight.”

However, the above implied that those persons, not necessarily natives, who had fulfilled all or some of the requirements for the acquisition of legal title under Spanish law could have acquired title over lands, even those larger than sixteen hectares.

On October 7, 1903, the Philippine Commission enacted Act No. 926, which allowed any citizen of the Philippines or the United States to apply for a homestead and sales patent to a portion of the unreserved, unappropriated agricultural public land, for a parcel up to sixteen hectares large.<sup>78</sup> However, with respect to those deriving titles from Spanish laws, there was no limit provided.<sup>79</sup>

One concludes that the parcels of land within the Reservation that Executive Order No. 16 attempted to exclude in 1915, such as those claimed by the heirs of Wilson, must have been derived from Spanish titles in order to be valid, especially if they were more than sixteen hectares large. Otherwise, they could not have been validly acquired under Act No. 926, because Executive Order No. 33 established the Reservation on July 26, 1904. Thus, the DENR may investigate the validity of alleged titles and initiate reversion proceedings.

Parenthetically, it is possible to convince private owners to use their property to benefit the whole community, including themselves. Even if courts dismiss a challenge to Executive Order No. 16, development activities in these areas eventually affect properties and businesses downstream, some of which belong to the same owners. This author posits, for example, that a pig farm operating within the Reservation might be owned by a well-known businessman, and the DENR can simply point out that water pollution affects his other businesses located downstream, and those his associates.

Note, however, that the issue of titles is completely distinct and independent from the issue of past grants of tenurial rights granted under the DENR's ISF program.

#### F. KAINGIN AND REFORESTATION

Compared to the twin problems of informal settlers and adverse development within the Reservation, rehabilitating the forest cover itself is not an urgent a problem since the forest has a natural regenerative capacity. Logically, *kaingin* continues after several decades simply because the trees grow. The most

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<sup>78</sup> Compare Act No. 926, Chapters II and IV

<sup>79</sup> *Id.*, Chapter VI.

important thing is to restrain human activity in the area, and allow the Reservation to heal itself.

Historically, the DENR resorted to an active reforestation program in an attempt to counter the destructive effects of *kaingin*. Unfortunately, it could not maintain its presence, and the new trees were themselves subjected to *kaingin*. Thus, a sense of defeat pervades DENR field offices

Stewardship is the present fashionable solution, where settlers are encouraged to abandon *kaingin* and other destructive activities, and encouraged to undertake conservation activities such as the planting of fruit trees. In exchange, they are given a security of tenure over the land they occupy. The government expects them to protect the land not just against deforestation, but against other squatters and encroachments as well.

This method was employed in the area covered by the ISF and Proclamation No. 585. Although ownership rights cannot be legally granted as these are public lands, their tenure is assured for 25-year periods by issuing certificates of stewardship. Subsequently, DENR Admin. Order No. 98-45, dated June 24, 1998, allowed the stewards to convey their tenurial rights, apparently to allow market forces to encourage greater conservation activity in the area. The idea was that when a steward is no longer in a position to utilize and protect the area, he must convey it to someone willing to do so, while earning something for his past labors.

Unfortunately, the entire scheme backfired. While the stewards willingly conveyed their tenurial rights, they were unwilling to leave. The land was subdivided into homelots, which were then sold to relatives and friends. Squatting and encroachment were, in effect, legalized, while plantation and conservation activities were abandoned. The communities evolved into residential areas with booming populations. Farming is now the major source of livelihood, with a growing diversification into construction work, and politicians are pressured to provide infrastructure development. Again, conservation efforts were defeated by the mutually reinforcing tandem of a growing population and their political patrons.

DENR officials are now forced to deal with local politicians rather than stewards, and the tenurial rights that were supposed to protect the land were seen as a source of quick money or an object for speculation. The long terms of these rights encouraged the stewards to build improvements and accommodate relatives who needed a place to stay, and built a sense of ownership among the settlers. This is compounded because local politicians will likely work for permanent recognition of these rights.

The above situation is most evident in the ISF area covered by Proclamation No. 585, but it is also increasing in other areas. For example, Sitio Calawis, adjacent to Boso-boso and the ISF area, now has a rapidly increasing population and expanding residential area, an expansion also fueled by migration.

The settlers are engaged not in tree planting but backyard vegetable farming, and most hope to settle permanently.

Faced with such a situation, the DENR granted them tenurial rights, such as the Protected Area Community-Based Resource Management Agreement with the Calawis Cooperative Association. But while the intent was limited to sustainable use for conservation purposes, this author feels that the grantee's ultimate intent is to validate the illegal entry of its members in the area. A low average educational attainment almost certainly means these settlers will have difficulty finding livelihood outside the Reservation. As with Proclamation No. 585's aftermath, politicians came to the rescue, providing electricity, school buildings, multipurpose halls equipped with computers, and covered sports complexes – further incentives for migrants.

This author submits that the grant of rights over land to private individuals by the State is based on John Locke's philosophy, that it becomes a piece of property only because of the labor invested in it by the person. The fusion of land as a physical entity and the labor of the person justifies a moral claim over the former.<sup>80</sup> Thus, the Philippine Bill of 1902 granted free patents to grantees who occupied and developed land prior to the grant, and sales patents to those who undertook to develop land after the grant. This concept survived into Philippine agrarian reform laws. Presidential Decree No. 27 granted rice and corn lands to actual tillers or "tenant-farmers," and the Comprehensive Agrarian Reform Law now provides:

"SECTION 22. Qualified Beneficiaries. — The lands covered by the CARP shall be distributed as much as possible to landless residents of the same barangay, or in the absence thereof, landless residents of the same municipality in the following order of priority:

- (a) agricultural lessees and share tenants;
- (b) regular farmworkers;
- (c) seasonal farmworkers;
- (d) other farmworkers;
- (e) actual tillers or occupants of public lands;
- (f) collectives or cooperatives of the above beneficiaries; and
- (g) others directly working on the land.

*Provided*, however, That the children of landowners who are qualified under Section 6 of this Act shall be given preference in the distribution of the land of their parents: and *Provided, further*, That actual tenant-tillers in the landholdings shall not be ejected or removed therefrom.

Beneficiaries under Presidential Decree No. 27 who have culpably sold, disposed of, or abandoned their land are disqualified to become beneficiaries under this Program.

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<sup>80</sup> See JOHN PATRICK DIGGINS, ON HALLOWED GROUND: ABRAHAM LINCOLN AND THE FOUNDATIONS OF AMERICAN HISTORY 48-49 (2000).

*A basic qualification of a beneficiary shall be his willingness, attitude, and ability to cultivate and make the land as productive as possible.* The DAR shall adopt a system of monitoring the record or performance of each beneficiary, so that any beneficiary guilty of negligence or misuse of the land or any support extended to him shall forfeit his right to continue as such beneficiary. The DAR shall submit periodic reports on the performance of the beneficiaries to the PARC.” (emphasis added)

This author thus argues that there is no moral justification for the grant of public land to private entities without the latter’s exertion of labor, for the benefit of the land and ultimately, the country’s environment. Not even agrarian reform, the most radical form of social legislation to date, condones sloth on the beneficiary’s part. As the failed stewardship story ends, a policy of dole-outs is self-defeating. To grant the steward ownership of the forestland he is supposed to protect, because the forest is gone and settlers have come in, is patently absurd. Even granting that genuine hard work as steward can be transposed into the Lockean commingling, the mere fact that they have almost all failed to exert the agreed upon labor undercuts any moral justification.

This author believes the political will should be mustered to strictly regulate the area covered by Proclamation No. 585.

### G. AUTHORITY OF LOCAL GOVERNMENT UNITS

At present, local government participation in managing protected areas is facilitated through the Protected Area Management Board. They have no direct control over land utilization within these areas.

However, the DENR must deal with local government units whose political boundaries cover portions of the Reservation. The Secretary is expressly empowered by Republic Act No. 7586 to enter into necessary agreements with private and public entities.<sup>81</sup> From the LGU perspective, the Local Government Code of 1991 empowers local government units to establish and conserve watersheds, among other forest development projects.<sup>82</sup> Again, however, some local politicians are actually involved in development projects adverse to watershed conservation efforts, and it always possible for these to overpower the DENR in their areas.

Thus, much depends on the DENR leadership’s ability to navigate these political currents and assert its legal mandate. Fortunately, the PAMB’s framework provides for a multi-stakeholder and multi-sectoral management approach, an avenue the DENR should maximize. It can, for example, be resorted to when local politicians tend to lobby individually. Needless to say, the presence of non-

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<sup>81</sup> Rep. Act No. 7586, § 10(h).

<sup>82</sup> LOCAL GOVT CODE, § 447(5)(i), 458(5)(i).

governmental and peoples' organizations in the PAMB may serve as a counterweight to less than scrupulous local leaders. Although the DENR Secretary is empowered to deal with LGUs directly, this author proposes that the PAMB should be allowed to serve as a primary forum, to ensure transparency, accountability, and social acceptability in managing the Reservation. However, the DENR should endeavor to include representatives of LGUs of downstream communities in the PAMB, as they will be affected by adverse developments upstream.

### CONCLUSION

The present confusion with respect to the Marikina Watershed Reservation's actual boundaries is not a reason for abandoning it. The government can take appropriate steps to untie the legal knots even prior to Congressional action resolving these boundaries. This author asserts that a near-mechanical application of the hierarchy of laws concludes that many of the issuances that sought to modify the Reservation's boundaries are actually invalid, and that titles founded on these flawed issuances may be challenged in order to make the Reservation whole.

Ultimately, although Republic Act No. 7586 allows for disestablishment of protected areas, the Reservation – and all other critical watersheds similarly situated – should be retained. This is justified by four main reasons:

- 1) the existence of a state of national water crisis;
- 2) the opportunity costs of ignoring a potential source of clean water for Metro Manila;
- 3) the economic losses due to pollution of the downstream areas; and
- 4) the increased risk of flooding in downstream population centers.

In any event, maintaining the Reservation is not harsh, nor unrealistic, nor impracticable. Even critical watersheds are legally subject to multiple use under both Presidential Decree No. 705 and Republic Act No. 7586. It falls to the DENR and the PAMB to maximize this flexibility, without necessarily violating the mandate outlined in the Water Commission's Resolution No. 08.

With judicious multiple use and more democratic management through multi-stakeholder interaction in the DENR and the PAMB, it is hoped that the government may strike a compromise between poverty alleviation in upstream communities and the water needs of Metro Manila. While the concept of social justice and individual property rights must be respected, one must not forget Justice

Laurel's original formulation that the ultimate social justice is one that effects the greatest good for the greatest number.

Let the letter and spirit of the law give life to a watershed, which gives water – which gives life.

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